

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1413 of 2023

[Arising out of Order dated 01.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Special Bench, New Delhi), in I.A. No. 4654 of 2023 in CP(IB) No. 662 (ND) 2021]

IN THE MATTER OF:

Ashmeet Singh Bhatia,

S/o Sh. Gurdeep Singh Bhatia, R/o H.No.12A, Savitri
Sahani Enclave, New Hyderabad, Lucknow, Uttar
Pradesh-226007, Mobile: 9889112244,9888038622.
Email:ashmeet@ymail.com

...Appellant

Versus

1. Pragati Impex India Private Limited,

Flat No. 216-B, Second Floor, Devika Tower, 6, Nehru
Place, New Delhi – 110019

...Respondent

No. 1/FC

2. M/s Vistar Construction Private Limited,

C-23 Greater Kailash Enclave, Part-I New Delhi-110048

...Respondent

No. 2/CD

Present:

For Appellant: Mr. Gaurav Mitra, Mr. Shashwat Tripathi, Ms.
Ridhima Verma, Mr. Ishan Roy Chowdhury, Ms.
Madhu Ayachit, Advocates

For Respondents: Mr. Abhijeet Sinha, Mr. Shohit Chaudhry,
Advocates for R-1

Mr. Pankaj Agarwal, Mr. Shashwat Srivastava,
Advocates for RP,R-2

J U D G M E N T

ASHOK BHUSHAN, J.

1. This Appeal has been filed challenging the Order dated 01.09.2023
passed by National Company Law Tribunal, New Delhi, Special Bench,

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Court-II (hereinafter referred to as “The Adjudicating Authority”) in I.A. No. 4654 of 2023 in CP(IB) No. 662/ND/2021. By the Impugned, Order, Intervention Application filed by the Appellant praying for certain reliefs have been rejected.

2. Appellant aggrieved by the said order has come up in this Appeal.

3. Brief facts necessary for deciding this Appeal are:-

- I. The Appellant in this Appeal is a home-buyer having allotted residential apartment in the Group Housing Project ‘Lotus Panache’ of Granite Gate Properties Private Limited (GGPPL in short). Allotment Letter was issued on 01.12.2011 by GGPPL.
- II. A ‘Corporate Insolvency Resolution Process’ commenced against a group company namely M/s Vistar Construction Private Limited by Order dated 05.08.2022 in an application filed by the Pragati Impex India Private Limited. The ex-director of the Corporate Debtor challenged the Order of CIRP which order was upheld by this Tribunal by Judgment and Order dated 06th January, 2023 in C.A.(AT) Ins. No. 1431 of 2022.
- III. Appellant claiming to be home-buyer in a sister company of the Corporate Debtor filed an application being I.A. No. 4654 of 2023 praying for following reliefs:

“a. Pass an order allowing the Applicant to intervene in the captioned matter i.e. C.P. (IB) 662 of 2022;
b. Pass an order to take on record and consider the facts and documents mentioned by the present Application, while adjudicating over the captioned

matter i.e. C.P. (IB) 662 of 2022 and I.A. bearing number 3636 of 2023 filed in the captioned matter;

c. Pass an order dismissing the captioned matter i.e. C.P. (IB) 662 of 2022 and I.A. bearing number 3636 of 2023, filed in the captioned matter;

d. Pass an order imposing heavy penalty, under Section 65 of the Code, upon the Financial Creditor and the Corporate Debtor;

e. Pass an order directing the Insolvency and Bankruptcy Board of India, to conduct an enquiry, regarding the ex-facie collusion between the Ld. RP and the Financial Creditor, the Corporate Debtor and the SRA;

f. Pass an order directing a detailed inquiry by an appropriate investigating agency of the Government of India Such as Enforcement Directorate, SFIO into the affairs of Financial Creditor and the Corporate Debtor

g. Pass any other order, as this Hon'ble Tribunal may deem fit, in the light of the facts and circumstances of the present case, in the interest of transparency, equity and justice."

- IV. The Appellant in the Application has made serious allegations of collusion and fraud against the Financial Creditor and the Corporate Debtor. It was pleaded that there is no genuine debt and initiation of CIRP by the Financial Creditor was *mala fide* and fraudulent. Appellant in his application has stated that alleged debt was transferred in circular manner back to one of the group company of the Financial Creditor on the same day. It was pleaded

that there was complex round tripping by Financial Creditor amounting to Rs. 1,75,81,442/-. The Adjudicating Authority was pleaded to dismiss the Company Petition and penalty under Section 65 of the Code was also prayed to be imposed. The Application was opposed by the Learned Counsel appearing for the Resolution Professional. The Adjudicating Authority observed that Appellant has no transaction with the Corporate Debtor and he has no locus to oppose the order admitting the CP(IB) No. 662/ND/2021 when the Order admitting CIRP was affirmed by the Appellate Tribunal, the Application was rejected with these observations. It is useful to extract the impugned order. The Impugned Order was passed on the Application which is to the following effect:

“IA-4654/2023: Ms. Ridhima Verma, Ld. Counsel appearing for the Applicant submitted that she is one of the Home Buyers qua M/s Granite Gate Properties Pvt. Ltd. By way of the captioned IA, the Applicant has virtually assailed the order dated 05.08.2022 passed in IB-662/ND/2021. Ld. Sr. Counsel P. Nagesh appearing for the Respondent opposed the application and submitted that on the challenge, the order dated 05.08.2022 passed in IB662/ND/2021 was upheld by the Hon’ble NCLAT in the Company Appeal (AT) (Insolvency) No. 1431 of 2022. He further stated that the Applicant had no direct transaction with the CD viz. Vistar Construction Pvt. Ltd. According to the Ld. Counsel for the Applicant, M/s Granite Gate Properties Pvt. Ltd. had

some transaction with the FC/CD qua the IB-662/ND/2021.

The transaction of the Applicant qua M/s Granite Gate Properties Pvt. Ltd. does not give her any locus to oppose or question the order of admitting the IB-662/ND/2021, more so, when the admission has been affirmed by the Hon'ble NCLAT. In our considered view, the application is not maintainable.

Accordingly, the same is rejected.”

4. We have heard Mr. Gaurav Mitra, Learned Counsel appearing for the Appellant, Mr. Abhijeet Sinha, Learned Counsel appearing for the Financial Creditor and Mr. Pankaj Agarwal, Learned Counsel appearing for Resolution Professional.

5. Affidavit has been filed by the Respondent No. 1 and 2 in the Appeal, Rejoinder to which has also been filed by the Appellant.

6. Mr. Gaurav Mitra, Learned Counsel appearing for the Appellant submits that the entire proceeding initiated by the Financial Creditor against the Corporate Debtor for financial debt of Rs. 1,75,81,442/- is non-existent debt. It is submitted that there is transaction on same day i.e. 02nd June, 2018 between related company of the Financial Creditor and the Corporate Debtor, where same amount which came from Financial Creditor to the Corporate Debtor was returned to the related company of the Financial Creditor and the financial debt did not remain with the Corporate Debtor for even one day and the entire transaction was clear cut case of round tripping. Learned Counsel for the Appellant has referred to the Bank Statement of Corporate Debtor, Financial

Creditor and Related Company of the Financial Creditor namely M/s. Oasis Supplier Pvt. Ltd. and submits that the same amount was transferred by the related party of the financial creditor M/s Oasis Supplier Pvt. Ltd. and on the same day financial creditor transferred the said amount to the corporate debtor and the Corporate Debtor on the same day returned the same amount to related party of the Financial Creditor i.e. M/s. Oasis Supplier Pvt. Ltd. It is submitted that round tripping clearly indicates that it was not a financial debt but only paper transaction and there being no financial debt, the initiation of CIRP was fraudulent and present was a fit case where the Adjudicating Authority ought to have exercised power under Section 65 of the Code to impose penalty and close the proceedings. It is submitted that Appellant had not prayed for recall of the admission order of CIRP rather it prayed for dismissal of the company petition and the Adjudicating Authority observed that the admission order having been affirmed by the Appellate Tribunal cannot be questioned, has not correctly appreciated the prayers made in the Application. It is submitted that the observation of the Adjudicating Authority that Appellant has no locus to file the application is also incorrect. Appellant is a home-buyers of related company of the GGPPL and under the Forensic Audit Report conducted in the CIRP of GGPPL, it is clearly mentioned that amount of Rs. 19.57 Crores is recoverable from Corporate Debtor. The CIRP has been initiated to get away from all liabilities of the Corporate Debtor. GGPL is already in CIRP and under the said CIRP the houses to the several thousand owners have

not been given and out of receivables from amount to GGPPL the construction has to be carried out hence Appellant has locus to question the fraudulent transaction initiated by the Financial Creditor against the Corporate Debtor. It is submitted that the Corporate Debtor is group company of Three C Groups which has indulged in siphoning off fund to its group companies defrauding home-buyers including the Appellant. Appellant has filed several proceedings against its group companies of Three C Company for protection of his rights.

7. Mr. Abhijeet Sinha, Learned Counsel appearing for the Financial Creditor refuting the submissions of Appellant contends that Appellant has no locus to file the application since he has no direct transaction with the Corporate Debtor. His transaction with a group company namely GGPPL cannot be reason to file any application in CIRP of the Corporate Debtor where Appellant has no concern. It is submitted that the Financial Creditor and Corporate Debtor entered into loan agreement dated 31st May, 2018 and it was resolved to advance an amount of Rs. 1,76,00,000/- to the Corporate Debtor by the Financial Creditor. The Appellant is selectively referring to four entries of 2nd June, 2018 whereas there are several transactions between the Corporate Debtor and the Financial Creditor. Several amounts were transferred by the Corporate Debtor to the Group Company of the Financial Creditor which was refunded. Learned Counsel has referred to transaction between Corporate Debtor, M/s. Oasis Supplier Pvt. Ltd. between May 2018 to July, 2018. He submits that Appellant has filed several frivolous applications in

proceeding related to Three C Companies, Appellant has no locus to file I.A. No. 4654 of 2023 which has rightly been dismissed. Appellant is trying to mislead the Tribunal by misrepresenting the transaction pertaining to the corporate debtor.

8. Learned Counsel appearing for the Resolution Professional also refuting the submissions of the Appellant submits that Applicant is in habit of filing multiple applications at belated stage against the Corporate Debtor as well as other group companies. He has referred to several company appeals filed by the Appellant as well as the Application filed in Company Petition before the Adjudicating Authority in paragraph 10 of the Reply. It is submitted that in the present case, Appellant has not filed the application after admission of the Section 7 Application rather has come up at the stage when Resolution Plan was submitted and pending consideration for the approval by the Adjudicating Authority. It is submitted that Appellant has no locus to file the Application.

9. We have considered the submissions of the parties and perused the record.

10. Before we come to the Impugned Order, it is necessary to notice certain averments made in the I.A. No. 4654 of 2023. Copy of the Application have been filed by the Appellant at Annexure A-2 where there was serious allegation that parties are in collusion and has intentionally filed the application. In paragraph 4,5 and 7 of the Application, following has been stated:

“4. At the outset, it is submitted that the present case is a case of an ex-facie fraudulent, malicious and collusive initiation of CIRP, and therefore, when the basic edifice on which the resolution plan of the corporate debtor is approved by a single member committee of creditors, is non-est in law; the superstructure of the resolution plan cannot sustain itself and therefore, the application for approval of resolution plan is liable to be outrightly dismissed, with exemplary costs.

5. The present case is a fit case for invoking powers under Section 65 of the Code and abate the entire CIRP process, impose penalties upon the Financial Creditor/M/s Pragati Impex India Pvt. Ltd. (“Financial Creditor”), as well as the Corporate Debtor and order an enquiry, through Insolvency and Bankruptcy Board of India (“IBBI”), upon the Ld. Resolution Professional, regarding the ex-facie illegal and fraudulent collusion between the Financial Creditor and the Corporate Debtor, proactively furthered and perpetuated by the Ld. RP.

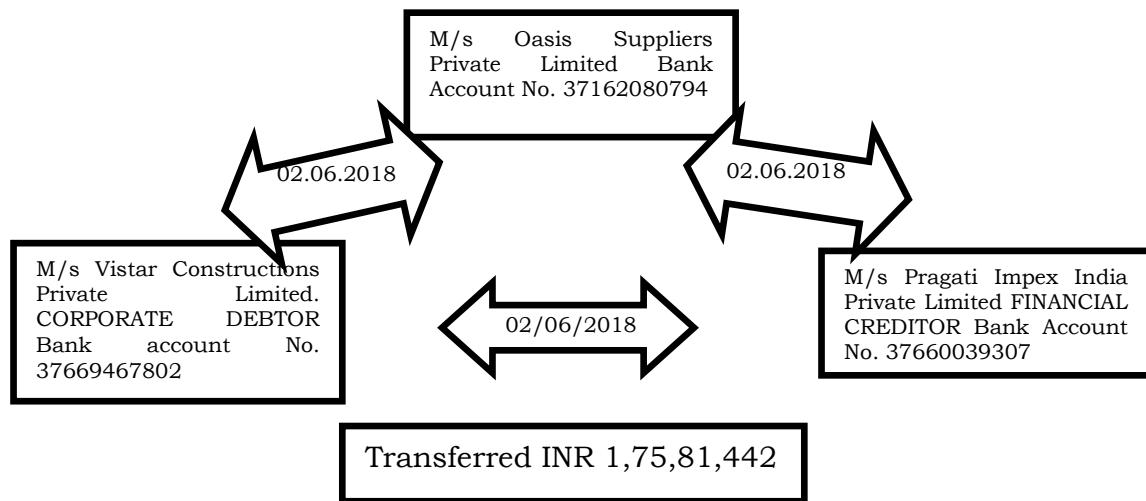
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7. The fact is that the present CIRP proceedings are nothing, but a jointly premeditated, intentional and dishonest fraud being played upon this Hon’ble Tribunal, by the parties to it (the alleged Financial Creditor and the alleged Corporate Debtor), for their wrongful personal gains. Significantly, the parties to the captioned petition, in collusion and connivance with each other, have shown an ex-facie fictitious financial transaction (in fact a criminal act of money laundering) to be an alleged debt and default and fraudulently pushed the corporate debtor in CIRP. In this regard, it is

relevant to mention that the parties have intentionally and dishonestly concealed and suppressed from this Hon'ble Tribunal that the alleged unpaid financial debt claimed in the captioned petition, is nothing but a circular, fraudulent and criminal round tripping of funds transaction, between the related company of the alleged financial creditor/M/s Oasis Suppliers Pvt. Ltd, the alleged financial creditor and the corporate debtor.”

11. Allegations made in the application has been reiterated in paragraph 2 of the synopsis. It is sufficient to notice paragraph 2 of the synopsis of the Appeal which captures three transaction dated 02nd June, 2018 for the same amount of Rs. 1,75,81,442/-. Paragraph 2 of the synopsis is as follows:

“2. Significantly, vide the afore said Application, the Appellant herein had approached the Ld. AA under the powers of section 65 of the code, which penalize fraudulent initiation of CIRP, in light of the clear cut round tripping of the alleged Financial Debt forming subject matter of the Company Petition. The alleged debt was transferred in a circular manner back to one of the group companies of the Financial Creditor on the same day it had been transferred to the Corporate Debtor, on pretext of a loan. The complex round-tripping of this financial debt, amounting to INR 1,75,81,442 (Rupees One Crore Seventy Five Lac Eighty-One Thousand Four Hundred and Forty Two) all occurred on a single day, i.e. 02.06.2018. A pictorial representation is mentioned hereinbelow for the ease of understanding of this Appellate Tribunal;



12. In the application filed by the Appellant, Appellant has also brought on record the Bank Transaction of concerned account to plead that on the same day i.e. 02nd June, 2018 M/s. Oasis Suppliers Pvt. Ltd. the group company of the Financial Creditor transferred the amount of INR 1,75,81,442/- on which date Financial Creditor transferred the amount of INR 1,75,81,442/- to the Corporate Debtor and on the same day Corporate Debtor transferred back the amount of INR 1,75,81,442/- to M/s. Oasis Supplier Pvt. Ltd. who has initially transferred the amount to Financial Creditor. The above indicates the round tripping of amount, which transaction was initiated by M/s. Oasis Suppliers Pvt. Ltd. and after routing through Financial Creditor Corporate Debtor same was returned to M/s. Oasis Supplier Pvt. Ltd. on the same day.

13. Appellant in his application has made further pleadings in paragraph 16, 20, 22 and 24 which are as follows:

“16. It is significant to mention here that it is an admitted fact as stated by the Respondent No.1 itself in the Captioned matter, that the Corporate Debtor had approached the Respondent No.1, seeking financial

assistance, in the month of April-May, 2018, following which, the Respondent No.1, had sanctioned a loan to the Corporate Debtor to the tune of INR 1,76,00,000/- out of which, after deducting some expenses, INR 1,75,81,442/- (One Crore Seventy Five Lakhs Eighty One Thousand Four Hundred Forty Two), were advanced as loan to the Corporate Debtor on 02.06.2018. The following glaring facts would go to prove that the afore stated transaction, was just a small part of the much larger siphoning off funds, their criminal round tripping and misappropriation; which has been jointly, intentionally and dishonestly, portrayed in the nature of an unpaid financial debt, to intentionally push the Corporate Debtor under CIRP, for achieving joint hidden nefarious agendas, as briefly mentioned hereinbelow:-

.....

20. The irrefutable fact that the said amount of INR 1,75,81,442/-, did not stay in the said Bank Account of the Corporate Debtor even for a day and was sent back to the associate company of the Respondent No.1 on the very same day, proves beyond an iota of doubt that per se there was never any financial debt as such and therefore the captioned company petition is an ex-facie fraudulent, malicious and collusive Petition, filed with ulterior motives, inter alia, of (i) defrauding creditors and evading liabilities at large of the Corporate Debtor and (ii) legalising large scale fraud carried out by the erstwhile management and promoters of the Corporate Debtor, misusing it for their personal, dishonest and wrongful financial gains.

.....

22. As such the present matter is a fit case for invoking powers under Section 65 of the Code by this Hon'ble Adjudicating Authority, outrightly rejecting, with exemplary costs, the said ex-facie tailor made, fraudulent and illegal Resolution Plan of the Corporate Debtor and order a detailed inquiry by an appropriate authority of the Government of India, into these extremely serious financial frauds and heinous crimes, so as to suitably discourage such brazenly anti-social promoters to repeatedly and consistently misuse the sacrosanct process of the IBC, for their dishonest and wrongful personal gains, at huge and wrongful costs to the homebuyers and to the various other Government bodies, like the NOIDA Authority, the Departments of Income Tax, GST, Stamps and Registration, etc. and to the public interest at large.

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24. In the present factual matrix, it is thus submitted that the captioned matter, squarely falls in the category of a fraudulent, malicious and collusive Company Petition, under Section 7 of the Code, as carved out by the Hon'ble NCLAT in Ocean Deity (Supra) and hence, this Hon'ble Tribunal, ought to consider these facts, before taking an informed decision on the ex-facie fraudulent and illegal Resolution Plan filed by the SRA, which would tantamount to legalising large scale financial frauds and heinous economic offences, which is against the spirit and contents of the sacrosanct Code and all other established tenets of law.”

14. Ld. Adjudicating Authority as noticed above have given two grounds to reject the Application. Firstly, the admission order having been

affirmed by this Appellate Tribunal, same cannot be allowed to be questioned and secondly, the Appellant has no locus to file the Application.

15. Coming to the first ground that Appellant cannot question the order admitting Section 7 Application which has been affirmed by the Appellate Tribunal. It is on record that admission order was affirmed by this Tribunal by its Judgment and Order dated 06th January, 2023. But when we look into the prayers made in application, Appellant has not prayed for recall of the admission order rather the prayer was that Company Petition be dismissed and penalty be imposed under Section 65 and further to conduct enquiries regarding the collusion. Section 65 of the Code provides as follows:

“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.

(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or
(b) 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.”

16. The power under Section 65 of the Code can be exercised by the Adjudicating Authority only after satisfying that grounds as mentioned exist, if the Adjudicating Authority come to the conclusion that insolvency proceedings have been initiated fraudulently or with malicious intent for any other purpose other than for the resolution of insolvency of the Corporate Debtor, it can impose penalty as provided in the provision. While exercising jurisdiction under Section 65, the Adjudicating Authority is also fully entitled to close CIRP process and pass all consequential order. The mere fact that Section 7 Application has been admitted does not denude the jurisdiction of the Adjudicating Authority to examine the application under Section 65 of the Code. The observations of the Adjudicating Authority are that the Appellant is opposing the admission of the proceeding which admission has been affirmed by the Appellate Tribunal. The above does not denude the jurisdiction of the Adjudicating Authority to examine the allegations made in the Section 65 Application even after admission of the proceedings under Section 7.

17. Now coming to the question of locus of Appellant, Appellant in the Application has given details of the facts, the transaction which is basis of financial debt by the Financial Creditor. The averments prima facie

makes it a case for looking in to the allegations more closely and when such glaring facts have come to the Court, the Court need to examine the allegations. Moreso, Appellant's case is that GGPPL which is also in CIRP, of which the Appellant admittedly is home-buyer has to receive amount from the Corporate Debtor which chance shall also be adversely affected due to commencement of CIRP of the Corporate Debtor. We are of the view that in the facts of the present case, Appellant has locus to file the I.A. No. 4654 of 2023. Further the facts of the case required a deeper examination by the Adjudicating Authority.

18. Learned Counsel for the Respondent submitted that Application have been filed belatedly at the stage when Resolution Plan of the Corporate Debtor is under consideration. The mere fact that Application has been filed at the time when plan is under consideration does not take away the jurisdiction of the Adjudicating Authority to consider the allegations and find out the truth, if any.

19. It is well settled that when proceedings have been fraudulently initiated, the appropriate orders can be passed by Court.

20. We thus are of the view that the Adjudicating Authority committed error in rejecting the Application without considering the Application on its merit. In result, the Order dated 01.09.2023 is set aside, the Application I.A. No. 4654 of 2023 is revived before the Adjudicating Authority to be considered and decided in accordance with law. We further observe that Adjudicating Authority shall proceed to consider the

Application for approval of the Resolution Plan after deciding I.A. No. 4654 of 2023.

21. We may further observe that we have not expressed any opinion on the merits of the allegations of the Appellant or the defence which has been raised by the Respondents in opposition to the Application. It is for the Adjudicating Authority to consider the Application and decide in accordance with law.

The Appeal is disposed of, accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI
02nd February, 2024

Basant