

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

I.A/5400/2023, IA 4121/2023, IA 4122/2023, IA 4312/2023

IN IB-682/PB/2021

(Application under Section 60(5) IBC, 2016)

IN THE MATTER OF:

Nitin Batra & Ors.

...Financial Creditor/ Applicant

VERSUS

M/s. Anand Infoedge Pvt. Ltd. & Ors.

...Corporate Debtors/Respondents

AND IN THE MATTER OF:

M/s. Mist Direct Sales Pvt. Ltd.

...Applicant

VERSUS

Mr. Nitin Batra

... Respondent No 1

Mr. Gaurav Bharadwaj Batra

... Respondent No 2

Col. Gulshan Juneja

... Respondent No 3

CORAM:

SHRI. P.S.N PRASAD, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for the Applicant: AEKOM Legal

Counsel for the Respondents: Mr. Dhruv Goel, Adv for Respondent No. 2. Mr. NPS Chawla and Ms. Mahima Shekhawat for Respondent No.3. Adv. Apoorv Agarwal, Adv. Vaishnavi Prakash for Respondent No. 1. Adv. Vijay Aggarwal, Adv. Rachit Bansal, Adv. Rajat Tayal for R-3.

ORDER

**PER- P.S.N PRASAD, MEMBER (JUDICIAL) &
RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

Order Pronounced on: 05.01.2024

1. The present Application has been filed by the Applicant who is respondent No.3 in the main matter, under Section 60(5) of the IBC, 2016 praying for the following reliefs:

- (a) Pass necessary orders and directions, thereby dismissing the present Company Petition filed under Section 7 of IBC by the Applicants/ Financial Creditors on the ground of playing fraud on this Tribunal;*
- (b) Initiate proceeding u/s Section 340 r/w section 195(1)(b) CrPC and other provisions of law against the Applicants/ Financial Creditors;*
- (c) Impose penalty u/s 65 of the IB Code 2016, on the Applicants/ Financial Creditors for initiating proceedings fraudulently and with malicious intent;*
- (d) Take the Information provided by the Respondent No.3 to this Tribunal on record, for making a reference to the Hon'ble High Court under Section 15 (2) of the Contempt of Court Act, 1972,*

for initiating criminal contempt proceedings against the Applicants/Financial Creditors;

(e) Pass necessary orders and directions thereby deciding the present Application as a preliminary issue;

(f) Pass necessary orders and directions, thereby deciding the present Application first, before proceeding with the main company petition as the same is in relation to administration of justice;

(g) Take such other actions and pass order as this Tribunal may deem fit and proper in the interest of justice.

2. During the course of hearing on 20.12.2023, it was submitted by the Counsel for the Applicant that the averments made in IA/4312/2023, IA/4121/2023 & IA/4122/2023 filed by the Applicant are similar and forming part & parcel of IA/5400/2023 and that no separate adjudication of these IAs was required and adjudication of the IA/5400/2023 tantamount to adjudication of all the above three IAs. The order in the present Application bearing number IA/5400/2023 was reserved by this Adjudicating Authority on 08.12.2023. The Counsel for the Respondent

(counsel for the Financial Creditor in the main matter) in the present Application brought on record order of Hon'ble Supreme Court of India dated 11.12.2023. The same is taken on record vide daily order dated 20.12.2023.

3. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That the present application is being filed by and on behalf of the Respondent No. 3, seeking dismissal of the present Company Petition on the ground that the Applicants/Financial Creditors have played fraud upon this Adjudicating Authority in view of filing of false affidavits in an endeavor to comply with the provisions of Section 7 IBC by applicants.
- ii. That vide IA No.4121/2023 and 4122/2023, the Respondent No. 3 (Applicant herein) had brought to notice of this Adjudicating Authority that at least 6 (six) applicants/financial creditors to the knowledge of the Respondent No. 3 out of total 143 Applicants/Financial Creditors as mentioned in the Memo of Parties have filed false affidavits. Further, vide IA No. 4312/2023, the Respondent herein had brought to notice of this

Adjudicating Authority that the affidavits of most of the allottees were notarised in August or September 2021. whereas the Application u/s 7 IBC was filed much later in October 2021. Thus. there was no accompanying application under Section 7 of the Code at that point in time when the affidavits were notarised. Further, it has come to the knowledge of the respondent herein that another applicant named Ajay Khajuria (Applicant No.106 as per the memo of parties in the company petition) has provided a declaration that the affidavit filed before Adjudicating Authority in the present matter has not been signed by him and there is a visible difference in signatures.

- iii. That the Applicants/ Financial Creditors have initiated the proceeding before this Adjudicating Authority fraudulently and with malicious intent and the Adjudicating Authority has power within Section 65 of the Code to impose penalty upon such person.
- iv. That affidavit of one of the Applicants, i.e. Mr. Ajay Khajuria has been forged and declaration to that effect has been given by such Applicant.
- v. That the affidavits are false and not notarized.

4. The Respondent has filed its reply stating as follows:

- i. That the Applicant has filed multiple motivated Applications raising similar accusations before this Adjudicating Authority including the present Application seemingly with the intention of preventing an Order under Section 7 of the Code. That all the Applications including this is barred by the principle of delay & laches.
- ii. That the entire allegations and the fabricated story of the Applicant pertaining to the legality of few affidavits have no relevance for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP'). Since, the Hon'ble Apex Court in the matter of Manish Kumar v. Union of India & Ors. [Writ Petition(C) No. 26 of 2020] has clarified only 'endorsement' is required by more than 100 or 10% of the allottees for the requirements of Section 7 of the Code and the said essential is fulfilled in the Petition filed by the Financial Creditors in the instant matter.

- iii. That the issue of maintainability of the Petition filed by the Financial Creditors has already been decided by this Adjudicating Authority vide a detailed order dated 21.10.2022.
 - iv. That the Hon'ble NCLAT in the appeal filed by the Applicant against the order of this Adjudicating Authority dated 21.10.2022, after hearing the arguments of all the parties vide a detailed judgment dated 17.11.2023 decided that the Application filed under Section 7 of the Code by the Answering Respondents is maintainable.
 - v. That the entire dispute raised by the Corporate Debtors is pertaining to some affidavits which are not even required by this Adjudicating Authority to decide for initiating the CIRP.
5. We have heard the submissions made by both the parties. The present Application has been filed by the Applicant seeking dismissal of the Petition filed u/s 7, IBC, 2016 (hereinafter referred to as "Section 7 Petition") bearing number IB-682/PB/2021 on the alleged ground of fraud. It is the contention of the Applicant that the Respondents have annexed forged affidavits whilst filing the Section 7 Petition. The Respondents

have however, denied such allegations. The Applicant has prayed for deciding the present Application before deciding the main Petition filed by the Respondents in the present Application.

6. The Applicant had challenged the maintainability of the Section 7 Petition before filing this Application and this Adjudicating Authority vide its order dated 21.10.2022 had held the Petition to be maintainable. The Applicant appealed before the Hon'ble NCLAT against the order upholding maintainability of the Petition. However, the Hon'ble NCLAT vide its order dated 17.11.2023, while dismissing the Appeal of the Applicant, upheld the order dated 21.10.2022 of this Adjudicating Authority and held that the Petition is maintainable. Further, the Applicant had appealed before the Hon'ble Supreme Court against the order of the Hon'ble NCLAT upholding the order of this Adjudicating Authority. The Hon'ble Supreme Court while dismissing the appeal of the Applicant held as follows:

“After the application under Section 7 is heard and disposed of on merits, should it become necessary to do so, the parties would be at liberty to take recourse to all appropriate proceedings in accordance with law. At that stage, should it become so necessary, this Court will enquire into both the merits and maintainability. However, we also clarify that the issue of

maintainability shall stand concluded by the impugned order dated 17 November 2023 insofar as the National Company Law Tribunal and NCLAT is concerned.

Since the application under Section 7 is pending for over two years, we request the NCLT to take up the application at the earliest possible date and to endeavour an expeditious disposal within two months.”

The main contention on the basis of which the Applicant had previously challenged the maintainability of the Section 7 Petition was that the Petition failed to satisfy the minimum threshold of jointly being filed by 100 allottees. However, this Adjudicating Authority held that the Petition is maintainable in light of the judgement of the Hon’ble Supreme Court in the matter of Manish Kumar v. Union of India and Ors. (2021) 5 SCCC 1, wherein it was held as follows:

“In the matter of presentation of an application under Section 7, if the threshold requirement, under the impugned provisos, stands fulfilled, the requirement of the law must be treated as fulfilled. The contention, relating to the ambiguity and consequent unworkability and the resultant arbitrariness, is clearly untenable and does not appeal to us. If an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.”

7. The Applicant has filed the present Application again seeking dismissal of the Petition on the alleged ground of fraud/forgery. It is the contention of the Applicant that the Respondents have annexed forged affidavits whilst filing the Section 7 Petition. The Applicant has also contended that one of the Applicants in the Section 7 Petition named Ajay Khajuria (Applicant No.106 as per the memo of parties in the company petition) has provided a declaration that the affidavit filed before Adjudicating Authority in the present matter has not been signed by him and there is a visible difference in signatures. The Respondents have denied all the allegations raised by the Applicant. With respect to Mr. Ajay Khajuria, it is noted that Mr. Ajay Khajuria had filed an Application bearing number IA/3755/2022 under Rule 8 of IBBI (Application to Adjudicating Authority) Rules, 2016 seeking withdrawal of the Applicant's claim. The said application was allowed by this Adjudicating Authority vide order dated 12.08.2022. The relevant part of the order is reproduced herein below:

“The Applicant has submitted that during the pendency of the present matter the entire claim and outstanding debt of the Applicant against the Corporate Debtor have been settled, satisfied and extinguished by an out of Court settlement dated 21.03.2022 and thus as on date there exists no remaining or subsisting claim of the Applicant against the Corporate Debtor. Therefore, the Applicant is desirous of withdrawing the claim filed against the Corporate Debtor under Section 7 of the Code. Accordingly, the Applicant has also submitted that he revokes the Authority granted to Mr. Nitin Batra, Col Gulshan Singh Joneja and Mr. Gaurav Bhardwaj.”

Therefore, it is clear that Mr. Ajay Khajuria had given his consent to the Applicants in the Section 7 Petition to proceed against the Corporate Debtors u/s 7, IBC, 2016. Subsequently, upon settlements of his debt, he withdrew his claim and it appears that now he has joined with the Applicants in the present Application. The Applicants are therefore, only trying to delay the CIR Process by raising such vexatious claims wherein it is on record that the claim of such person has been withdrawn and no such ground of forgery was raised by Mr. Ajay Khajuria while filing the Application for withdrawing his claim and his consent for filing the Section 7 Petition.

8. The Applicant has also alleged that false affidavits have been filed by the Respondents and that the affidavits are not notarized. The Applicant has also relied on Section 340, CrPC, 1973 and various judgements of High Courts and Supreme Court to support his contention that the Petition u/s 7, IBC, 2016 should be dismissed on account of such false affidavits. At this juncture, reliance is placed on the judgement of the Hon'ble Supreme Court in the matter of *Amarsang Nathaji v. Hardik Harshadbhai Patel & Ors.* [Civil Appeal No. 11120 of 2016] wherein it was held as follows:

“The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as “the IPC”); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having

regard to the overall factual matrix as well as the probable consequences of such a prosecution.”

9. Therefore, it is clear that two pre-conditions must be satisfied for initiating proceedings under Section 340 CrPC. First, there must be a prima facie case for a complaint for the purpose of inquiry and, second, it is expedient in the interests of justice that an inquiry should be made into the alleged offence. Assuming the alleged fabrication of affidavits by the Respondents who are the Applicants in the Section 7 Petition, the Applicants in this Application have failed to satisfy this Adjudicating Authority as to how an offence under Section 340, CrPC, 1973 has been committed. The Applicants in Section 7 Petition have not once raised an objection with respect to the veracity of the affidavits executed in their name. Further, it can in no way be assumed that even if false affidavits were executed by merely 6 of the Applicants in the Section 7 Petition, it can lead to injustice to the Applicant in this Application. Section 7 of the IBC, 2016 clearly states that this Adjudicating Authority merely has to ascertain existence of financial debt and its default. Even if we assume that 6 affidavits

were fabricated, it will in no way affect the outcome of the Petition filed under Section 7, IBC, 2016 if existence of financial debt and default quo any of the Applicants is proved. The same view has been taken by Hon'ble Supreme Court in the matter of *Manish Kumar v. Union of India and Ors. (2021) 5 SCC 1*, wherein it was held as follows:

“138. Taking a cue from the Explanation to Section 7(1), all that would be required is, to plead the default, no doubt, in the sum of Rs. 1 crore, which is not barred as the cause of action. In other words, if a law contemplates that the default in a sum of Rs.1 crore can be towards any financial creditor, even if he is not an applicant, the fact that the debt is barred as against some of the financial creditors, who are applicants, whereas, the application by some others, or even one who have moved jointly, fulfill the requirement of default, both in terms of the sum and it not being barred, the application would still lie.”

Further, the Hon'ble NCLAT in the matter of *Shelendra Kumar Sharma Vs DSC Ltd. Company Appeal (AT) (Insolvency) No. 1459 of 2019* held that “So far as the question as to whether the documents are forged or not is concerned, it cannot be determined by the Adjudicating Authority (National Company Law Tribunal) or

this Appellate Tribunal and therefore, the Adjudicating Authority rightly not deliberated on such issue.” Therefore, it is well settled position of law that this Adjudicating Authority cannot decide on the alleged issue of forged affidavits.

10. In light of the above, we find no merit in the present Application filed for dismissal of IB-682/PB/2021 which a Section 7 Application. The present Application appears to be misleading, filed only for the purpose of delaying the adjudication of IB-682/PB/2021. The applicant has failed to appreciate that the intent behind classification of homebuyers as “Financial Creditor” by the legislature was to enable homebuyers to participate in the insolvency resolution process in a constructive and egalitarian manner. The Applicant is insisting on dismissal of the Section 7 Petition even after the same has been held maintainable by the Hon’ble NCLAT vide order dated 17.11.2023 and the Hon’ble Supreme Court vide order dated 11.12.2023 has held that the issue of maintainability shall stand concluded by the order dated 17.11.2023 insofar as the Adjudicating Authority and NCLAT are concerned. The malafide intention of the Applicant to delay the adjudication of the Section 7 Petition is also evident from the fact

that the Applicant never raised this contention of affidavits being forged during the adjudication of maintainability of the Section 7 Petition neither before this Adjudicating Authority nor before the Hon'ble NCLAT.

11. Further, prior to admission of Section 7 Application making attempts to seek dismissal of the application by the applicant is not a practice which in consonance with the provisions of IB Code, 2016 as well as the objects sought to be achieved by the said legislation.

12. From the prayers made at (a) to (g) in the application it transpires that the applicant is attempting to drag on the proceedings and build an approach to have a road-way for forum shopping, therefore, the IA/5400/2023 is dismissed.

13. IA/5400/2023 stands dismissed. Consequently, IA/4312/2023, IA/4121/2023 & IA/4122/2023 also stand dismissed. The applicant is also directed to refrain from filing such frivolous applications in future so as to avoid imposition of cost.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(P.S.N PRASAD)
MEMBER (JUDICIAL)