

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

M.A. 2987 OF 2019

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

TJSB Sahakari Bank Limited
...Applicant

Vs.

Ms. Jovita Reema Mathias & Others
...Respondent

In the matter of

C.P.(IB) No. 1669/MB/2018

M/s Trimurti Services

Operational Creditor

Vs.

M/s Vipul S Plastocrafts Private Limited

Corporate Debtor

Order delivered on: 18.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Ankit Lohia, Advocate

For the Respondent : Mr. Santosh R. Bharucha, Advocate

ORDER

Per: , Member ()

1. This application MA 2987/2019 was filed by Mr. TJSB Sahakari Bank Limited (“Applicant”) in the matter of M/s Vipul S Plastocrafts Private Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking following reliefs:
 - a. To severely penalise the Respondents as per the provisions of Section 65 of the Insolvency and Bankruptcy Code, 2016 for fraudulent initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor,
 - b. To severely punish and penalise the Respondent No. 2. Respondent No 13 and Respondent No. 15 under Section 71 of the Insolvency and Bankruptcy Code, 2016 for falsification of books of corporate debtor,
 - c. To severely punish and penalise the Respondent No. 1 and Respondent No. 2 under Section 72 of the Insolvency and Bankruptcy Code, 2016 for willful and material omissions from statements relating to affairs of corporate debtor,
 - d. To punish and penalise the Respondent No. 1 and Respondent No. 2 under Section 73 of the Insolvency and Bankruptcy Code, 2016 for false representations to creditors,
 - e. To dismiss the present Company Petition No. 1669 of 2018 filed by the Respondent No. 4 and revoke the orders passed there under;
2. The Applicant sanctioned various loan facilities to the Corporate Debtor during the period from 2008 to 2013. The Respondent No. 8 and Respondent No. 9 were the personal guarantors to the loan facilities sanctioned by the applicant to the Corporate Debtor. The Corporate Debtor made regular payments to the Applicant from Year 2011 to 2016.

- 2.1. On 15th July, 2014, Respondent No. 2 was appointed as the Additional Director of the Corporate Debtor. The Respondent No. 2 was transferred 80% shareholding of the Corporate Debtor on 19th January, 2016. Since the transfer of shareholding of the Corporate Debtor, it started defaulting in making the payments of loan instalments to the Applicant.
- 2.2. The applicant was shocked to notice that the Corporate Debtor has opened and operated bank accounts in Saraswat Co- Operative Bank Limited and Bank of Maharashtra without obtaining the consent of the Applicant with the clear view to defraud the applicant. After the onset of the IBC, 2016, somewhere in 2017 an evil plan was prepared by the Respondent No. 2 with the help of other respondents and in view of the said plan Respondent No. 2 resigned from the directorship of the Corporate Debtor on 23rd August, 2017.
- 2.3. Respondent No. 10 and Respondent No. 11 were appointed as the proxy directors as a front for the Respondent No. 2. Thereafter, on 23rd August, 2017, the Respondent No. 2 incorporated Respondent No. 3 with a view to take over the Corporate Debtor and appointed his wife as the Director of the Respondent No. 3.
- 2.4. The Corporate Debtor is shown to have made various advances to the Respondent No. 3 during the financial year 2017-18 and 2018- 19, which is the concern of the wife of the Respondent No 2. Respondent No. 2 was calling all the shots even after his so called resignation at the Corporate Debtor and is evident from the fact that well after his resignation from the Corporate Debtor, the Respondent No. 2 has signed the financial statements of the Corporate Debtor for the financial year 2016-17 on 06th September, 2017. This makes it crystal clear that he was still managing the affairs of the Corporate Debtor even after his resignation from the Corporate Debtor and his resignation from the directorship is only a farce. Since the financial year 2016-17, the

Respondent No. 2 along with other directors started manipulating the records of the Corporate Debtor.

2.5. At one place the Corporate Debtor defaulted in the payments of instalments to the Applicant and at the same time made huge advances to the related parties. The advances exceeded the turnover of the Corporate Debtor by 3 times during the financial year 2017-18. The detailed comparison between the turnover and advances of the corporate debtor is as tabulated below:

Financial Year	Turnover	Advances
2017-18	5,42,60,951	15,29,18,328
2018-19	1,45,41,823	15,29,18,328

2.6. Thereafter, the Corporate Debtor has not filed its financial statements for the financial year 2016-17 and 2017-18 with the Registrar of Companies with a view to suppress material information from the public eye.

2.7. The Respondent No. 4, who is the operational creditor who purportedly later on filed an application for the CIRP, was shown to have done business with the Corporate Debtor from April 2017 to September 2017. In May 2018, the Respondent No. 4 filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor for non-payment of outstanding dues by the Corporate Debtor vide Company Petition No. 1669 of 2018. The said application was signed by the Respondent No. 12 who is the accountant of the Respondent No. 4. The Respondent No. 1, acting hand in glove with the other respondents, consented to be appointed as IRP and hence, was proposed as the Interim Resolution Professional of the Corporate Debtor

in the said application itself. It seems to give effect to their evil plans the respondents wanted to have their own person acting as IRP/RP.

- 2.8. We have a serious doubt that the said application was filed by the Respondent No. 4 on the basis of the false and fabricated invoices depicting the charges levied for the labour services provided to the Corporate Debtor. The Respondent No. 4 is conspicuous by his absence in the financial statements for the financial year 2017-18.
- 2.9. The application was heard by the Bench on 23rd October, 2018 and the Corporate Debtor, as a pre-decided ploy, sought time from the Bench for filing the Reply to the application. The Bench then granted the time of 7 days to the corporate debtor for filing the reply.
- 2.10. Then, on 22nd January, 2019, the Corporate Debtor appeared before the Bench and stated that "he is not filing any reply and further stated that he has no objection if the petition is admitted because the corporate debtor does not have the funds to pay the dues of the Respondent No. 4." Thereafter, the Bench on 11th March, 2019 passed an order admitting the application made by the Respondent No. 4 and appointed Respondent No. 1 as the Interim Resolution Professional of the Corporate Debtor. The above act of the Corporate Debtor speaks volume about the drama performed by the Corporate Debtor and the fraudulent intentions of the Corporate Debtor and the rest of the respondents for initiation of Corporate Insolvency Resolution Process. Simultaneously, in the month of July 2018, the Applicant had also filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor for non-payment of outstanding dues by the Corporate Debtor vide Company Petition No. 3377 of 2018. The above stated application was declared as infructuous by the Bench vide

its order dated 02nd April, 2019 due to the admission of the fraudulent application filed by the Respondent No. 4.

- 2.11. After the initiation of Corporate Insolvency Resolution Process of the Corporate Debtor, the Respondent No. 2 swung into the action and started manipulating the financial and other records of the corporate debtor with the help of Respondent No. 13. The Respondent No. 1 took the control of the Corporate Debtor and issued public announcement for inviting claims from the creditors of the Corporate Debtor. The Respondent No. 1 conducted the first meeting of the committee of creditors on 12th April, 2019 and placed the list of claims received by her after issuance of public announcement. The claims were received from Respondent No. 5, Respondent No. 6 and Respondent No. 7 whereas these claimants were shown in the books of the corporate debtor only since the financial year 2017-18. The Applicant observed that one of the claimant i.e. Respondent No. 6 was the sole proprietorship concern of the Respondent No. 2 itself. Interestingly the applicant was further surprised to observe that Respondent No. 5, Respondent No. 6 and Respondent No. 7 had authorised Respondent No. 2 as their representative to attend the meeting of the committee of creditors. It was apparent on its face that it's a ploy played out by all. Therefore, the applicant requested Respondent No. 1 to re-verify the claims of Respondent No. 5, Respondent No. 6 and Respondent Nos. 7.
- 2.12. The Applicant further raised a robust objection that the corporate debtor has not routed any sale transaction through them. The Respondent No.1 replied that the Corporate Debtor was operating its accounts with Saraswat Co-Operative Bank Limited and Bank of Maharashtra. The applicant further objected that no transaction can be routed in any other bank without their NOC as the corporate debtor has availed credit facilities from them. Sensing something fishy about the intentions of the respondents, the applicant proposed the name of another Resolution

Professional and objected to the appointment of Respondent No.1 as the Resolution Professional of the Corporate Debtor. The resolution for her appointment was claimed to have been passed with 64.55% of the voting share which was lesser than the limit of 66% prescribed by the Insolvency and Bankruptcy Code, 2016. Therefore, the appointment of Respondent No. 1 as the Resolution Professional of the Corporate Debtor is invalid and baseless. The objections raised by the Applicant have been recorded in the minutes of the first meeting of the committee of creditors and the same has been attached herewith as Annexure No. 11. Respondent No.1, taking benefits of the provisions of the IBC, 2016, continued to operate as RP.

- 2.13. The Applicant filed an application before the Hon'ble Bench on 03rd May, 2019 for the appointment of the Resolution Professional. The Respondent No. 1 failed to provide a satisfactory reply on the acceptance of the claims of Respondent No. 5, Respondent: No. 6 and Respondent No. 7. Therefore, the applicant vide e-mail dated 22nd April, 2019 requested the Respondent No. 1 to provide the claim authentication documents. The Respondent No. 1 failed to share the documents and intimated the applicant that they can inspect the documents only during the inspection and in the presence of other unsecured creditors. The second meeting of the committee of creditors was conducted by the Respondent No. 1 on 15th May, 2019. The Respondent No. 1 informed the members of committee of creditors that the corporate debtor has three bank accounts and all the transactions are routed through those bank accounts. The Applicant insisted the Respondent No. 1 to close the bank accounts and to route the transactions in the new bank account to be opened with the applicant.
- 2.14. The applicant raised further objections on the acceptance of claims of Respondent No. 5, Respondent No. 6 and Respondent No. 7 by the Respondent No. 1. The Respondent No. 1 allowed the applicant to carry

out inspection of the records but failed to provide the bank statements recording the entries of the transactions for the respective period. It was clear from the record produced before the applicants that no bank statements were verified by the IRP at the time of verification or even after raising specific doubt about the said creditors.

- 2.15. It is evident from the financial records of the CD that the Corporate Debtor obtained huge amount of unsecured loans to the tune of 36-38 Crores when the turnover of the Corporate Debtor was merely 4-5 Crores. This money was neither used to repay the old outstanding nor was used to create any further assets for the company. Hence, it was done only with a view to balance out the voting share of the only Secured Financial Creditor in the meeting of the COC. We have a serious doubt that even money has not been transferred to and from the accounts Of the Corporate Debtor and mere entries seems to have been passed falsifying the records. When challenged by Applicant in the COC meeting the IP only produced the fabricated Audited records whereas no bank statements were produced even after the repeated requests of the Representatives of the Applicant. The Minutes of the COC painted a different story altogether.
- 2.16. It's evident from the records that all the respondents wanted to fast track the completion of CIRP process and approve their own. person as the resolution applicant. One of the agenda items of the second meeting of the committee of creditors was approval of Form G for inviting expression of interest from the Prospective Resolution Applicants. The said item was taken up in the second meeting itself which throws light on the fraudulent intentions of the Respondent No. 1 and Respondent No. 2. Even though the Regulation 36A specifically prescribes that the publication has to be made in a newspaper having wide circulation, the said FORM G was published in a scarcely circulated Newspaper i.e.

"Aapla Maharashtra" so that it does not attract unwanted Resolution applicants.

- 2.17. The Respondent No. 1 also intimated the members of the committee of creditors in their second meeting that the Information Memorandum has been prepared by her. This act of the Respondent No. 1 makes the doubts more deeper that the Information Memorandum was prepared well in advance by the Respondent No. 1 purportedly on the directions given by Respondent No. 2. The copy of the minutes of the second meeting of the committee of creditors has been attached herewith as Annexure No. 13.
- 2.18. On 20th May, 2019, the Applicant vide e-mail informed the Respondent No. 1 that the discussion pertaining to appointment of forensic auditor was not made a part of the minutes of the second meetings of the committee of creditors. The applicant further informed that he has suggested the name of CA Tejas Parikh for the position of the forensic auditor and it was decided that necessary quotes will be obtained from him. The Respondent No. 1 further replied to the Applicant mentioning that she cannot take references from any of the financial creditors and the forensic auditor is required to be independent. This clearly proves that the Respondent No. 1 and Respondent No. 2 was acting hand in glove and did not act on any suggestion of the Applicant.
- 2.19. The Applicant sent an e-mail dated 03rd June, 2019 to the Respondent No. 1 highlighting the details missed out by the Respondent No. 1 in the Information Memorandum shared with the committee of creditors. The Respondent No. 1 vide return e-mail dated 04th June, 2019 accepted the same and assured that the said information will be made a part of the Information Memorandum. This shows that the Information Memorandum was prepared by the Respondent No. 1 in haste.
- 2.20. The Respondent No. 1 then shared the revised Information Memorandum with the Applicant vide e-mail dated 17th June, 2019.

The Respondent No. 1 shared the provisional list of the Resolution Applicants with the committee of creditors vide e-mail dated 27th June, 2019. To the surprise of the applicant, there were only two resolution Applicants ie. Respondent No. 2 (ex director and shareholder of the CD) and Respondent No. 3 (A Company floated by the wife of Respondent No 2) had given their expression of interest and were the prospective Resolution Applicants.

- 2.21. The third meeting of the committee of creditors was conducted by the Respondent No. 1 on 17th July, 2019. The Respondent No. 1 informed the committee of creditors that the claims have been received from Respondent No. 4 and M/s Venus Enterprises. It is quite surprising that the Respondent No. 4 has itself filed an application for initiation of corporate insolvency resolution process and was very well aware of the order dated 11th March, 2019 passed by the Hon'ble Bench. Thereafter, it took him more than 3 months to submit its claim before the Respondent No. 1.
- 2.22. The Applicant further raised a concern that the Respondent No. 1 is not operating the new bank account opened with the applicant bank. The Respondent No. 1 replied that she will route the transactions in the said account in the coming future. The resolution for the appointment of the Resolution Professional was again placed before the committee of creditors for their approval which was again objected by the applicant. The applicant informed the members of committee of creditors that they have filed a miscellaneous application for appointment of the resolution professional before the Bench and they are waiting for the hearing of the said application.
- 2.23. The Respondent No. 2 and Respondent No. 3 failed to comply with the criteria of 50 Lac towards the Earnest Money Deposit (EMD). Therefore, the Respondent No. 1 and Respondent No. 2 proposed the members of the committee of creditors in its third meeting to reduce the

criteria of the EMD from 50 Lac to 5 Lac. The said resolution was also objected by the Applicant and the said resolution was also claimed to have been passed by 65.61% voting. of the members. The IRP did not even bother to specify that the Respondent No.2, who himself is a resolution applicant cannot vote on the matters he is personally interested in.

- 2.24. Pursuant to the change of criteria of EMD, the Respondent No. 1 proposed the members of the committee of creditors to issue the revised Form G for invitation for expression of interest. The said resolution was also objected by the Applicant and the said resolution was also claimed to have been passed by 65.61% voting of the members.
- 2.25. The Respondent No. 1 then shared the revised provisional list of the Resolution Applicants with the committee of creditors vide e- mail dated 01 August, 2019. To the surprise of the applicant, the expression of interest was again received from Respondent. No. 2 and Respondent No. 3. The Respondent No. 3 complied with the criteria of revised EMD this time but the Respondent No. 2 again failed to comply with the said criteria.
- 2.26. The Respondent No. 1 then shared the final list of the Resolution Applicant with the committee of creditors vide e-mail dated 05th August, 2019. The Respondent No. 3 which is the related concern of the Respondent No. 2 was selected as the Final Resolution Applicant.
- 2.27. The Applicant enquired about the status of the Valuation report and Forensic Audit Report from the Respondent No. 1 vide e-mail dated 13th August, 2019. The Respondent No. 1 by return e-mail informed the applicant that the forensic audit has been conducted by the Respondent No. 14 and the forensic audit report has been received from him. She further informed that she has appointed 2 Registered Valuers i.e. Mr. Milind Ankalgi and Mr. Girish Pawar and the Valuation Report is still awaited.

- 2.28. The Applicant via e-mail dated 16th August, 2019 requested the Respondent No. 1 to share the forensic audit report and updated information memorandum.
- 2.29. The Respondent No. 1 shared the Forensic Audit Report with the Applicant via e-mail dated 19th August, 2019. The Forensic Audit Report provided by the Respondent No. 14 is again appears to be a managed affair and the same has been prepared without going into detailed documentation of the Corporate Debtor or the concerned unsecured Creditors. It needs to be checked by an Independent Authority or Auditor if there are certain under reporting etc.
- 2.30. The Respondent No. 1 sent the updated Information. Memorandum to the Applicant via e-mail dated 19th August, 2019. The Respondent No. 1 was only concerned about her fees during the Corporate Insolvency Resolution Process as she raised her invoices way before the execution of the services for the respective month.
- 2.31. The Respondent No. 1 and Respondent No. 2 have conducted the affairs of the corporate debtor as per their own whims and fancies during the entire Corporate Insolvency Resolution Process. The ambiguous unsecured creditors have been made a part of the Committee of Creditors and upto 65% of the voting percentage have been allotted to them.
- 2.32. The Respondent No. 1 and Respondent No. 2 have taken the benefit of the Insolvency and Bankruptcy Code, 2016 for their fraudulent motives. The Respondent No. 1 is still continuing as the Resolution professional without obtaining the consent of the committee of creditors by required voting of 66% as prescribed under Section 22 (2) of the Insolvency and Bankruptcy Code, 2016. The entire object of the Insolvency and

Bankruptcy Code, 2016 regarding the insolvency resolution of the company has been defeated by the Respondents.

- 2.33. The Respondent No.1 and Respondent No. 2 have tried all means to defraud the Applicant and to extort the lawful monies of the Applicant. This smells of a vindictive attitude towards the Applicant by the Respondent No. 2 who is acting hand in glove with Respondent No. 1 for ulterior motives. The Respondent No. 1 has acted ultra vires the code of conduct of Insolvency Professionals prescribed under The Insolvency and Bankruptcy Code, 2016.
 - 2.34. The First Schedule as per Regulation 7(2)(h)] of Insolvency And Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016 lists down the code of conduct for the Insolvency Professionals.
 - 2.35. The Respondent No. 2 and Respondent No. 4 are therefore liable to be penalised as per the provisions of Section 65 of the Insolvency and Bankruptcy Code, 2016 for fraudulent initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.
3. Respondent Nos. 13 to 15; Respondent Nos. 8 to 11; Respondent Nos. 3 to 5, 7 & 11 and Respondent Nos. 2 & 6 have filed joint Replies in the present matter.
 4. The Respondent No. 1/Resolution Professional has filed and placed on record their Affidavit in Reply. We have perused the same. Following are the notable facts of the Reply filed by the Respondent No. 1:
 - 4.1. The present Application was signed on 31.08.2019 and filed after CIRP came to an end.
 - 4.2. The Applicant had 34.38% of the voting share and was the only secured Financial Creditor. As such, it had the voting share to block any Resolution not requiring simple majority.

- 4.3. Applicant offered no co-operation in the CIRP of the Corporate Debtor and rejected almost all Resolutions put to vote after the First CoC meeting.
- 4.4. Respondent No. 1 also submits that the Second CoC meeting was held on 15.05.2019. During this meeting, IRP allowed the officers of the Applicant to inspect the claim documents relating to the other CoC Members. Officers of the Applicant inspected all the documents and raised some queries which were satisfactorily dealt with by the IRP. This is recorded in the minutes. The Applicant has not disputed the minutes of the Second CoC meeting. No action was taken by the Applicant at that time nor was any objection to the claims raised. It is further submitted that the Applicant only disputed the minutes of the Second CoC meeting to the extent of attempting to insist that its own choice of professional be appointed as forensic auditor; however, IRP pointed out that the same is her responsibility which must be carried out independently. No other objection was raised on the minutes of the Second CoC meeting.
- 4.5. Further, in Fourth CoC meeting also, the Applicant blocked all Resolutions including the Resolution for extension of CIRP under Section 12. Thus, CIRP came to an end on 06.09.2019 and the IRP had no choice but to file an Application for Liquidation.
5. Heard the Counsel and perused the material on record.
- 5.1. The Applicant had assigned the debt to Omkara Asset Reconstruction Private Limited *vide* Assignment deed dt. 28.01.2021; accordingly, the Applicant was substituted by the Assignee in terms of IA 2001 OF 2021, *vide* order dt. 13.09.2023
- 5.2. This Bench recorded on 13.02.2024 that this Application has to be decided on the reference to the IBBI in relation to the conduct of the Resolution Professional and all other prayers came to be infructuous after passing of order of the Liquidation in this case. On perusal of the

Daily orders filed, it is noticed that this Bench has also recorded the time passed in the CoC in its order dt. 08.11.2019. It is also noticed that due to this impasse, this CIRP period came to an end without any Resolution taking place in the case of the Corporate Debtor; accordingly, the Respondent No. 1 filed an Application in MA 3299 of 2019, for Liquidation of the Corporate Debtor and this Tribunal allowed the Application vide order dt. 23.11.2023, appointing Sh. Rakesh Kumar Tulsyan, as the Liquidator of the Corporate Debtor.

- 5.3. The Applicant has alleged that Respondent No. 1, allowed Respondent No. 2, to represent the Respondent Nos. 5, 6 & 7 in the CoC knowing fully well that Respondent No. 2 was Ex-Director and also proprietor of Respondent No. 5. We find that Respondent No. 2 has ceased to be a Directors of the Corporate Debtor at the time of constitution of CoC and was not a related party; we cannot find fault in the conduct of the IRP in so far as she permitted the Respondent No. 2 to take parts in the CoC meetings after discovering that the Respondent No. 2 is no longer a Director of the Corporate Debtor.
- 5.4. We further note that the claims of the Creditors was admitted after the verification of the books of the Corporate Debtor wherein the debts owed to the Respondent Nos. 5 to 7 were reflecting. It is undisputed facts that these Books of accounts came into possession of the Respondent No. 1 after the commencement of CIRP and no allegation can be made against her in relation thereto. Since, a committee of Creditors has to be constituted after the admission of the claim and composition of such committee is derived from the list of the Creditors so prepared by the IRP.
- 5.5. Since, no Resolution took place; hence, we are not going into the enquiry pertaining to the role of Respondent No. 3. Needless to say, the accounts of Financial Year 2017-18 and 2018-19 were duly audited by the Chartered Accountant and were subsequently examined by the Forensic

Auditor. The Code authorises the Resolution Professional to engage Professionals for conducting Forensic/Transaction Audit of the Corporate Debtor and no specific approval of the CoC is required in relation to such appointment. There is no allegation that the Transaction Auditor was so appointed was either related or any undue benefit was received by the Respondent No. 1 whether directly or indirectly from such Forensic Auditor.

5.6. In view of the above discussions, we do not find any wrong doing in the action of IRP, so as to necessitate any enquiry by IBBI.

6. Accordingly, MA 2987/2019, is dismissed and disposed of Accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)