

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.04.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Jaya Mangai Transport
Vs
Ra-ni Precast Pvt Ltd

MAIN PETITION NUMBER : CP/1156/IB/2018
(IA/MA) APPLICATION NUMBERS
IA(IBC)/1639(CHE)2023; IA/383/CHE/2021

ORDER

IA(IBC)/1639(CHE)2023:

Present: Mr. P.R.Raman, Liquidator in person.

Vide separate order pronounced in the open court, the application is dismissed.

IA/383/CHE/2021:

Present: Mr. P.R.Raman, Liquidator in person.

Vide separate order pronounced in the open court, the application is disposed of with directions.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA (IBC)/383(CHE)/2021 in CP/1156/IB/2018

*(Filed under Section 35(1)(k) read with 60(5) of the Insolvency and Bankruptcy
Code, 2016)*

Pathukasahasram Raghunathan Raman

Liquidator of Ra-Ni Precast Private Limited

No.93, Sivan Koil South Street,

Vadapalani, Chennai – 600 026

... Applicant

-Vs-

1. Jayashree Mohan

Suspended Managing Director of Corporate Debtor

No.6, Neelakandan Street,

Choolaimedu, Chennai – 600 094

2. Soundar Rajan Thyagarajan

Suspended Director of Corporate Debtor

Sundhareswamy Koil Street,

Kosapet, Vellore – 632 001

3. Tr. Revenue Divisional Officer

Kancheepuram District

4. Tr. Inspector General of Registration

#100, Santhome High Road, Pattinapakkam,

Raja Annamalipuram, Chennai – 600 028

... Respondent

Order Pronounced on 26th April 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *A.K. Mylsamy, Advocate*
PR Raman, Liquidator

For Respondent : *Prakash, Advocate for R1*

ORDER

(Heard through physical mode)

IA(IBC)/383/(CHE)/2021 is an Application filed by the Liquidator of the Corporate Debtor viz. Ra-Ni Precast Private Limited under Section 35(1)(k) of IBC, 2016 seeking relief as follows;

- i. Direct the Respondent No.1 to submit all the original title deeds of the "Subject property" to the applicant Company Liquidator immediately, to enable him to proceed with the sale of assets forming part of Liquidation estate of the Corporate Debtor as mandated under "The I&B Code 2016".*
- ii. Direct the Respondent No 1 to submit all the original title deeds of the two Flats A206 & A207, in "Green 201" apartments located at SIRUSERI, Pudupakkam Village, Vandalur Taluk, Chengalpattu District, registered with SRO - Thiruporur to the applicant Company Liquidator immediately to enable him to proceed with the Sale of assets under the on- going Liquidation Process, and*
- iii. Direct the Respondent No -2 to file his submission regarding the Subject Property and the Two Residential Flats at SIRUSERI along with all the records and documents in his possession and*
- iv. Direct the Respondent No -3 to Correct the anomaly in the revenue records and issue a Fresh PATTA in the name of "Corporate Debtor" immediately, and*
- v. Direct the Respondent No -5 being the Key managerial personnel of the Corporate Debtor to file the Submissions/ objections/counter Statement, regarding the Staking of claim*

to the "Subject property" by the Respondent No -1 and the contention of the Respondent No 1 that the factory of Corporate Debtor was only functioning from Poramboke lands leased by the Respondent No -1, and

vi. Give any other direction to meet the ends of justice as deemed proper and fit.

2. The Applicant / Liquidator during the course of hearing on 01.02.2024 submitted that he is confining the application to the relief as against Respondent No. 1 only. Thus, by recording the above submissions, this Tribunal vide its order dated 01.02.2024 dismissed the relief no. (iii), (iv) and (v) made in the application.

3. The Applicant was appointed as Interim Resolution Professional in respect of the Corporate Debtor, by this Tribunal vide its Order dated 05.04.2019. It is stated that on taking charge as IRP, the Applicant noticed that there were Oppression and Mis-management proceedings filed by the shareholders cum erstwhile directors of the Corporate Debtor which were adjourned *sine die* on 29.04.2019 in CP/46/2018 and CP/47/2018.

4. It is stated that the Applicant ascertained during the course of his work that the accounts of the Corporate Debtor had not been audited for the Years 2017-18 and 2018-19. During the CIRP, the Applicant formed the Committee of Creditors (hereinafter referred to as "COC"). The first COC meeting was held on 06.05.2019 in which the Applicant requested the erstwhile director Ms. Jayashree Mohan to handover the Financials and other Books of accounts of the Corporate Debtor. In the same meeting, pursuant to Section 22 of IBC, 2016, it was unanimously resolved by the COC to confirm the Applicant as the Resolution Professional.

5. It is stated that as requested in the First COC meeting, the 1st Respondent sent a copy of duly audited balance sheet for the FY 2016-2017 via e-mail on 22.05.2019. In the said audited balance sheet, the Factory Lands located at Pinayur Village, Uthiramerur Taluk, Kancheepuram District along with the incomplete residential Flats at Siruseri were shown in the assets block as belonging to the Corporate Debtor.

6. It is stated that the books of Corporate Debtor were not audited for the FY 2017- 2018 & FY 2018-2019 and no details were available at the registered office of the Corporate Debtor and the erstwhile management was totally non-cooperative in revealing any details in this regard. It is stated that the Applicant as a result, filed MA/1066/2019 in CP/1156/IB/2018 under Section 19(2) of I&B Code, 2016, seeking Co-operation from the erstwhile management and the statutory auditors of the corporate debtor during CIRP which was disposed of on 18.10.2022.

7. It is stated that in the 3rd COC meeting, the Factory Lands belonging to the Corporate Debtor located at Pinayur Village, Uthiramerur Taluk, Kancheepuram District as reflected in the Last audited balance sheet of FY 2016-2017 were discussed by the members of CoC and the CoC requested the 1st Respondent to come up with the details / status of the Land Documents by a particular date and the Applicant requested the erstwhile directors to identify the Factory Lands where the operations of the Corporate Debtor were being carried out.

8. It is stated that in the 4th CoC meeting held on 03.09.2019, the 1st Respondent, after a prolonged follow-up, submitted the copies of Title deeds of Factory Lands belonging to the Corporate Debtor located at Pinayur Village and two incomplete residential Flats located at Siruseri. Further, she agreed to submit the Original documents as and when demanded by the Applicant. The same was duly recorded in the minutes of the Meeting.

9. It is stated that after examining the copies of the documents of the Factory Lands submitted by the 1st Respondent, the Applicant sent a notice to the 1st Respondent to showcause as to why the aforesaid factory lands situated at Pinaiyur Village should not be treated as the asset of the Corporate Debtor.

10. Thereafter, as decided by the COC in its 6th meeting held on 27.02.2020, the Applicant filed IA/670/2020 for initiation of Liquidation Process of the Corporate Debtor. This Tribunal vide its order dated 23.12.2020 ordered for Liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator.

11. It is stated that the Applicant in consonance with IBBI (Liquidation Process) Regulations, 2016 appointed two registered Valuers on 08.01.2021, to conduct independent valuation of the Factory Lands at Pinayur Village and Unfinished Flats at Siruseri. It is stated that the Applicant sent an e-mail dated 03.02.2021 to the 1st Respondent requesting her to submit the original sale deeds of the Factory Lands at Pinayur Village and the Flats at Siruseri as already promised by her in the 4th CoC meeting. It is stated that since there was no response to the aforesaid email, the Applicant sent a Notice dated 26.03.2021 to the 1st Respondent to submit the Original Sale Deed of the Factory Lands at Pinayur Village and the UDS registration documents of the two incomplete Flats at Siruseri.

12. It is stated that on 30.03.2021, the Applicant received a reply from the counsel of the 1st Respondent claiming that the Factory Lands at Pinayur Village belong to her and the factory of the Corporate Debtor was only functioning from the Poramboke lands which were let out on lease by her. However, no such lease was ever recorded in the books of Corporate Debtor and no lease rentals were ever paid out from the bank

account of Corporate Debtor and for this reason no documents were enclosed with her letter.

13. It is stated that during the routine Site Inspection conducted by the Applicant, he was surprised to notice that the Factory lands at Pinayur Village were occupied by a third party who was carrying on his business activities and the Applicant was unlawfully restrained from entering the said factory lands of the Corporate Debtor. It is stated that the Applicant after enquiry conducted with the local administration sent an eviction notice to the illegal occupier M/s. R.R. INFRAA CONSTRUCTION to vacate the factory lands of the Corporate Debtor. On further investigations conducted by the Applicant, it was revealed that an illegal lease deed was created by Ms. Jayashree Mohan on the said lands using falsified records and forged documents. It is stated that the aforesaid illegal lease was brought to the notice of this Tribunal by the Applicant through his Status Report dated 24.12.2021, enclosing all the documents evidencing that the Factory lands at Pinayur Village were illegally leased out by the 1st Respondent herein to M/s. R.R. INFRAA CONSTRUCTION by executing a unregistered Lease Agreement when the Corporate Debtor was in liquidation.

14. It is stated that in the meantime, the audited Balance sheet and P&L account of the Corporate Debtor for the FY 2017-2018, FY 2018-2019 & for the period from 01-04-2020 to 23-12-2020 were finalised. It is stated that the Applicant on 12.10.2022 issued a Notice to the 1st Respondent i.e., Ms. Jayashree Mohan and Mr. N. M. Ranganathan (so called Financier) to submit the original letter along with the Mortgage deed for checking its veracity. However, no response has been received either from the 1st Respondent or Mr. N.M. Ranganathan till the date of filing of this instant Application.

15. It is stated that the 1st Respondent on 02.11.2022 filed reply in IA/383/2021 without annexing any documents pertaining to the so called mortgage created by her with Mr. N. M. Ranganathan (so called Financier). In the said reply it was stated that a rental agreement was made during the year 2016 between Mr. Mohan Kumar and the Corporate Debtor represented by Ms. Jayashree Mohan and the lands at Pinaiyur Village were let out on lease.

16. The Respondent has filed the reply. It is stated that the land measuring 7 Acres and 46 cents obtained by way of Sale Deed dated 20th August 2014, registered as Document No.5701 of 2014, in the office of Sub-Registrar, Walajabad and Sale Deed dated 02nd June 2014, registered as Document No.3686 of 2014, in the office of Sub-Registrar, Walajabad was purchased by her husband Mr. Mohankumar out of his self-earned funds. It is stated that upon perusal of the aforementioned document it can be seen that the Sale Deed does not bear any official seal indicating that the aforementioned piece of land was purchased in the representative capacity of Mr. Mohankumar as the Managing Director of Ra-Ni Precast Pvt. Ltd. It is stated that the entire sale consideration towards purchase of the aforementioned lands was paid by her late husband Mr. Mohan Kumar from his personal account.

17. It is stated that the 1st Respondent was not aware of the mistakes that might have been made in the Encumbrance Certificate for the aforementioned land, however, in the aforementioned Sale Deeds, it is clearly stated that the property is owned by Mr. Mohan Kumar as an individual, who was the Managing Director of Ra - Ni Consulting

Services Pvt. Ltd. It is stated that the receipt registered by Bank of Baroda when the mortgage was discharged states that the receipt in relation to the aforementioned property has been executed in favour of Ra- Ni Precast Pvt. Ltd., represented by its Director Mr.Mohan Kumar on 16th October 2018, however, Mr.Mohan Kumar expired in the month of February 2018. It is stated that this entry is sufficient to prove that mistakes in Encumbrance Certificates are not uncommon and thus the name of Ra-Ni Consulting Services Pvt. Ltd., was erroneously mentioned for the mere fact that the name of the Company figured in the Sale Deed dated 20th August 2014 and 02nd June 2014 along with that of Mr. Mohan Kumar.

18. It is stated that upon verification of the various documents available with the Company, the property extending to about 4.8 Acres being Government land, has been in the possession of the Corporate Debtor and balance portion of lands measuring 7.46 Acres has been leased by Mr. Mohan Kumar to and in favour of M/s Ra-Ni Consulting Services PvtLtd., represented by its Director Mrs. Jayashree for a period of eleven (11) months. It is stated that during the meeting of Committee

of Creditors, the 1st Respondent had submitted the proofs pertaining to the Government land in the possession of the Company and the Lease Deed in relation to the land measuring 7.46 Acres in favour of the Corporate Debtor.

19. It is stated that the revenue records in relation to the aforementioned land stood in the name of Mr. Mohan Kumar only and not in the name of Ra-Ni Precast Pvt. Ltd. which in itself goes a long way in proving that the aforementioned land was in possession of Mr. Mohan Kumar in his individual capacity. It is stated that upon the demise of Mr. Mohan Kumar, the revenue records in relation to the aforementioned land have been transferred in the name of the legal heirs of Mr. Mohan Kumar, therefore, it is clear that the legal heirs of Mr. Mohan Kumar are the absolute and peaceful owners of the land measuring 7 Acres 46 cents obtained by way of Sale Deed dated 20th August 2014, registered as Document No.5701 of 2014, in the office of Sub-Registrar, Walajabad and Sale Deed dated 02nd June 2014, registered as Document No.3686 of 2014, in the office of Sub-Registrar, Walajabad.

20. It is stated that the title and possession in relation to the aforementioned property vest solely with the legal heirs of Mr. Mohan Kumar and the same cannot be treated as the property of M/s Ra Ni Precast Pvt. Ltd.

21. Under such circumstances, the 1st Respondent has prayed for dismissal of the present Application.

FINDINGS OF THIS TRIBUNAL

22. Heard the submissions made by the Learned Counsel for the parties and perused the record.

23. In relation to IA(IBC)/383(CHE)/2021 it is seen that the Liquidator has restricted his relief only against the 1st Respondent.

24. The issue which is required to be adjudicated is that whether the land measuring 7 Acres 46 cents which was obtained by way of Sale Deed dated 20th August 2014, registered as Document No.5701 of 2014, in the office of Sub-Registrar, Walajabad and Sale Deed dated 02nd June 2014, registered as Document No.3686 of 2014, in the office of Sub-

Registrar, Walajabad and also the UDS Sale Deed in respect of two Flats A206 & A207, in "Green 201" apartments located at SIRUSERI, Pudupakkam Village, Vandalur Taluk, Chengalpattu District, registered with SRO – Thiruporur, **belongs to the Corporate Debtor or not.**

25. It is seen that the subject property which forms parts of the Sale Deed dated 20th August 2014, registered as Document No.5701 of 2014, in the office of Sub-Registrar, Walajabad and Sale Deed dated 02nd June 2014, registered as Document No.3686 of 2014, in the office of Sub-Registrar, Walajabad is duly registered in the name of the Corporate Debtor.

26. Further, it is also seen that the subject property was purchased from the funds of the Corporate Debtor which is also established by the DD No. 003004 dated 31.05.2014 which was issued from the current account of the Corporate Debtor which is held with HDFC Bank, Vadapalani Branch. We have also noted that as per the ledger extracts from the books of the Corporate Debtor for the Financial Year 2014 –

2015 the amount was debited from HDFC Bank for the purchase of the subject property.

27. It is also seen that the subject property is recorded in the Balance Sheet of the Corporate Debtor as an Asset Block right from the date of purchase and also in the Balance Sheet for the year ended 31st March 2017 which has been signed by the 1st Respondent.

28. It is also required to be noted that the subject property was mortgaged to Bank of Baroda for securing an OD limit of Rs.1.25 Crores for the Corporate Debtor and the said mortgage was redeemed later by using the funds received from the Sundry Debtors of the Corporate Debtor.

29. Thus, upon perusal of all these documents, it is evident that the ownership of the Subject Property is very much vested with the Corporate Debtor and forms part of the liquidation estate of Corporate Debtor. The 1st Respondent cannot hold in her possession the documents which are standing in the name of the Corporate Debtor. Further, the 1st

Respondent cannot create any encumbrances in the subject property after initiation of CIRP.

30. While this being the case, the 1st Respondent has filed a status report before this Tribunal and the same is extracted hereunder;

I, Jayashree Mohan, Respondent-1 do hereby submit the following for taking on record and consideration of Hon'ble member in the above matter:

1. The original documents of the factory are not available with the Respondent-1, Mrs. Jayashree Mohan and it is available with the Financier who has funded Mrs. Jayashree Mohan to clear of all the dues payable by the company to outsiders.

2. The financier is ready to handover the documents to the company subject to the payment of full amount along with necessary interest payable.

3. The company has preferred an application with NCLAT for revival of the company vide Efiling Ref.9805118/02523/2022. The hearing is likely to come shortly.

4. In respect of the dispute with reference to the ownership of the properties of the factory, the petitioner has preferred a case with City Civil Court, Chengalput and the Ref.no. 13926/2022. As these are all disputed, the Civil court has got the jurisdiction to decide and NCLT does not have jurisdiction as per Sec.9(3)(b) of IBC, 2016.

5. Further, in respect of removal of Liquidator the case is pending.

6. A copy of the Affidavit filed with NCLT, Chennai dated 07.01.2023 is annexed herewith and marked as Annexure – 1.

7. Further, it is requested that the replies / Affidavits submitted by the Respondent – 1 vide SR No. 5925/4.11.22, SR No.6332/2.12.22, etc may please be referred and considered.

31. Thus, upon perusal of the above status report, it is seen that the 1st Respondent is not in possession of the documents relating to the subject property.

32. In relation to relief (ii) it is clear that the property viz. the UDS Sale Deed in respect of two Flats A206 & A207, in "Green 201" apartments located at SIRUSERI, Pudupakkam Village, Vandalur Taluk, Chengalpattu District, registered with SRO – Thiruporur, stands in the name of the Corporate Debtor and the Respondent in the reply has not rebutted the same.

33. Thus, by considering the totality of circumstances of the present case, we issue directions as follows;

- (i) The Liquidator is directed to treat the subject property which forms parts of the Sale Deed dated 20th August 2014, registered as Document No.5701 of 2014, in the office of Sub-Registrar, Walajabad and Sale Deed dated 02nd June 2014, registered as Document No.3686 of 2014, in the office of Sub-Registrar, Walajabad **as the property of the Corporate Debtor.**

- (ii) The 1st Respondent is directed to handover the original documents in respect of the subject property within a period of 7 days from the date of this order, failing which, the Applicant / Liquidator shall approach the concerned Sub – Registrar office and obtain a certified copy of the sale deed and the said documents shall be treated as the original documents and the Liquidator shall proceed with the sale of the property as per the IBBI (Liquidation Process) Regulations, 2016, as early as possible.

- (iii) The 1st Respondent is directed to handover the original documents pertaining to the two Flats A206 & A207, in "Green 201" apartments located at SIRUSERI, Pudupakkam Village, Vandalur Taluk, Chengalpattu District, registered with SRO - Thiruporur to the Applicant / Liquidator within a period of 7 days from the date of this order, to enable him to proceed with the Sale of assets as per the IBBI (Liquidation Process) Regulations, 2016.

- (iv) If any encumbrance has been created in the subject property after the initiation of the CIRP by the 1st Respondent, we direct the affected / concerned person to file the claim with the Liquidator within a

period of 30 days from the date of this order and they shall be treated as per Section 53 of IBC, 2016.

34. With the above said directions, **IA(IBC)/383(CHE)/2021** stands **disposed of.**

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA (IBC)/1639(CHE)/2023 in CP/1156/IB/2018

(Filed under Section 66(1) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016)

In the matter of Ra-Ni Precast Private Limited

Pathukasahasram Raghunathan Raman

Liquidator of Ra-Ni Precast Private Limited

No.93, Sivan Koil South Street,

Vadapalani, Chennai – 600 026

... Applicant

-Vs-

1. Jayashree Mohan

Suspended Managing Director of Corporate Debtor

No.6, Neelakandan Street,

Choolaimedu, Chennai – 600 094

2. Soundar Rajan Thyagarajan

Suspended Director of Corporate Debtor

Sundhareswamy Koil Street,

Kosapet, Vellore – 632 001

3. Varadhachari Ammangi Balaji

Suspended Director of Corporate Debtor

Old No.4, New No.21, MMTC Colony,

Srividhya Nagar, Nanganallur,

Chennai – 600 061

... Respondent

Order Pronounced on 26th April 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *A.K. Mylsamy, Advocate*
PR Raman, Liquidator

For Respondent : *Prakash, Advocate for R1*

ORDER

(Heard through physical mode)

IA(IBC)/1639/(CHE)/2023 is an Application filed by the Liquidator of the Corporate Debtor viz. Ra-Ni Precast Private Limited under Section 66 of IBC, 2016 seeking reliefs as follows;

- i. To declare that Respondent 1, 2 & 3 are jointly and severally liable to contribute to the assets of the Corporate Debtor to the tune of Rs.1,95,25,222/- (Rupees One Crore Ninety Five-Lakh Twenty-Five Thousand Two Hundred and Twenty-Two Only), which was diverted by them through "Fraudulent and Wrongful Trading"; and*
- ii. To direct Respondents 1, 2 and 3 are jointly and severally pay a sum of Rs.1,95,25,222/- (Rupees One Crore Ninety Five-Lakh Twenty-Five Thousand Two Hundred and Twenty-Two Only) to the Corporate Debtor; and*
- iii. To declare that Respondents 1 & 2 are jointly and severally contribute to the assets of the Corporate Debtor to the tune of Rs.25,30,000/- (Rupees Twenty-Five Lakh Thirty Thousand Only) which was utilized for their personal gain by using the assets of the Corporate Debtor Fraudulently; and*
- iv. To direct Respondents 1 and 2 to jointly and severally pay a sum of Rs.25,30,000/- (Rupees Twenty-Five Lakh Thirty Thousand Only) to the Corporate debtor; and*

v. To pass any such other orders or grant reliefs in favour of the Applicant as this Hon'ble Tribunal may deem fit in the circumstances and in the best interests of justice and equity.

2. The Applicant was appointed as Interim Resolution Professional in respect of the Corporate Debtor, by this Tribunal vide its Order dated 05.04.2019. Thereafter, as decided by the COC in its 6th meeting held on 27.02.2020, the Applicant filed IA/670/2020 for initiation of Liquidation Process of the Corporate Debtor. This Tribunal vide its order dated 23.12.2020 ordered for Liquidation of the Corporate Debtor and appointed the Applicant herein as the Liquidator.

3. It is stated that on 15.03.2023, the Applicant conducted the 4th SCC meeting wherein the "Information Memorandum" of the Corporate Debtor was taken note of by the stakeholders. It is stated that the Applicant also discussed the audited financials of the Corporate Debtor wherein, it was informed to the Stakeholders that an amount of Rs.90,50,574/- (Rupees Ninety Lakh Fifty Thousand Five Hundred Seventy-Four Only) was collected by the erstwhile management but not remitted to the statutory authorities. It was then decided to appoint an Independent Auditor Firm to conduct the transaction audit and

accordingly M/s. IPRS AND COMPANY was appointed to conduct the Transaction audit for the purpose of identifying the reversal Transactions (PUFE transactions) if any.

4. It is stated that the Auditors M/s. IPRS AND COMPANY studied the audited financials of the Corporate Debtor and submitted its report confirming the reversal Transactions to the tune of Rs.2,20,55,222/- (Rupees Two Crores Twenty Lakh Fifty-Five Thousand Two Hundred and Twenty-Two Only).

5. The extracts of the transaction audit report on the examination conducted under Section 66 of IBC, 2016 is reproduced hereunder;

a) THE SUSPENDED DIRECTORS OF THE CORPORATE DEBTOR FAILED TO KEEP THE CORPORATE DEBTOR AS A GOING CONCERN (PRIOR TO COMMENCEMENT OF CIR PROCESS)

The application under the I&B Code 2016, was filed by an operational creditor with the claim amount of Rs.3,62,751/- (Rupees Three Lakh Sixty-Two Thousand Seven Hundred and Fifty-One Only). Despite the availability of funds with the Corporate Debtor at the time of application as well as during pendency of the application the suspended directors have chosen not to appear or respond to this petition and allowed the application for triggering Corporate Insolvency Resolution Process (CIRP). This clearly exhibits that the suspended directors were neither interested in continuing the business of Corporate Debtor post demise of Mr. Mohan Kumar (Promoter) on 05.02.2018 nor had the intention of settling the

dues of all the stakeholders and decided to close down the Business of the Corporate Debtor by using the Insolvency & Bankruptcy Code 2016.

b) FRAUDULENT TRADING OR WRONGFUL TRADING BY THE SUSPENDED DIRECTORS OF THE CORPORATE DEBTOR:

The working capital funds realized from current assets was used to close the Overdraft facility availed from Bank of Baroda, Choolaimedu Branch, Chennai instead of using the same to meet the working capital requirements or to meet regular financial commitments of Financial Creditors or to pay the Statutory dues (Including GST) which is the paramount priority for continuing the business of Corporate Debtor.

It is pertinent to note that by closing the Overdraft facilities of Bank of Baroda, the suspended Directors have given preferential treatment to Bank of Baroda over the other Financial Creditors (term loan lenders) HDFC Bank, Deutsche Bank and several Operational Creditors.

c) TRANSACTIONS DONE BY THE SUSPENDED DIRECTORS OF THE CORPORATE DEBTOR WITH THE INTENSION TO DEFRAUD THE CREDITORS:

The Land property located at Kanchipuram and two residential flats located at Siruseri owned by the Corporate Debtor were discharged by Bank of Baroda post closure of Credit facilities. During the subsistence of ongoing liquidation process of the corporate debtor, Ms. Jayashree Mohan (the erstwhile Director) had created an encumbrance over the said land property by entering into an unregistered Lease agreement with third party in her individual capacity through fabricated Patta (Annexure 10). The name of property owner is properly recorded in the revised patta (Annexure 11) which was confirmed by the revenue documents perused by us. The Suspended Directors had also created an encumbrance over the two flats located at Siruseri by colluding with a third-party financier claiming custody of original documents without having any legal documents/obligation.

Both the above said mala-fide activities of the suspended directors clearly indicate their ulterior motive to keep the immovable properties owned by the Corporate Debtor out of the liquidation estate. This will hinder the performance of the Liquidator in terms of liquidating the assets owned by

the Corporate debtor and settling the dues of various stake holders who have duly filed their claims with the liquidator.

On perusal of Audited Financials of FY 2018 & FY 2019 the following major observations are made:

Cash flow Statement extracts of Corporate Debtors for FY2019:

Cash inflow Heads	Cash Inflow (Amount in Rs.)
Trade Receivables & Loans and Advances	1,29,55,277
Realization from other Current Assets	4,70,135
Realization from increase in Current Liabilities	84,700
Interest Received	28,205
Increase in other Long Term Loans	5,56,705
Total Cash Inflow – A	1,40,95,022
Cash Outflow Heads	
Loss incurred in FY 2019	56,48,462
Interest Expenses	6,75,193
Amount paid to Sundry Creditors	26,48,327
Closure of Overdraft (Bank of Baroda)	39,13,205
Total Cash outflow – B	1,28,85,187
Net Cash inflow (A-B)	12,09,835
Opening Balance of Cash / Bank	62,133
Closing Balance of Cash / bank	12,71,968

i) Substantial cash receipt to the tune of Rs.1,29,55,277/- is generated through realization from Current Assets during FY2019 and the Corporate Debtor had surplus cash of Rs. 84,46,560 even after adjusting the cash loss of Rs. 56,48,462 incurred during FY2019.

ii) The Directors of the Corporate Debtor diverted a substantial portion of surplus cash available with the Corporate Debtor on 06.04.2018 and closed the working capital facilities having outstanding of Rs. 40,37,918 availed from Bank of Baroda prejudicially affecting the interest of operational creditors, Term Loan lenders (Financial Creditors) as well as the statutory authorities (Including GST).

Following table depicts negative movement (No repayment of EMI) in Term Loan accounts during FY2019

Heads	FY 2018 (in Rs.)	FY 2019 (in Rs.)
HDFC Loan	19,18,165	20,42,816
Deutsche Bank	31,57,381	35,89,435
Total	50,75,546	56,32,251

Following table depicts no movement (Nil payment) in Statutory dues during 2019;

Heads	FY 2018 (in Rs.)	FY 2019 (in Rs.)
Service Tax	21,72,493	21,72,493
VAT	43,758	43,758
TDS	7,59,150	7,59,650
ESI & PF	1,37,462	1,37,462
GST	59,25,211	59,25,211
Total	90,38,074	90,50,574

Considering the above said aspects, it is concluded that the suspended directors are solely responsible for bringing the Corporate Debtor under liquidation and for obstructing the disposal of the immovable assets owned by the Corporate Debtor during the on-going liquidation process and hence they are responsible for returning all the Sum of money back to the Corporate Debtor, diverted by them as per the details given in the table given below:

Nature of Transaction	Amount involved (in Rs.)
Amount of claim filed and admitted by the Liquidator	40,48,635
Amount due to statutory authorities (claim not filed but expected being Government Dues)	90,50,574
Amount of Corporate Insolvency Resolution Process (CIRP) cost	35,49,348
Amount of Liquidation cost	28,78,665
Amount received by the suspended Directors from Mrs. Ranganathan towards the mortgage of	20,00,000

<i>two residential flats. It is suggested that this money claimed by Mr. Ranganathan from the Liquidator by submitting a suitable claim form along with all the supporting documents.</i>	
<i>Amount received from M.s, RR INFRA CONSTRUCTION – Rs.50,000/- towards Deposit and monthly Rental for the factory lands – Rs.4,80,000/- (From July 2021 till June 2023) – Liquidator is eligible for this rental income generated out of the benefits derived from the assets forming part of the liquidation estate of the Corporate Debtor</i>	<i>5,30,000</i>
Total	2,20,55,222

6. It is submitted by the Learned Counsel for the Applicant that as per the audit report, the above transactions carried out by the erstwhile directors of the Corporate Debtor were detrimental to the interests of the Creditors and Stakeholders of the Corporate Debtor including the Statutory Authorities. It is submitted that these transactions have been carried out at a time when the Corporate Debtor was in default of its financial debts and was being pursued by various lenders. It is stated that given the scale of debts owed and the issues faced by the Corporate Debtor, the Respondents clearly knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP and despite such knowledge, they failed to exercise due diligence in minimizing the potential loss to all the creditors of the company. As

a Consequence, they are liable to contribute to the assets of the Corporate Debtor the total amount of Rs.2,20,55,222/- (*Rupees Two Crores Twenty Lakh Fifty Five Thousand Two Hundred Twenty Two Only*) for using the assets of the Corporate Debtor for their personal gain and the consequential loss caused to all the Stake holders as mentioned in the Transaction audit report summary.

7. In relation to the Respondents, this Tribunal vide its order dated 24.11.2023 granted two weeks' time to file reply. Thereafter, on 11.01.2024, this Tribunal as a final chance granted another two weeks' time to file reply. However the Respondents did not file their reply within the stipulated time period. Hence this Tribunal vide its order dated 01.02.2024 closed the right of the Respondents to file their reply.

FINDINGS OF THIS TRIBUNAL

8. Heard the submissions made by the Learned Counsel for the parties and perused the records.

9. The Liquidator has filed the present Application under Section 66 of IBC, 2016. However, the Liquidator has not clarified whether the

transactions impugned in this applications pertains to 66(1) or 66(2) of IBC, 2016. In this context it is relevant to extract Section 66 of IBC, 2016, which is as follows;

66. Fraudulent trading or wrongful trading. –

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under subsection (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

10. A careful perusal of Section 66 of IBC, 2016 would manifest the fact that it deals with two transactions; Section 66(1) of IBC, 2016 deals with 'Fraudulent Trading' and Section 66(2) of IBC, 2016 deals with 'Wrongful Trading'. Section 66(1) of IBC, 2016 imposes liability on 'any person' who was knowingly party to the carrying on the business with a dishonest intention to defraud the creditors, to make contribution to the assets of the Corporate Debtor. Thus, essentially for a transaction to qualify under Section 66(1) of IBC, 2016, the following conditions should be satisfied;

- (a) Liability can be fixed upon 'any person';
- (b) The said person should knowingly carry on the business with the Corporate Debtor;
- (c) The said person should have a dishonest intention to defraud the creditors;

11. Section 66(1) of IBC, 2016 is *pari materia* to the provisions of Section 213 of UK Insolvency Act, 1986, which is extracted hereunder;

213 Fraudulent trading.

(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

12. On analysing Section 66(2) of IBC, 2016 it is to be seen that it deals with 'Wrongful Trading' and for a transaction to qualify under Section 66(2) the following conditions must be satisfied;

- (a) Liability can be fixed upon only 'Director' or 'Partner';
- (b) They knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings;
- (c) They did not take due diligence with a view to minimizing the potential loss to the company's creditors;

13. Section 66(2) of IBC, 2016 is akin to the provisions of Section 214 of UK Insolvency Act, 1986, which is extracted hereunder;

214 Wrongful trading.

(1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

(a) the company has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and

(c) that person was a director of the company at that time; but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that he had knowledge of the matter mentioned in subsection (2)) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
- (b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(6A) For the purposes of this section a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.

(7) In this section “director” includes a shadow director.

(8) This section is without prejudice to section 213.

14. Thus, there seems to be a stark contrast in relation to Section 66(1) and 66(2) of IBC, 2016. It is needless to say that even the scope of sub – section (1) and (2) of Section 66 of IBC, 2016 are different. As already adumbrated *supra*, the Liquidator has not clarified whether the

transactions impugned are sought to be reversed under Section 66(1) or 66(2) of IBC, 2016.

15. By keeping in mind the scope of Section 66 of IBC, 2016, this Tribunal is required to examine as to whether the transactions as alleged by the Applicant in the present Application against the Respondents would fall within the confine of 'Fraudulent Trading' that is to say that whether the business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose. In this context, it is significant to refer to the decision of Hon'ble Supreme Court in the matter of **Anuj Jain IRP for Jaypee Inrfatech Limited –Vs- Axis Bank Limited Etc.**, in *Civil Appeal No. 8512 – 8527 of 2019*;

29.1. However, we are impelled to make one comment as regards the application made by IRP. It is noticed that in the present case, the IRP moved one composite application purportedly under Sections 43, 45 and 66 of the Code while alleging that the transactions in question were preferential as also undervalued and fraudulent. In our view, in the scheme of the Code, the parameters and the requisite enquiries as also the consequences in relation to these aspects are different and such difference is explicit in the related provisions. As noticed, the question of intent is not involved in Section 43 and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time. However, whether a transaction is undervalued requires a different enquiry as per Sections 45 and 46 of the Code and

significantly, such application can also be made by the creditor under Section 47 of the Code. The consequences of undervaluation are contained in Sections 48 and 49. Per Section 49, if the undervalued transaction is referable to sub-section (2) of Section 45, the Adjudicating Authority may look at the intent to examine if such undervaluation was to defraud the creditors. On the other hand, the provisions of Section 66 related to fraudulent trading and wrongful trading entail the liabilities on the persons responsible therefor. We are not elaborating on all these aspects for being not necessary as the transactions in question are already held preferential and hence, the order for their avoidance is required to be approved; but it appears expedient to observe that the arena and scope of the requisite enquiries, to find if the transaction is undervalued or is intended to defraud the creditors or had been of wrongful/fraudulent trading are entirely different. Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority.

16. From the above judgment of the Hon'ble Apex Court, it is noted that specific material fact in relation to the transaction which is sought to be challenged by the Resolution Professional / Liquidator is required to be pleaded in the Application. As to the present case, the Applicant has sought to reverse the transactions purported to be done by the Respondents under Section 66 of IBC, 2016.

17. From the averments and the ingredients extracted supra, it is seen that the Applicant is required to prove the following;

- (a) The person should knowingly carry on the business with the Corporate Debtor;
- (b) The said person should have a dishonest intention to defraud the creditors;

18. In the present application, the Applicant / Liquidator has relied upon transaction audit report to conclude that the suspended directors are solely responsible for bringing the Corporate Debtor under liquidation and for obstructing the disposal of the immovable assets owned by the Corporate Debtor during the on-going liquidation process and hence they are responsible for returning all the Sum of money back to the Corporate Debtor, diverted by them as per the details given in the table given below:

Sl. No.	Nature of Transaction	Amount involved (in Rs.)
1	Amount of claim filed and admitted by the Liquidator	40,48,635
2	Amount due to statutory authorities (claim not filed but expected being Government Dues)	90,50,574

3	Amount of Corporate Insolvency Resolution Process (CIRP) cost	35,49,348
4	Amount of Liquidation cost	28,78,665
5	Amount received by the suspended Directors from Mrs. Ranganathan towards the mortgage of two residential flats. It is suggested that this money claimed by Mr. Ranganathan from the Liquidator by submitting a suitable claim form along with all the supporting documents.	20,00,000
6	Amount received from M.s, RR INFRA CONSTRUCTION – Rs.50,000/- towards Deposit and monthly Rental for the factory lands – Rs.4,80,000/- (From July 2021 till June 2023) – Liquidator is eligible for this rental income generated out of the benefits derived from the assets forming part of the liquidation estate of the Corporate Debtor	5,30,000
	Total	2,20,55,222

19. Sl. No. 1 pertains to the claim admitted by the Liquidator to the tune of Rs.40,48,635/-. We are unable to comprehend as to how the said sum of Rs.40,48,635/- is being treated by the Liquidator 'fraudulent transaction' and sought to be reversed in the present application. The Liquidator in his application has not explained the nature of this transaction.

20. In respect of Sl. No.2, it is seen that the Auditor has observed that the working capital funds realized from current assets were used to

close the Overdraft facility availed from Bank of Baroda, Choolaimedu Branch, Chennai instead of using the same to meet the working capital requirements or to meet regular financial commitments of Financial Creditors or to pay the Statutory dues (Including GST) which is the paramount priority for continuing the business of Corporate Debtor. It is to be noted here that neither the Forensics Auditor nor the Liquidator has stated as to how this would amount to a fraudulent transaction. Further, the said statutory authorities have not even preferred to file the claim before the Liquidator. The Liquidator has not proved any dishonest intention on the part of the Respondents. The Liquidator without applying his mind to the report of the Forensics auditor has filed the present application.

21. In respect of Sl. No.3 and 4, it is seen that Applicant / Liquidator is seeking to recover CIRP cost and Liquidation cost from the Respondents. We are appalled by the way in which the Liquidator under the guise of Section 66 of IBC, 2016 is seeking to recover the CIRP cost and Liquidation cost. It seems that the Liquidator has misunderstood the ingredients of Section 66 of IBC, 2016.

22. In respect of Sl. No. 5 and 6, it was observed by the Auditor that the Land property located at Kanchipuram and two residential flats located at Siruseri owned by the Corporate Debtor were discharged by Bank of Baroda post closure of Credit facilities. During the subsistence of ongoing liquidation process of the corporate debtor, Ms. Jayashree Mohan (the erstwhile Director) had created an encumbrance over the said land property by entering into an unregistered Lease agreement with third party in her individual capacity through fabricated Patta. The name of property owner is properly recorded in the revised patta which was confirmed by the revenue documents perused by us. The Suspended Directors had also created an encumbrance over the two flats located at Siruseri by colluding with a third-party financier claiming custody of original documents without having any legal documents/obligation.

23. It is stated that both the above said mala-fide activities of the suspended directors clearly indicate their ulterior motive to keep the immovable properties owned by the Corporate Debtor out of the liquidation estate. This will hinder the performance of the Liquidator in

terms of liquidating the assets owned by the Corporate debtor and settling the dues of various stake holders who have duly filed their claims with the liquidator.

24. In relation to the said issue it is seen that the encumbrances and lease had happened during the CIRP and Liquidation of the Corporate Debtor and hence they cannot be brought under the ambit of Section 66 of IBC, 2016. Be that as it may, we have given directions in relation to the flat at siruseri and also in relation to the subject property which is given on lease to RR Infra Construction in detail in IA(IBC)/383(CHE)/2021.

25. Thus, in the light of what has been stated above, we are of the view that the Applicant has not made a case of fraud or dishonest intention on the part of the Respondents except making sweeping allegations and hence Section 66 of IBC, 2016 cannot be invoked under such circumstances. Under the said circumstances, the present Application is *san* merit and is liable to be dismissed.

26. Accordingly, **IA(IBC)/1639(CHE)/2023** stands **dismissed**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond