

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 30.04.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA No.506/2019 in CP(IB) No.172/10/HDB/2017</b>
<b>NAME OF THE COMPANY</b>	<b>Super Agri Seeds Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	
<b>NAME OF THE RESPONDENT(S)</b>	
<b>UNDER SECTION</b>	<b>10 of IBC</b>

**ORDER**

**IA No.506/2019**

Orders pronounced, recorded vide separate sheets. In the result, the application is dismissed.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH - II**

**IA No 506/2019  
In CP (IB) No. 172/10/HDB/2017  
u/s 65 of IBC, 2016**

**In the matter of:**

**M/S. SUPER AGRI SEEDS PVT LTD (CORPORATE DEBOTR)**

**Between:**

Dr. K.V Srinivas,  
Liquidator of M/s. Super Agri Seeds Pvt Ltd,  
1-8-304 to 307, 4<sup>th</sup> Floor,  
Kamala Towers, Patigadda Road, Begumpet,  
Hyderabad – 500 003.

.... Applicant

**And**

1. Mr. Ravi Srinivas  
Managing Director of Suspended Board of Directors  
M/s. Super Agri Seeds Pvt Ltd
  
2. Mr. Vijaya Bhaskar Yenamandala  
Director of Suspended Board of Directors  
M/s. Super Agri Seeds Pvt Ltd,  
Flat C, Prajwal Bhagirath,  
No.23, Bhagirathi Ammal Street, T Nagar,  
Chennai – 600 017.

.... Respondents

**Date of Order : 30.04.2024**

**Coram:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)  
Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Applicant : Mr. Y. Suryanarayana, Advocate  
For the Respondent No.1 : Mr. G. Manish, Advocate  
Heard on : 01.04.2024

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. The present application has been filed by the Liquidator praying to impose maximum penalty of rupees one crore u/s 65 of IBC, 2016 holding Respondents guilty for fraudulent or malicious initiation of proceedings with fraudulent intention of pushing the Corporate Debtor into liquidation.
2. M/s Super Agri Seeds Pvt Ltd, the Corporate Debtor (**CD**) as represented by the Respondent No.1 herein, had filed an application<sup>1</sup> seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the case of the CD. This application was allowed by this Tribunal and the CIRP commenced vide order dated 06.09.2017 and an Interim Resolution Professional (IRP) was appointed on 18.09.2017. Subsequently, the present Applicant was appointed as Resolution Professional (RP) on 28.11.2017.
3. It is submitted that throughout CIRP, the Respondents, who are members of the Suspended Board of the CD, remained extremely hostile to the RP and did not give physical possession of any original records/data/information pertaining to CD. They did not even handover the up-to-date books of accounts, username and passwords etc for filing of statutory returns with Income Tax Department and other Government agencies. The books of accounts were not updated, where huge volume of purported sale was shown in collusion with one M/s Bhaskar Agro Agencies.
4. In due course this Tribunal passed an order dated 21.03.2018 liquidating the CD. Against the said liquidation order, appeals<sup>2</sup> were preferred to NCLAT by the Respondent No.1 and M/S Bhaskar Agro

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<sup>1</sup> CP(IB) No. 172/10/HDB/2017 filed on 12.08.2017

<sup>2</sup> CA(AT) (Ins) No. 124 of 2018 and CA (AT) (ins) No. 380 of 2018

Agencies, which were dismissed vide orders dated 11.07.2018 and 23.07.2018 respectively. Subsequent appeals<sup>3</sup> to the Apex Court were also dismissed.

5. The Applicant has sought to describe the modus operandi of Respondents, and has stated that the CD was essentially a shell company with no business activity, employees, or operational factory production. It is pointed out that for the financial year 2014-15, the Statutory Auditors of the CD had given a qualified opinion, in respect of trade receivables, amounting to Rs 55,07,56,303 citing lack of evidence to support management's expectation of recoverability. The auditors had reportedly expressed concerns about the company's ability to continue as a going concern due to a net loss of Rs 132,37,15,344 during the year ended 30.06.2015 and accumulated losses of Rs 91,71,50,938, against shareholder funds of Rs. 47,08,72,880. Additionally, current liabilities exceeded current assets by Rs. 37,17,87,972. The auditors noted long outstanding trade receivables and slow-moving/expired inventories, with provisions made accordingly. The Directors' report for the year ending 30 June 2015 admitted the closure of the manufacturing unit, while the factory's power connection was disconnected on 27.06.2016.
6. It is alleged that the Respondents, in a planned manner, aimed to defraud the company's creditors by orchestrating its liquidation using Section 10 of the IBC with a malicious and fraudulent intention. Initially, they colluded with the investors to settle pending arbitration proceedings vide Arbitration Petition No. 600 of 2016 before the Delhi High Court, where under the guise of settlement, the investors transferred their substantial shareholding worth Rs 75,75, 00,000 for a meagre amount of Rs 10,00,000 to Respondent No.1 and his family members through a settlement agreement dated 18.07.2017, thereby absolving themselves of any further involvement. The Respondents

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<sup>3</sup> Civil Appeals No. 11243 & 11244 of 2018

thereafter in a planned manner initiated the proceedings u/s 10 of IBC knowing fully well that there was no scope for resolution of financial stress of the company.

7. Submitting that limited data and information was made available right through the CIRP and Liquidation process, coupled with the concealment of the assets of the CD, the Applicant has expressed his “considered opinion” that the Respondents in a planned manner took CD into liquidation with sole objective to defraud the creditors of company to tune of Rs 152,35,82,810 as on 30.06.2015.
8. The Applicant is reported to have appointed J Singh & Associates, a Chartered Account firm, as the 'Forensic Auditor' to conduct a forensic audit of the CD from April 1, 2013 to March 31, 2017, based on the limited data and information provided by the Respondents during the CIRP period. The Forensic Auditors observed “several irregularities/fraudulent activities” in the business of the CD and reported that:
  - The company may have inflated the sales in the earlier years to utilize loan amounts, and then reversed the same in subsequent years once to total sanctioned loan amount is utilized by them.
  - The Corporate Debtor initially reported a stock of Rs. 12.09 crore in the provisional financial statement for the period ending 6th August 2017 filed before the NCLT. However, in the provisional financial statement for the period ending 30th November 2017, the stock was reduced to Rs. 2.28 crore. This decrease in stock could be due to either sale or reduction in the value of the stock. Since this adjustment is not reflected in the revenue of the Corporate Debtor, it means that the stock might have been removed from the Corporate Debtor's premises without being booked as revenue.

- In routing of transactions through Bhaskar Agro Agencies (Stockist/Distributor), The Respondent No. 1 diverted the assets of the Corporate Debtor by transferring stock to the distributor's account and then utilizing the funds from there, thus defrauding the company's creditors.
  - During the Financial Year 2014-15, the company provisioned for slow-moving inventory amounting to Rs. 41.50 crore, which is 74% of the opening stock of finished goods. This sudden provision, after showing profits in earlier financial years, shows “either the Corporate Debtor is used to over value its inventory/stock [or it] has been moved out” without proper booking of the revenue. Once the total limit of the bank was utilized, the inventory value was re-stated by reducing the same. It indicates fraudulent intent by Respondent Nos.1 to defraud creditors.
  - Respondent No.1 had filed the last three years' pending returns by manipulating financial statements, passing entries in backdate, and adjusting stocks and liabilities before auditing and filing them.
9. It is pointed out by the Applicant that in the financial year ending 31.03.2017, there were huge debt in the form of trade receivables, security deposits, and advance receivables in cash or in kind, amounting to Rs. 99,92,84,640, 55,92,385, and 5,43,43,311 respectively. Respondent No. 1 showed questionable urgency in filing a malicious application under Section 10 of the IBC, 2016, before the Tribunal for the initiation of CIRP. Subsequently, the Respondents conveniently either wrote off the significant debts or showed stock returns, thus deflating the large debtors/trade receivables/stocks. It is essential to note that these debtors/trade receivables/stocks were charged to the financial creditor, State Bank of India, and by writing them off, the Respondents committed fraud against the financial

creditors. It is thus contended that the conduct of Respondents during entire process makes it loud and clear that the application u/s 10 was filed with malafide intention.

**Counter of Respondent No 1:**

10. The Respondent denied all the averments made by the Applicant and stated that imposition of any penalty as claimed by Applicant can be concluded only on the basis of detailed trial which should contain marking of documents, examination of witness including the admissibility of documents on which Liquidator is relying.
11. Respondent who was the Managing Director of the CD company until 2017, has submitted that the company faced significant losses and cash flow problems from 2015 onwards. Due to pressure from financial creditors threatening to auction the company's properties, the Respondent, acting as the Corporate Applicant, filed for insolvency.
12. Respondent has given para wise reply in his counter affidavit however, the gist of the same is that the IRP conducted the first CoC meeting without including the appointment of a Resolution Professional on the agenda. The Applicant managed to influence a leading CoC member, State Bank of India, for his appointment as Resolution Professional. However, the approval of his appointment in a CoC meeting chaired by a member, not the IRP, is invalid under IBC.
13. The claim of the Applicant that the Respondents did not provide physical possession of original records pertaining to the Corporate Debtor, is refuted. It is asserted that after appointment of the Applicant as Resolution Professional, they accompanied media and police to the plant location, where possession of factory premises and assets, including records, was duly conducted and documented. It is submitted that all records were available at the factory premises, which have been under the control of the Resolution Professional since his appointment.

14. It is asserted that the Respondents provided requested information, including Tally backup of accounts up to May 30, 2017, initially via email and later on a pen drive. It is contended that all required information was available with the Applicant.
15. The Respondent has expressed shock that the Applicant conducted Forensic Audit on the books of accounts, yet claims no records were provided. It is argued that the Resolution Professional had full knowledge of the Corporate Debtor's affairs, including financial standing, but failed in statutory compliances during his tenure. Allegations against the Respondents are claimed to be an attempt to cover up RP's own faults.
16. It is alleged that the RP conducted the CIRP from the start under the impression that it would lead to liquidation. It is further alleged that the RP acted in favour of the lead bank, State Bank of India, neglecting potential resolution plans, ultimately leading to liquidation despite chances of revival.
17. The Respondent denied allegations that he as Managing Director, colluded to defraud the company and creditors by acquiring shares just before insolvency proceedings. It is asserted that there was no financial transaction with the promoter, and the share acquisition was intended to address financial difficulties caused by creditors. The private equity investor's offer to divest shares to the promoter was to facilitate the insolvency proceedings.
18. According to the Respondent, due to financial issues, the company's bank account was blocked by secured lender, leading them to conduct business through another entity to settle dues. It is asserted that trade receivables were shared with the RP, but actions were delayed until liquidation proceedings, causing animosity. It is stated that details of the trade receivables were provided to then RP in month of January 2018 which was not acted upon.

19. The Respondent has claimed to have resubmitted all information to the Liquidator as directed by the Tribunal, but the Liquidator continued to allege non-compliance. The Tribunal dismissed the Liquidator's application under Section 19(2) of IBC, 2016 in IA 148/2018 based on the provided information. The Respondent has criticized the Liquidator for not prioritizing recovery from trade receivables and instead pressuring them.
20. The Respondent has also criticized State Bank of India for misleading them regarding a One Time Settlement (OTS) offer and then proceeding with asset liquidation despite the Respondent's proposal for a higher OTS amount. It is alleged that State Bank of India, with a majority stake in the CoC, consistently advocated for liquidation over OTS. He has accused the RP for being in collusion with State Bank of India, and not following the proper procedures for Corporate Insolvency Resolution and failing to make efforts to revive the company as mandated in IBC.
21. The Respondent, as the former Managing Director and majority shareholder, denied any plan to take the company into liquidation, attributing it to the Applicant's assumption. He claimed to have attempted to resolve the company's debts but was hindered by State Bank of India's actions. Despite offering an OTS, the bank prolonged the process and eventually proceeded with an auction without prior notice, prompting the Respondent to initiate insolvency proceedings. Even after admission of the Petition, State Bank of India continued auctioning the company's properties, including those personally mortgaged by the Respondent, with the help of the Liquidator.
22. The Liquidator, alleged the Respondent, prevented other buyers from participating in the E-Auction and misled genuine buyers with a different contact number. The Liquidator then sold the Respondent's mortgaged personal properties to the same bidder who initially paid the bid amount in the auction conducted by State Bank of India.

23. The Respondent denied the Applicant's claim of executing a settlement agreement with investors and initiating proceedings under Sec 10 of IBC with the intention of defrauding creditors. He refuted allegations of withholding data or cooperation, asserting that the Applicant's communications lacked coherence and aimed to drag the company into liquidation without proper information on the CIRP proceedings.
24. The Respondent also has accused the Applicant of misleading the Tribunal with false allegations to conceal his own faults during the CIRP and liquidation of the CD. It is argued that since the Panchanama date of 16.11.2017, the CD has been under the control of the Applicant, making his request for records which was illegal and unlawful.
25. It is submitted that the Hon'ble Tribunal had disposed of IA 148 of 2018, confirming that the Applicant received all records from the Respondent. On 28.11.2018, the Respondent claimed to have submitted documents to the Applicant and received acknowledgment for the same.
26. About the report of the Forensic Auditor, it is submitted that the same was not clear and moreover there is no base or supporting provided by the Forensic Auditor why he had come to the conclusion drawn by him. Terming the Forensic Report as not valid and against the principles of natural justice, the Respondent has rejected all allegations based on that report.

**Counter of Respondent No 2:**

27. It is submitted that throughout the CIRP and subsequent liquidation proceedings, the Respondent was never called for any CoC meeting nor any assistance sought from him by the Applicant. Dubbing the allegations of non-cooperation as baseless, it is submitted that the Applicant never specified what assistance was needed and that the Applicant aimed to create a false narrative of non-cooperation to conceal his own misconduct.

28. It is alleged that the Applicant, through team member G. Madhusudhan Rao had demanded an initial amount of Rs 2,00,000 and a "success fee" of 0.75% from a Resolution Applicant, Bhaskara Agro Agencies, during the liquidation process. Alleging this demand as bribe, it is submitted that this demonstrated how the Applicant extorts money from Resolution Applicants and other Stakeholders in the insolvency process.
29. It is alleged that while the Applicant auctioned the CD's assets on 16/12/2017 realizing Rs 18.65 crores, only Rs 16.16 crore was distributed to State Bank of India, leaving a residuary amount of Rs 2.49 crores unaccounted for. It is unclear how this amount was utilized by the Applicant.
30. It is submitted that, from the date of auctioning of the CD's assets to the filing of this application against the Respondents, over eight months have passed. However, during this period, the Applicant did not make the allegations presented in this application against the Respondents.
31. It is claimed that the reason for the Applicant's 'vendetta' against all the Respondents and the cause for this application stems from a complaint filed by the 1st Respondent against the Applicant on 09/11/2018 before the Insolvency and Bankruptcy Board of India (IBBI). The serious allegations supported by evidence in this complaint led to the IBBI initiating action on 27/05/2019. The consequences for the Applicant are severe, as substantiated allegations on their professional character are being investigated, potentially resulting in the cancellation of his registration as a Resolution Professional.
32. It is stated that the 1st Respondent had filed a complaint on 30/09/2019 with the Central Bureau of Investigation (CBI) against the Applicant and a CoC member Mr. Guruprasad Deshpande, alleging conspiracy and collusion to sabotage the CIRP and subsequent liquidation proceedings. A Writ regarding this issue is pending before the Hon'ble High Court of Judicature at Hyderabad, numbered as W.P.

20156 of 2019. These developments indicate that the present application is a counter-blast to intimidate and pressure the Respondents from informing authorities about alleged crimes committed by the Applicant, it is alleged.

### **The Decision**

33. After hearing the counsels and going through the records presented before us in connection with the present application, the issue before us is whether the acts of the Respondents fall within the purview of Section 65 of IBC<sup>4</sup>, 2016?

34. Essentially the case of the Applicant rests on the conclusions drawn in the forensic report. It has been presented that the affairs of CD were run in a manner where sales were fictitious, receivables non-existent and stock was over-valued to obtain higher limits from the Bank i.e. SBI. While that may be so, but other than pointing out to various infirmities in the recording of transactions and the mismatch of figures in the final accounts, the forensic report fails to bring any evidence on record to support the allegations made in various conclusions drawn in the forensic report.

35. The very first observation of the forensic audit report

“that the company **may have** inflated sales in the earlier years....” (*emphasis supplied*)

shows uncertainty on part of the auditor with regard to the allegation of inflated sales. Even about the stock, the report is ambivalent, stating that

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<sup>4</sup> **Section 65: Fraudulent or malicious initiation of proceedings.**

- (1) *If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
- (2) *If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

“Decrease in stock is **either** on account of sale **or** reduction in value of stock”. (*emphasis supplied*)

36. So far as the diversion of stock by the CD to its distributor is concerned, the alleged transaction may as well fall within the realms of preferential or fraudulent transactions under section 43 and 66 respectively, but it does not prima-facie suggests a fraud as envisaged in section 65 of IBC.

37. The allegation of high provisioning of the slow moving stock is also reported in the same uncertain terms. That the forensic report is unsure on this aspect is evident from the observation that

“...either the company is used to overvalue its inventory / stock has been moved out of the company without booking the same...”

and going on to make a conjecture that “once the total limits of the banks are utilized the company is restating the value of inventory by reducing the same”.

38. Finally, the forensic report, expresses an “**opinion**” that the financials of the company have been “prepared and audited in a hurry without going into the details of the transactions...” and thus the forensic auditors

“**feel** that a thorough investigation of the affairs of the company from FY 2014-15 is required and all transactions of the company **are required** to be investigated”. (*emphasis supplied*)

The forensic report, on which the Applicant has relied is therefore not the last word. The report itself recommends further investigations, and is thus incomplete.

39. The forensic report, on which the Applicant has majorly relied, has merely reported the symptoms of a malaise that might have been present in the affairs of the CD. The financial stress faced by the CD could have also been due to other unfavourable conditions. It could be either, but we don't know that yet, in absence of the 'further investigation' that is yet to be carried out.
40. That proceedings under section 10 of IBC were initiated by the CD for the reason of coercive actions of the financial creditors, was a fact that has not been held back by the Respondents. Be that as it may, this Tribunal after thorough examination of the financial debt, admitted the CD into CIRP. Therefore, at this stage, the allegation that this Tribunal was victim of a fraud, would require much higher standard of evidence of the perpetration of such a fraud, than mere making of allegations based on an uncertain forensic report.

Being unconvinced about fraudulent initiation of section 10 proceedings, we decline to act under section 65 of IBC. As a consequence, the Application is dismissed without costs.

**Sd/-**

**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**