

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT NO. II**

**I.A (IBC)(PLAN) 5/KB/2024**

**AND**

**IVN. P (IBC)/38(KB)2023**

**IN**

**C. P. (IB) No. 220/KB/ 2022**

**AN APPLICATION UNDER SECTION 60(5) OF THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016.**

**IN THE MATTER OF:**

**Pixel Consultancy Private Limited**

**...Financial Creditor**

**Versus**

**Dreamvalley Projects Private Limited.**

**...Corporate Debtor**

**And**

**IN THE MATTER OF:**

- 1. Sanghi Steel Udyog Private Limited**
- 2. Bijay Kumar Poddar**

**...Applicants**

**Versus**

- 1. Dreamvalley Projects Private Limited**
- 2. Karthik Singh**
- 3. Nawal Kishore**
- 4. Ravi Singhania**
- 5. Giri Raj Chandak**
- 6. Vivek Drolia**
- 7. Pixel Consultancy Private Limited**

**...Respondents**

**Date of Pronouncement: 22/08/2024**

**CORAM:**

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**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI. D. ARVIND, MEMBER (TECHNICAL)**

**APPEARANCE:**

<b>Mr. Shaunak Mitra, Adv.</b>	<b>]</b>	<b>For the Applicant in IVN.P</b>
<b>Mr. Dripto Majumdar, Adv.</b>		<b>(IBC)/38(KB)2023</b>
<b>Mr. Aditya Garodia, Adv.</b>		

<b>Ms. Aparajita Rao, Adv.</b>	<b>]</b>	<b>For the Respondent No.6</b>
<b>Mr. Sanwal Tibrewal, Adv.</b>		
<b>Ms. Sutapa Mitra, Adv.</b>		
<b>Ms. Swastika Roy, Adv.</b>		

<b>Ms. Rashmi Bothra, Adv.</b>	<b>]</b>	<b>For the Respondent No.7</b>
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<b>Ms. Manju Bhuteria, Adv.</b>	<b>]</b>	<b>For the Resolution</b>
<b>Ms. Madhuja Barman, Adv.</b>		<b>Professional</b>

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**COMMON ORDER**

**Per: D. Arvind, Member (Technical):**

1. The Court congregated through hybrid mode.
2. Heard Ld. Counsels for the parties.
3. This application has been filed in C.P. (I.B.) No. 220/(KB)2022 by **M/s. Sanghi Steel Udyog Private Limited and Bijay Kumar Poddar** who is one of the directors of Sanghi Steel Udyog Private Limited (herein after referred as “**Applicant/Applicants**”) against **Dream Valley Projects Private Limited (“Respondent No. 1”), Mr. Karthik Singh**, director of Dream Valley Projects Private Limited (“**Respondent No. 2**”), **Mr. Nawal Kishore**, director of Dream Valley Projects Private Limited (“**Respondent No. 3**”), **Mr. Ravi Singhania**, director of Dream Valley Projects Private Limited (“**Respondent No. 4**”), **Mr. Giri Raj Chandak**, director of Dream Valley Projects Private Limited (“**Respondent No. 5**”), **Mr. Vivek Drolia**, Promoter of Dream Valley Projects Private Limited (“**Respondent No. 6**”) and **Pixel Consultancy Private Limited (“Respondent No. 7”)**. This IA seeks following reliefs:

- a. Order dated 18<sup>th</sup> July 2023 (CIRP Order) passed by this Tribunal in CP (IB) No. 220/KB/2022 be set aside or in the alternative be recalled.

- b. CP (IB) No. 220/KB/2022 be dismissed.
- c. Until disposal of the present Application, stay of the order dated 18<sup>th</sup> July 2023 and all further process of CIRP
- d. Imposition of Maximum Penalty of Rs 1,00,00,000/- (Rs One crore) upon the Respondent No 2 to 7.
- e. Such further and/or other order(s) be made as this Hon'ble Tribunal may deem fit and proper.
- f. Ad- interim order in terms of the prayer above.

#### **IVN. P (IBC)/38(KB)2023**

##### **Brief facts of the case:**

4. The Applicants and Mr. Vivek Drolia (the respondent No. 6 herein) together carried on multiple businesses. When the business relationship was good it is claimed, Sanghi Steel Udyog Private Limited (Applicant) gave a sum of Rs. 6.48 crores as loan to Dream Valley Projects Private Limited which was promoted by respondent No. 6. On 06.02.2020. The applicant demanded a sum of Rs. 6,09,70,351/- as due and outstanding from the Dream Valley Projects Private Limited (respondent No. 1) and when respondent No. 1 failed to pay the defaulted amount, the applicant initiated proceedings under Section 7 of IBC against the corporate debtor.
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However, the section 7 application was not listed because it was having defect. Therefore only diary no ( 1908134/01761/2020 ) was generated and no number was given to the application filed before this Adjudicating Authority, against the corporate debtor.

5. Meanwhile, an application filed by the respondents before the Hon'ble High Court at Bombay on 23.10.2020 and on 15.12.2020, an Order was passed by the court restraining the applicant from proceeding with the Section 7 application initiated by it before the Adjudicating Authority.
  6. Meanwhile, one of the purported financial creditor namely, Pixel Consultancy Private Limited initiated Corporate Insolvency Resolution Process of the respondent No. 1 company and an Order was passed by the Tribunal on 18<sup>th</sup> July 2023 in C.P IB) No. 220/KB/2022 admitting the petition filed under Section 7 of IBC and ordered for commencement of CIRP in respect of respondent No. 1 company Dream Valley Projects Private Limited.
  7. It is the contention of the applicant herein that the petition filed by Pixel Consultancy Private Limited is collusive with an intent to deny the rightful dues payable to the applicant herein against the loans
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advanced by it to the corporate debtor (the respondent No. 1 company).

- 8.** To demonstrate that the petition filed by Pixel Consultancy Private Limited is collusive with a malicious intent to defraud the creditors of the respondent No. 1 company and in particular the applicant brings on record the following:

- a. Both the said Financial Creditor and Corporate Debtor were having common directors:

S.NONO	<u>DIN</u>	Date of appointment/cessation	Common director with both Financial Creditor and Corporate Debtor

1.	06796456	Appointment as an additional director: 18/05/2015 Change in designation:30/09/2015 Cessation:15/07/2017	Dilip Kumar Saraf
2.	01908447	Appointment as director 26-08-2014 Cessation:22-05-2015	Pritam Ghosh
3.	00519521	Appointment in director: 26/08/2014 Cessation:22/05/2015	Akash Chatterjee

- b. Both the said Financial Creditor and Corporate Debtor have/had common Registered Office address – 5/4 Clive Row, second Floor, Room No. 33A till 1<sup>st</sup> July 2018.
- c. Both the said Financial Creditor and Corporate Debtor have common shareholder. The list of common shareholder is Annexed as Annexure Q in the intervention application.



**Ld. Counsel for Applicant:**

9. Ld. Counsel for applicant submits that in view of common directors, common shareholding company, common registered office, respondent No. 1 along with respondents No. 2, 3, 4, 5 and 6 colluded with respondent No. 7 to make an application under Section 7 of IBC at the back of the applicant. The application filed by respondent No. 7 Pixel Consultancy Private Limited was admitted by this Tribunal *vide* Order dated 18<sup>th</sup> July 2023, ordering commencement of CIRP against the corporate debtor (respondent No. 1 company).
  10. It is the submission of the Ld. Counsel that facts relating to common directors, common shareholding, common office were not before the Tribunal when they passed an Order admitting the corporate debtor into CIRP passed on an application filed by respondent No. 7 Pixel Consultancy Private Limited. Therefore, the collusive and malicious intent of the respondent herein was not before the Tribunal and consequently, it led to an Order being passed for admission of the corporate debtor into CIRP.
  11. The Resolution professional has made paper publication as per regulation 6 of CIRP regulation 2016, inviting claims and fixed the last date for receipt of claim as 01.08.2023, whereas no intimation about CIRP and claims were made to the applicant. However on
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14.09.2023, through an e-mail the Resolution professional asked the applicant for payment of Rs 1,01,03,672/( dividend receivable on account of share lent by the corporate debtor) as per the last audited financial statement. Therefore, the applicant was prevented from even lodging a claim with the resolution professional. Even otherwise the company hardly has any asset to meet huge liabilities. The huge liabilities were created by entering into fraudulent transaction with the group companies. Therefore, he submits that reliefs as prayed for may be granted and the Order dated 18th July passed by this Tribunal ordering commencement of CIRP of the corporate debtor be set aside/recalled. Ld. Counsel also seeks imposition of maximum penalty of Rs. 1 crore upon respondents No. 2 to 7.

**Ld. Counsel for Respondent:**

- 12.** The Ld. Counsel for respondent denies all the allegations made in the application. Ld. Counsel for respondent No. 7 submits that the applicant does not and cannot have any cause of action against respondent No. 7. Ld. Counsel for respondent No. 6 submits that the applicant has no locus to initiate such proceedings in view of the Order passed by the Hon'ble High Court at Bombay. Criminal cases
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between the parties are pending before various Forum alleging frauds against each other. He submits that this Court has no jurisdiction to adjudicate on such frauds claimed to have been committed against each other.

- 13.** Ld. Counsel further submits that common directorship, common shareholding etc. were five years ago and not now and therefore, such allegations cannot be maintained and even otherwise when the claims of frauds are made, this Tribunal cannot adjudicate on such frauds particularly when various litigations on account of alleged purported frauds committed on each other are pending for disposal, before various courts/legal Forums.

**I.A (IBC)(PLAN) 5/KB/2024**

- 14.** The application **I.A (IBC)(PLAN) 5/KB/2024** has been preferred by **Neeraj Kejriwal** Resolution Professional seeking approval of resolution plan approved by Committee of Creditors (CoC) on **28.03.2024**.

**ORDER**

**Analysis and Findings:**

- 15.** We find that the applicant (financial creditor) wanted to initiate CIRP against the corporate debtor and was restrained by Hon'ble High

Court at Bombay for doing so. Meanwhile, respondent No. 7 Pixel Consultancy Private Limited ( another Financial Creditor) has initiated CIRP against the corporate debtor. Therefore, the purpose of the applicant is served because this is what it wanted, that the corporate debtor to be put into Corporate Insolvency Resolution Process. It could have lodged this claim its the resolution professional of the corporate debtor based on the publication made by the resolution professional fixing last date as 01.08.2023. However, we note that the interim resolution professional has written to the applicant herein only on 14.09.2023, intimating the commencement of CIRP of the corporate debtor/Instead of seeking the applicant to lodge its claim, the resolution professional has enquired about dividend receivable on account of share lent by the corporate debtor to applicant, to the tune of Rs. 1,01,03,672.10/- We see no response to this e-mail by the applicant that has been placed on record. The applicant instead lodging of formal claim for the amount claimed to have been defaulted has preferred this application. We have also gone through the records submitted by the interim resolution professional in connection with the resolution plan of the corporate debtor. It has been recorded in the information memorandum that the corporate debtor owns a sum of Rs. 6,09,70,351/- to the applicant.

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**16.** When that being the case, the resolution professional should have formally communicated and invited the claim of the applicant, particularly, when the liabilities reflected in the information memorandum. Instead resolution professional made paper publication only and the last date of submission of claim, was fixed on 1/8/2023. Subsequently, he has chosen to inform the applicant about the commencement of CIRP on 14.09.2023, that too for the recovery of dividend on share belonging to corporate debtor, allegedly pledged with for loan borrowed.

**17.** As per regulation 6A of CIRP regulation 2016 the resolution professional is required to send a communication along with a copy of the public announcement made under regulation 6, to all the creditors as per the available book of account of the corporate debtor through post or electronic mail wherever the information for communication is available.

We find that the in spite of applicant claim is part of information memorandum, the resolution professional failed to communicate about the claim as provided in the regulation herein above. The Resolution professional also failed to place any record to this effect

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- 18.** When that being the case, in the interest of equity and fair play, we allow the applicant to submit its claim within 7 days from the date of this Order.
- 19.** We also note that the resolution plan has already been approved by CoC and the matter is pending before us for disposal. Keeping in mind the facts and circumstances of the case in hand, we allow the applicant to file the claim as stated above, for consideration by CoC.
- 20.** On the allegations made with reference to common shareholding, common directorship etc., we note that such things happened several years before filing this application. In any event, the purported/alleged fraud committed by the parties against each other cannot be adjudicated by this Authority as the matter is pending before various Criminal Courts on suits filed by the parties. Therefore, **we find no reason to grant any relief** to the applicant **other than allowing him to file the claim at this stage**, accordingly this **IVN. P (IBC)/38(KB)2023** is **disposed of**.
- 21.** The application **I.A (IBC)(PLAN) 5/KB/2024** has been preferred by **Neeraj Kejriwal** Resolution Professional seeking approval of resolution plan approved by Committee of Creditors (CoC) on **28.03.2024**. Without getting into the merits of the resolution plan,
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we remit the matter back to CoC and for considering of IVN. P (IBC)/38(KB)2023 wherein we have directed to admit the claim of Sanghi Steel Udyog Private Limited. Upon admission of the claim, the CoC may add its commercial wisdom decide the claim on merits and the allocation, if any, thereof. Accordingly, this **IVN. P (IBC)/38(KB)2023 is disposed of and the application for Resolution plan in IA(IBC)Plan) 5/KB/2024 is remitted back to CoC in view of direction passed in this order.**

**22.** The I.A (IBC)(PLAN) 5/KB/2024 is **disposed of**. List the CP for further progress report on **1/10/2024**.

**23.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**Signed on this, the 22<sup>nd</sup> day of August, 2024.**

PH[PS]/NKS(LRA)(LRA)