



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)**

I.A.No.1204/2023

in

CP (IB) No. 97/Chd/Pb/2019

(Admitted)

**Under Section 9 & 60 (5) and 65 of
IBC, 2016 r/w Rule 11 of the NCLT
Rules, 2016**

IN THE MATTER OF:

Nil Kamal Limited

.....**Applicant**

Vs.

M/s U I Beverages Private Limited

.....**Respondent/Corporate Debtor**

IN THE MATTER OF I.A. NO. 1204/2023

Rajnishpal Singh Dhaliwal

Promoter and Suspended Director

M/s U I Beverages Private Limited

R/o House No. 7, Lodhi Enclave

Barewal Awana, Rajguru Nagar

Ludhiana- 141012

.....**Applicant**

Vs.

1. M/s Nilkamal Limited

Having its registered office at:

Survey No. 654/2 and 354/3

Near Rakholi Bridge, Silvasa

Khanvel Road, Vasona

U.T. Dadra and Nagar Haveli- 396230



2. M/s U I Beverages Private Limited

Having its registered office at:

B-XX-550, Ghumar Mandi, Ludhiana- 141001

Through its Resolution Professional

Sh. Rajiv Bhambri

SCO 9, 2nd Floor, Jandu Tower

Miller Ganj, Ludhiana- 141003

3. Sh. Rajiv Bhambri

Resolution Professional

SCO 9, 2nd Floor, Jandu Tower

Miller Ganj, Ludhiana- 141003

.....Respondents

Order delivered on: 22.10.2024

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

Present:

For the Applicant : Dr. Rajansh Thukral, Dr. Surekha Thukral,
Dr. Sidharth Thukral, Advocates

For the Respondent No. 1 : Mr. Gurpreet Singh, Advocate

Per: Sh. Harnam Singh Thakur, Member (Judicial)
Sh. Umesh Kumar Shukla, Member (Technical)

ORDER

The present Interlocutory Application (hereafter referred to as the “**IA**”) has been filed by the Rajnishpal Singh Dhaliwal, Promoter and Suspended Director (hereafter referred to as the “**Applicant**”) of M/s U I Beverages Private Limited (hereafter referred to as the “**Corporate Debtor**”) against M/s Nilkamal Limited (hereafter referred to as the “**Respondent No. 1**”), M/s U I Beverages Limited (hereafter referred to as the “**Respondent No.**



2”) and Sh. Rajiv Bhambri, Resolution Professional (hereafter referred to as the **“Respondent No. 3”** or **“RP”**) (hereafter collectively referred to as the **“Respondents”**) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”**) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereafter referred to as the **“Rules”**) with the following prayers:

- (i) To terminate/set aside the Corporate Insolvency Resolution Process (hereafter referred to as the **“CIRP”**), moratorium, suspension of directors and appointment of RP in terms of the order dated 03.03.2020 along with directions to the RP to handover the possession of the Corporate Debtor to the Applicant;
- (ii) To impose penalty u/s 65 of the Code on the Operational Creditor along with its directors and Key Managerial Persons for putting Corporate Debtor to CIRP in a fraudulent manner; and
- (iii) To direct Operational Creditor to compensate the Corporate Debtor for the CIRP Cost.

2. It is averred in the IA:

- (i) That the Applicant is the promoter and suspended director of the Corporate Debtor, wherein CIRP was initiated pursuant to order dated 02.03.2020 upon a petition filed by the Operational Creditor.
- (ii) It was discovered by the Applicant on 04.05.2023 that the order dated 02.03.2020 regarding commencement of CIRP was obtained by fraud without disclosing that another petition CP 192/2016 was



filed before the Hon'ble Punjab and Haryana High Court u/s 433(e) of the Companies Act, 1956, which was eventually transferred to this Bench and was registered as RT No. 71/Chd/Pb/2017, which was dismissed vide order dated 01.03.2017 without giving any liberty to file another petition on the same cause of action.

- (iii) The Operational Creditor issued a demand notice dated 11.09.2018 demanding an amount of Rs.33,86,063/- on the same cause of action as in the earlier petition, which was apparently barred by limitation, as the last unpaid invoice was dated 19.07.2015 and the limitation period was to be counted from 19.07.2015 and the petition was filed on 14.02.2019, rendering it barred by limitation.
- (iv) The Applicant did not acquire the knowledge about the filing and/or pendency of the petition CP (IB) No. 97/Chd/Pb/2019 and accordingly the said petition was ordered to be proceeded ex-parte as against the Corporate Debtor.
- (v) The Operational Creditor neither in the demand notice nor in the petition filed under Section 9 of the Code, disclosed the factum of the Company petition 192/2016 filed before the Hon'ble High Court, its consequent transfer to this Bench and concealed that even the liberty had not been granted to file the petition on the same cause of action. Thus, the Operational Creditor and all its directors are liable for fraudulent initiation of CIRP proceedings in accordance with Section 65 of the Code and are liable to be penalised. Reliance is placed upon the Hon'ble Supreme Court's



verdict in the matter of ***Bhaurao Dagdu Paralkar vs. State of Maharashtra and Ors in Appeal (civil) 5162-5167 of 2005.***

(vi) The Applicant has referred to the following authorities to contend that the Adjudicating Authority is empowered to terminate the CIRP by setting aside its own order dated 02.03.2020 because the order has been obtained by fraud.

- a. ***M/s Khan Enterprises vs. the National Company Law Tribunal*** (Hon'ble Allahabad High Court);
- b. ***Sri Budhia Swain & Others vs. Gopinath Deb and Others dated 07.05.1999*** (Hon'ble Supreme Court); and
- c. ***Ocean Deity Investment Holdings Limited, PCC vs. Suraksha Asset Reconstruction Limited, Company Appeal No.795 of 2021*** (Hon'ble NCLAT).

(vii) It is further alleged that the even the RP was not aware of the previous litigation before the Hon'ble Punjab and Haryana High Court in CP 192/2016. The cause of action is therefore, continuous and accruing to the Applicant every day. As such the limitation for the purpose of filing of the present application is continuous and, in any case, a fresh limitation starts from 04.05.2023 and hence this application is filed within the period of limitation as per Section 17 of the Limitation Act, 1963.

(viii) The instant petition CP (IB) No. 97/Chd/Pb/2019 was decided ex-parte against the Applicant, which was challenged before the Hon'ble NCLAT in Company Appeal (AT)(INS) 465/2020, which was



dismissed vide order dated 19.05.2020 with the liberty that the Corporate Debtor may raise all contentions before this Adjudicating Authority.

- (ix) Subsequently, the Applicant moved an application bearing I.A. No. 213/2020 for setting aside the ex-parte order dated 02.03.2020, which was dismissed vide order dated 18.09.2020 with the direction that the order shall not preclude the Applicant from settling the matter with the stakeholders.
- (x) At the time of filing of the said application, it was not within the knowledge of the Applicant that the CIRP order was barred by Resjudicata, and the alleged Operational Creditor could not have filed the said petition in view of the order dated 01.03.2017 passed by this Adjudicating Authority. This new ground came to the knowledge of the Applicant for the first time on 04.05.2023, and hence this application seeking termination of the CIRP initiated vide ex-parte order dated 02.03.2020 is maintainable in view of the Hon'ble Supreme Court's judgment in **A.V. Papayya Sastry & Ors. vs. Government of A.P. & Ors., 2007 V AD (SC) 21**, wherein the Hon'ble Apex Court held that where an order has been procured by playing fraud with the court, such can be challenged at any time of the proceedings namely in appeal, revision, writ or even in collateral proceedings.

3. Respondent No. 1 filed its reply dated 31.07.2023, vide diary no. 01619/2, wherein it is submitted that:



- (i) The Applicant had admitted its liability towards the Respondent No.1 and had agreed to a repayment schedule before the Hon'ble Court of the Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa. The copy of the consent terms dated 28.09.2018 entered into by the Applicant has been annexed with the IA as Annexure R-2. In spite of the said consent terms, the Applicant has defaulted in the payment of the agreed amount, and further, numerous warrants of arrest have been issued by the Hon'ble Court of the Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa. The copy of the latest warrants of arrest issued against the Applicant and his family members has been annexed with the IA as Annexure R-3.
- (ii) The Applicant had entered into a settlement agreement with the Respondent No. 1 on 17.08.2020, according to which, the claim of the Respondent No. 1 had been amicably, fully and finally settled between the parties for an amount of Rs.44,30,000/- and the Applicant had agreed to pay the same within 3 months. The said agreement was placed on record before this Adjudicating Authority by the parties in the present case. The copy of the settlement agreement has been annexed with the IA as Annexure R-4.
- (iii) The Respondent No. 1 had filed an application for restoration of CP No. 192 of 2016 before this Adjudicating Authority, which was disposed of and liberty was granted to the Respondent No. 1 to file a fresh petition on the same cause of action, the facts of which are



subject to verification of the certified copy of the application and order passed by this Adjudicating Authority, as the said certified copies are presently not available with the Respondent No. 1 and he has applied for the same.

- (iv) The fact regarding the earlier petition was not mentioned in the subsequent petition is a result of an inadvertent error and not of fraud and concealment as the Respondent No. 1 had been given the liberty to file a fresh petition.
- (v) The present IA is barred by limitation, as the Applicant had knowledge of the earlier petition.

4. Rejoinder dated 02.08.2023 was filed by the Applicant vide diary no. 01619/3, wherein it is stated:

- (a) The subject matter of the present IA is limited only to the extent of concealments of order dated 01.03.2017 and order dated 19.05.2017 and making a deliberate false statement during the course of judicial proceedings.
- (b) The Respondent No. 1 had filed certain cases under Section 138 of the Negotiable Instruments Act, 1881 against the Applicant and some other persons before the Court of Chief Judicial Magistrate, Silvasa, and the settlement, being consent terms, was made in the court, however no consent or authorisation was given to the Respondent No. 1 to file a petition for initiating CIRP against the Corporate Debtor. The consent terms dated 28.09.2018 placed on record as Annexure R-2 are of no consequence, as these have no



relevance to the subject matter of the present IA. Further, the same are already a matter of record in reply to IA No. 213 of 2020 in CP (IB) 97/Chd/Pb/2019 earlier filed by the Applicant.

- (c) While dismissing the earlier petition filed under Section 9 of the Code, the same was termed as 'abated' and liberty was granted to avail only alternative remedy, which cannot include the same remedy.

5. The Applicant filed written submissions dated 04.09.2023, vide diary no. 01619/4. Written Submissions dated 05.01.2024 were filed by the Respondent No. 1 vide diary no. 01619/6.

6. During the course of arguments, the Ld. Counsel for the Applicant relied upon the Hon'ble NCLAT's authority in the case of ***Union Bank of India (Erstwhile Corporation Bank vs. Dinkar T Venkatasurbramanian & Others, Company Appeal (AT) (INS) No. 729 of 2020***, which was upheld by the Hon'ble Supreme Court in ***Civil Appeal No. 4620/2023***, wherein it has been held that this Adjudicating Authority is competent to recall its own order. Reliance is also placed on the Hon'ble Supreme Court's judgment in ***A.V. Papayya Sastry & Ors. vs. Government of A.P. & Ors., 2007 V AD (SC) 21***, wherein the Hon'ble Apex Court held that where an order has been procured by playing fraud with the court, such can be challenged at any time of the proceedings namely in appeal, revision, writ, or even in collateral proceedings.



7. Refuting the contentions of the Ld. Counsel for the Applicant, the Ld. Counsel for Respondent No. 1 asserted that this Tribunal vide order dated 19.05.2017 granted the permission to the Respondent No. 1 to withdraw CP No.192 of 2016 with liberty to file a fresh petition on the same cause of action under the provisions of the Code. Further, reliance is placed upon the following judgments to assert that a litigant should come with clean hands before the Court:

- a. ***Oswal Fats and Oils vs. Additional Commissioner, 2010 (4) SCC 728.***
- b. ***Dalip Singh vs. State of U.P. 2010 (2) SCC 114.***
- c. ***Welcome Hotel vs. State of AP 1983 (4) SCC 575***
- d. ***S.P. Chengalvarya Naidu vs. Jagannath 1994(1) SCC 1.***

8. We have heard the Ld. Counsels for both parties and pursued the records. There are two issues involved in the present IA:

9. Firstly, **whether the IA filed is time barred?**


- (i) When the Applicant has clearly challenged the ex-parte order dated 02.03.2020 through I.A. No. 213/2020, which was dismissed by this Bench vide order dated 18.09.2020 and in the appeal preferred against the said order before the Hon'ble NCLAT, then why this ground was not taken at that time by the applicant.
- (ii) Moreover, there is no evidence present on the record, as to how the applicant came to know about the alleged misrepresentation or fraud on 04.05.2023.



- (iii) The authorities ***Bhaurao Dagdu Paralkar vs. State of Maharashtra and Ors, M/s Khan Enterprises vs. the National Company Law Tribunal, Sri Budhia Swain & Others vs. Gopinath Deb and Others; and Ocean Deity Investment Holdings Limited, PCC vs. Suraksha Asset Reconstruction Limited, (supra)***, relied upon by the Ld. Counsel for the Applicant are not applicable to the facts and circumstances of the case in hand.
- (iv) The Corporate Debtor was admitted into CIRP vide order dated 02.03.2020 and the present IA seeking to set aside the said order was filed on 15.05.2023. Thus, the present IA is time barred.

10. Secondly, **whether the petition bearing CP (IB) No. 97/Chd/Pb/2019 was filed without prior permission/ liberty by concealing the material facts from this Authority.**

- (i) It is noted that **CP 192/2016**, filed before the Hon'ble Punjab and Haryana High Court u/s 433(e) of the Companies Act, 1956, was eventually transferred to this Bench and registered as RT No. 71/Chd/Pb/2017, which was dismissed as abated vide order dated 01.03.2017, due to the failure of the Respondent No. 1 to file the same under the relevant provisions of the Code within 60 days w.e.f. 15.12.2016, according to Rule 5 of the Companies (transfer of pending proceedings) Rules, 2016, without giving any liberty to file another petition on the same cause of action. However, the said rule was subsequently amended, vide Notification dated



29.06.2017, giving the Respondent No. 1 a right to file a fresh petition under Section 7, 8 or 9 of the Code after 15.07.2017.

- (ii) The Respondent No. 1 then filed a petition bearing CP (IB) No. 210/Chd/Pb/2018 under Section 9 of the Code, which was withdrawn with a liberty to file fresh petition on the same cause of action, which was duly granted by this Bench vide order dated 10.09.2018. Thus, the petition CP (IB) No. 97/Chd/Pb/2019 has been filed by the Respondent No. 1 with the due permission of this Adjudicating Authority granted vide order dated 10.09.2018, without concealing any material facts.
- (iii) It may be noted that the Corporate Debtor was admitted into CIRP vide order dated 02.03.2020, where Corporate Debtor was proceeded ex-parte despite being given various opportunities to show up. The Applicant filed an application bearing I.A. No. 213 of 2020 for setting aside the ex-parte order dated 02.03.2020, on the grounds that valid service of notice of the petition was not made on the Corporate Debtor. This Adjudicating Authority while dismissing the aforementioned application observed that a valid service of the notice of petition was duly made on the Corporate Debtor vide speed post and also gave an opportunity to the Applicant to settle the matter with the stakeholders to enable them to file an application under Section 12A for withdrawal of CP (IB) No. 97/Chd/Pb/2019.
- (iv) Thus, it can be concluded that the present IA is nothing, but a tactic played by the Applicant to terminate the CIRP of the Corporate



Debtor, on a sham ground that the order admitting the Corporate Debtor into CIRP was obtained by the Operational Creditor by playing fraud. Once it has been proved and established that the Corporate Debtor was duly served with a notice of the petition, and given opportunities to show up and file reply to the said petition, the ignorance of the Corporate Debtor cannot be termed as a fraud played upon by the Operational Creditor.

- (v) Further, the Applicant's contention that the CIRP order was barred by Resjudicata, and the alleged Operational Creditor could not have filed the said petition in view of the order dated 01.03.2017 passed by this Adjudicating Authority, which came to the knowledge of the Applicant for the first time on 04.05.2023, and hence this application seeking termination of the CIRP initiated vide ex-parte order dated 02.03.2020 is maintainable, does not hold good as law assists only those who are vigilant, and not those who sleep over their rights. The authority of the Hon'ble Supreme Court in **A.V. Papayya Sastry (supra)**, relied upon by the Applicant is not applicable to the facts and circumstances of the present case as no instances of fraud is made out against the Operational Creditor.

11. In the backdrop of these facts, the Applicant arguments with respect to "termination/setting aside of the CIRP of the Corporate Debtor" are insubstantial. The IA is time barred as well as not maintainable on merits.

12. As a sequel to the discussion above, the present application bearing no. I.A. 1204/2023 is dismissed and disposed of, with a cost of Rs. 25,000/-



being false and frivolous. The cost shall be deposited into 'Prime Minister National Relief Fund' within two weeks.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October 22, 2024

ASG