

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
31-05-2024 AT 10:30 AM**

**Company Petition IB/107/2021
AND**

**IA(IBC) 782, 926 & 932/2024 in Company Petition IB/107/2021
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Vemuri Ravi Kumar

...Financial Creditor

AND

Bhriugu Infra Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 782/2024

For orders/Consideration, matter adjourned to 20.06.2024.

IA(IBC) 926 /2024

Orders pronounced. In the result, **this application is dismissed as rejected. No costs.**

IA(IBC) 932/2024

Mr Pavan Kankani, Liquidator present through Video Conference.

Learned Counsel Mr Umashankar, for COC present physically.

This being an application seeking for extension of liquidation by 6 months effective from 10.04.2024 on grounds that efforts are being made to put the properties of the Corporate Debtor to sale.

It is represented by liquidator that his resolutions that getting the properties valued enabling him to proceed with the sale of Corporate Debtor as a going concern however, the COC has not entitled the same. If that be so, we find no point in the extension of liquidation period.

However, learned Counsel for COC present and states that necessary steps will be taken immediately for valuation of the assets of the Corporate Debtor and for their disposal.

In the light of the representation while extension period by 6 months we direct that meeting of the SCC be called within 10 days from today and necessary steps be taken therein for taking the liquidation forward in default of this let the liquidator approach this court that necessary information for passing dissolution order.

Accordingly, **this application is allowed and disposed of.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH - I, HYDERABAD**

**I.A. No. 926/2024
in
C.P. (IB) No.107/7/HDB/2021**

Under Section 66(2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rules 11, 13 and 32 of The NCLT Rules

BETWEEN

Pavan Kankani

Liquidator of Bhrigu Infra Pvt. Ltd.

...Applicant

VERSUS

1. Marpina Venkat Rao

Suspended Managing Director of Bhrigu Infra Pvt. Ltd

Near Reliance Tower, Plot No.50, H.No.15-28-234/2

EWS 305 KPHB Colony, Kukatpally, Hyderabad-500072

2. Marpina Lakshmisasi Kala

Suspended Managing Director of Bhrigu Infra Pvt. Ltd

Near Reliance Tower, Plot No.50, H.No.15-28-234/2

EWS 305 KPHB Colony, Kukatpally, Hyderabad-500072

3. Shaik Mohammed Asim Moinuddin

Suspended Director of Bhrigu Infra Pvt. Ltd

6-2-45/13, Plot No 301, Azam Towers, Advocate Colony,

Opp Lane to Saleem Function Hall, AC Guards,
Khairatabad, Hyderabad-500004

4. Shabana Shaik

Suspended Director of Bhrigu Infra Pvt. Ltd
Partner in Rendlas Bhrigu Infra Developers
Flat No. G-802, Rainbow Vistas, Moosapet, Behind IDL,
GHMC Municipal Office, Sanathnagar IE, Hyderabad-500018

5. Rendla Suresh

Partner in Rendlas Bhrigu Infra Developers
H. No. 2-6-1049/1, KLN Reddy Colony,
Opp. Daffodils High School, Hanamkonda, Warangal-506001

6. Rendlas Bhrigu Infra Developers

Represented by its two partners
Shabana Shaik (Respondent 4 above) and
Rendla Suresh (Respondent 5 above)
Flat No.302, Sairam Swarnalatha Estates, Sai Saradhi Nagar,
Yellareddyguda, Ameerpet, Hyderabad-500073

7. Sub-Registrar Officer (SRO), Sanga Reddy

4-8-38/A&B, Manjeera Nagar, Sanga Reddy-502285

8. Mandal Revenue Officer (MRO), Sanga Reddy

Medak-Sangareddy Road, Shivaji Nagar, Sanga Reddy-502001

...Respondents

Date of Order: 31.05.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)
SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Parties/Counsels present:

For Applicant: Mr.Uma Shankar Gollapudi,Counsel along with
Ld.Liquidator Mr.Pavan Kankani.

PER BENCH

ORDER

1. This is an Application filed by Mr. Pavan Kankani, the Liquidator of 'M/s. Bhriugu Infra Pvt. Ltd.' (hereinafter referred as 'Corporate Debtor') under Section 66(2) read with Section 60(5) of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') read with Rules 11, 13 and 32 of The NCLT Rules seeking the following directions/orders:
 - a. Jurisdictional Mandal Revenue Officer (MRO), Sangareddy District, for the Edula Nagulapally Village in Ramachandrapuram Mandal to

register/mutate the following land parcels in the listed sub-survey numbers in the name of the CD:

.....

- b. Jurisdictional Sub-Registrar Officer (SRO), Sangareddy District, for the Edula Nagulapally Village in Ramachandrapuram Mandal to cancel the below SALE DEED and DAGPA documents:

.....

2. It was submitted that the Corporate Debtor made various payments for land admeasuring 3 Acres 24.5 Guntas at Edugangulapally Village, Ramachandrapuram Mandal, Sangareddy District, but these lands were registered in the name of M/s. Rendlas Bhrigu Infra Developers which is a Partnership Firm of one of the erstwhile Directors of Corporate Director vide various sale deeds enumerated in the Application.
3. It was submitted that the management of the Corporate Debtor utilised an amount of Rs.1,67,87,500/- (Rupees One Crore Sixty-Seven Lakhs Eighty-Seven Thousand Five Hundred Only) belonging to the Corporate Debtor and got registered the said lands in the name of M/s. Rendlas Bhrigu Infra Developers. That the Corporate Debtor was defrauded by the management of the Corporate Debtor by not getting registered the lands in the name of the Corporate Debtor.

4. Basing on these averments, the Applicant prayed this Tribunal to grant the reliefs as prayed for. This Tribunal, upon perusing the averments and the reliefs prayed for, raised a question as to the maintainability of the present Application and passed following order on 03.05.2024:

“Learned counsel Mr Uma Shankar Gollapudi, for liquidator present physically. Mr Pavan Kankani , liquidator present physically. Heard. For orders on maintainability on 31.05.2024.”

5. Therefore, following point arises for our consideration:

Point: Whether present application is maintainable or not?

6. In this regard, it is relevant to point out to Section 66 and Section 60(5) of IBC:

“Section 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 sub- section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation. -For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

60. Adjudicating Authority for corporate persons

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

7. A perusal of Section 66 of IBC makes it clear that the Adjudicating Authority is empowered to direct the persons who are involved in fraudulent trading or wrongful trading of the Corporate Debtor *to contribute back to the assets of the Corporate Debtor*. This provision makes liable the personnel of the Corporate Debtor to contribute to the

assets of the Corporate Debtor who carried on the affairs of the Corporate Debtor with a fraudulent intent.

8. The intent of directing the persons to contribute to the assets of the Corporate Debtor is because it is the effect of these transactions the Corporate Debtor was forced to be put into CIRP. As the personnel of the Corporate Debtor were responsible for putting the Corporate Debtor into CIRP which otherwise would have been a solvent Company, the statute empowered the Adjudicating Authority to direct these persons to contribute such amounts of the Corporate Debtor which were made use in giving effect to these fraudulent or wrongful transactions. *It is to be noted here that the entire transaction is not made to be invalidated by Section 66 of IBC.* The provision only directs the persons involved therein to contribute to the assets of the Corporate Debtor.
9. Moreover, the Respondents No.7 and 8 are third parties to the transactions alleged in the Application. A relief under Section 66 of IBC cannot be granted by this Tribunal against third parties. In this regard, it is relevant to place reliance on the following observation of the Hon'ble Supreme Court in the matter of *Gluckrich Capital Pvt. Ltd vs The State*

*of West Bengal & Ors., Miscellaneous Application No. 1302 of 2023 in
Special Leave Petition (Crl.) No. of 2023 (Diary No. 6732 of 2023):*

“8. We may also observe that the Tripura High Court has rightly relied upon the observations made by this Court in a binding precedent, in **Usha Ananthasubramanian Vs. Union of India**, which pertains to a matter under Section 339(1) of the Companies Act, 2013 which is pari materia with Section 66 of IBC. The High Court in the case of Sudipa Nath (Supra) has rightly observed that :-

“13..... That Section 66 (1) also directed towards making such persons personally liable for such fraudulent trading to recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on NCLT to pass such orders against other organizations/legal entities (other than corporate debtors) with whom such business was carried out against any person responsible in such other organizations/legal entities for carrying on business with corporate debtor. For the said purpose, the ratio of the judgment of the Hon'ble Supreme Court in **Usha Ananthasubramanian (supra)** in the context of section 339 (1) one of the companies Act, 2013 as extracted above would clearly apply even in the context 66(1) of IBC. Accordingly, an application under Section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of resolution professional or liquidator or by the corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organization / legal entities. Such legal action is independent of Section 66(1).”

.....
10. We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section.”

10. In the same way, Section 60(5), which is generally considered as a residuary provision empowers the Adjudicating Authority to adjudicate the applications involving the Corporate Debtor in relation to the Corporate Insolvency Resolution Process (CIRP) or Liquidation of the Corporate Debtor. Further, Section 60(5)(c) gives a very wide power to the Adjudicating Authority to adjudicate on the question of priorities, law or facts provided the same arises in relation to CIRP or Liquidation of the Corporate Debtor.

11. In the present case, it is the allegation of the Applicant/Liquidator that monies of the Corporate Debtor were used for the purpose of purchasing the lands as mentioned in the Application, but that those lands were not registered in the name of the Corporate Debtor. In such case, if the allegation is presumed to be true, the power vested with the Adjudicating Authority, if an application is filed, is to direct the persons involved in such transactions to return the monies of the Corporate Debtor which were utilised in giving effect to these transactions and not to invalidate the transaction itself.

12. In terms of Section 60(5), before this Tribunal, the claim of the Corporate Debtor will be limited to these monies which were alleged to be of the Corporate Debtor. The question of law or fact in this case will be that whether the monies of the Corporate Debtor were utilised in these transactions or not which resulted in defrauding the creditors of the Corporate Debtor by not making available the fruits of the monies utilised and not to invalidate the transaction itself.

13. Keeping in view, the above, we decide that this application is not maintainable as per law. The point is accordingly decided.

14. In view of the above this application is liable to be rejected, hence rejected and disposed of with no costs. However, we grant liberty to the applicant to file application with proper prayers, if he wishes so.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Anil