

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Comp. App. (AT) (Ins) No. 743 of 2020

IN THE MATTER OF:

**Arvind Garg Liquidator of Carnation Auto India Pvt.
Ltd.**

...Appellant

Versus

Jagdish Khattar & Ors.

...Respondents

Present:

**For Appellant : Mr. Kamal Mehta, Jasmeen Sharma, Advocates
Mr. Arvind Garg Liquidator in person,**

**For Respondents : Ms. Varsha Banerjee, Adv. for R1
Mr. Arun Kathpalia, Sr. Adv. Mr. Satendra K. Rai,
Advocates for R9
Jai Anant Dehadrai, Adv for R8
Mr. Krishnendu Datta, Sr. Adv, Mr. Anuj Berry, Mr.
Aryan Agrawal, Adv for R10**

O R D E R

Per – Justice Rakesh Kumar Jain (Oral)

08.08.2023 This appeal is directed against the order dated 24th July, 2020 passed by the ‘National Company Law Tribunal, New Delhi Bench -VI’ (hereinafter referred as to ‘the Adjudicating Authority’) by which an application bearing IB No-302/(ND)/ 2017 filed under Section 43,45,50 & 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to ‘The Code’) by the Liquidator for avoidance of transactions has been dismissed.

2. The Liquidator has sworn an affidavit dated 02.08.2023 and placed on record of this case in which he has averred that he has impleaded the nominee Directors as party only to avoid any kind of a technical objection to arise in

future but it is submitted that the names of the said nominee Directors may be deleted from the array of the parties with liberty to the Liquidator to implead them afresh, if at any stage, any incrementing material is found which would reflect their participation in the decision making of the Corporate Debtor in respect to the transactions which qualify to be a part of the avoidance report.

3. It is pertinent to mention that in the present appeal the Appellant has impleaded as many as 17 Respondents out of whom Respondents No.4,5,7,8,9,10,12,13,14,15, 16 & 17 are the nominee Directors.

4. In view of the aforesaid affidavit of the Liquidator (Appellant), Respondents No.4,5,7,8,9,10,12,13,14,15, 16 & 17 are hereby deleted from the array of the Respondents with a rider that, in case, if at any stage, any incrementing material is found which would reflect their participation in the decision making of the Corporate Debtor in respect to the transactions which qualify to be a part of the avoidance report then the Appellant shall have a right to file an appropriate application to implead the nominee Directors, who are being deleted from the array of the parties today as a party Respondents.

5. Needless to mention that in case any such application is filed then the Nominee Directors shall have every rights to contest the same.

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6. This appeal is directed against the order dated 24th July, 2020 passed by the 'National Company Law Tribunal, New Delhi Bench -VI' (hereinafter referred as to 'the Adjudicating Authority') by which an application bearing IB No-302/(ND)/ 2017 under Section 43,45,50 & 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to 'The Code') filed by the Liquidator for avoidance of transactions on the basis of Forensic Audit Report submitted by M/s.K.G.Somani & Co., Chartered Accountants, has been dismissed.

7. Counsel for the Appellant vehemently argued that the impugned order does not reflect the application of mind on the issues involved and is not a speaking order. He has reference to para 5 &6 of the impugned order by which the application has been dismissed.

8. On the other hand, counsel for the Respondent has submitted that the findings recorded by the Adjudicating Authority does not require any interference because no case is made out even on the basis of the application filed by the Liquidator under Section 66 of the Code, therefore, the impugned order may not be set aside only on the ground that impugned order is not speaking.

9. Respondent No.6 also has a grievance that he has been unnecessarily impleaded as a party in this appeal as he was only an Independent Director and has resigned about 3½ years before the initiation of CIRP.

10. We have heard counsel for the parties and after perusal of the record, are of the considered opinion that the impugned order is not a speaking order because the Adjudicating Authority has not dealt with all the aspects of the matter which have been referred to in the impugned order prior to taking decision in para 5 & 6. It is not clear as to how the Adjudicating Authority has come to the conclusion that the Forensic Audit Report has not been conducted by the Auditor as per the procedure and therefore, the Auditor has not come to the proper conclusion.

11. We have specifically asked counsel for the Respondent as to what is the procedure which has to be followed for the purpose of Forensic Audit to which she feigned ignorance.

12. Be that as it may, we are satisfied that the manner in which the application of the Liquidator has been dismissed by the Adjudicating Authority is not appropriate and, therefore, the impugned order is totally untenable. Consequently, the present appeal is hereby allowed. The impugned order dated 24.07.2020 is set aside. The matter is remanded back to the Adjudicating Authority.

13. The Adjudicating Authority is directed to decide the application once again after taking into consideration all the aspects by passing a speaking order in accordance with law. The parties are also directed to appear before the Adjudicating Authority on 16th August, 2023.

14. Needless to mention that Respondent no.6 shall also have a right to raise an issue before the Adjudicating Authority of its impleadment in the

litigation as according to him he had already resigned before the initiation of CIRP. In case, any such objection is raised by Respondent No.6, the Adjudicating Authority shall deal with the same.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Raushan/Ravi