**(2023) 12 NCLT CK 0060**

**In the National Company Law Tribunal**

**Case No :** I.A.No.39 of 2022 in CP (IB) No.384/07/HDB/2020

**M/s Bartronics Global Solutions Limited Vs Mr. Prashant Deshpande ?**

**Date of Decision :** 22-12-2023

**Acts Referred:**
Insolvency and Bankruptcy Code, 2016 — Section 7, 66

**Citation :** (2023) 12 NCLT CK 0060

**Hon'ble Judges :** Rajeev Bhardwaj, Member (J);Sanjay Puri, Member (T)

**Bench :** Division Bench

**Advocate :** Dr. S.V. Ramakrishna, Kanthaiah

**Final Decision :** Dismissed

## Judgement

Sanjay Puri

1. This is an application filed by the Liquidator of M/s. Bartronics Global Solutions Limited, the Corporate Debtor (CD). The company entered the Corporate Insolvency Resolution Process (CIRP) on 04.08.2020, following an application filed under Section 7 by M/s. Infokall Enterprise Solutions Limited, a Financial Creditor (FC), in CP No.384/7/HDB/2020.

Brief facts of the Application:

2. On 29.09.2021 pursuant to IA No.529/2021 Mr. Ramachander Bikumalla has appointed as Resolution Professional (RP). Within one month of his appointment as the RP, Mr. Ramachander Bikumalla filed an IA No.574/2021 seeking liquidation of the CD. In due course, initiation of liquidation proceedings was approved on 06.09.2022 and through IA No.565/2022 Mr. Matta Pedda Srinivas was appointed as the Liquidator. Later on, the Financial Creditor (FC) filed two IAs, No.70 & 71 of 2023, seeking the removal of the current Liquidator. These applications were dismissed by this Authority in an order dated 07.12.2023.

3. In the present Application, the Liquidator reportedly has noticed several irregularities and fraudulent and suspicious transactions entered into and committed by the erstwhile/suspended Directors of the CD who are impleaded in

 

this Application as Respondents 1 to 4. It is alleged by the Liquidator that the Respondents 1 to 4 have been extending no cooperation to him and hindering the progress of liquidation process.

4. In his Application, the Liquidator has alleged several irregularities committed by the erstwhile Directors of the CD i.e. Respondents 1 to 4. Some of the salient allegations made by the Liquidator are:

• Not maintaining of a Registered Office of the CD as per the provisions of Companies Act 2013.

• Investment into the CD by a Company incorporated in Singapore i.e. M/s. Bartronics Singapore Pte Limited for which no records are available to show whether it complied with the FEMA. Allegation of 'Round Tripping of Funds' has also been made.

• Collusive conduct on part of the CD and the FC who are reportedly having common Directors and Statutory Auditors. It has pointed out that one single CA Firm is preparing and maintaining the Books of Accounts of both these Companies.

5. Based upon the records available on MCA website, the Liquidator has alleged anomalies and irregularities in the Accounts of CD, such as:-

• Company's Cash Flow shows shortage of Rs.1,29,62,080 i.e. negative Cash Balance as on 31.03.2021.

• Funds Flow shortage of Rs.81,21,415/- as on 31.03.2021.

• No proportionate increase in Closing Stock, and it is increased only to balance the figures without payment purchases or increase in Sundry Creditors. It is not explained as to how the material is consumed.

• Trade Debtors are written off without any correspondence or any Legal Notices for recovery. This gives suspicion that of fake and fictitious sales.

• Loan advance given by M/s. Swift Vithiya Samavesh Private Limited to the extent of Rs.2,26,38,020/- since due to Holding Company

• Adjustment of Short Term Loan payable to i) M/s. Bartronics America Inc Rs.1,64,44,670/- ii) M/s. Max Arabian FZE, UAE Rs.39,51,240/- towards loan repayable to M/s. Swift Vithiya Samavesh Private Limited. No business connection seen between these parties and the CD.

• Expenditure booked in the name of 'Site Subscription Charges' of Rs.22,54,629/- as on 31.03.2016 and of Rs.18,37,590/- as on 31.03.2017 indicating diversion of funds to buy some Plots and Building.

• Taking Deposits from Customer Service Providers for a sum of Rs.1,77,95,500/- as on 31.03.2021, and no record maintained for the same.

 

• Payment of Rs.1,64,00,000/- approximately in cash towards GST in demonetisation time in 2018. How funds for this payment came has not been explained by the Directors of the suspended Board.

Based on the above transactions, the Liquidator has alleged misappropriation and/or diversions of funds amounting to several crores of rupees. Allegations about money laundering during demonetisation period have also been made.

6. Broadly, the Liquidator has alleged that, the CD and the FC both are bogus entities created for money laundering purpose and for duping the Government Authorities like GST, Income Tax, PF, ESI etc. and they acted in concert to abuse of provisions of IBC.

7. Thus, the Applicant Liquidator has prayed for following reliefs:

a. To declare the transactions conducted by the Respondent-directors as Fraudulent Transactions.

b. To direct the Registrar of Companies to initiate prosecution of the Directors for the irregularities committed by the Directors, under the Act, 2013; ED authorities under FEMA Rules 2009 r/w 2014 are infringed.

c. To permit the Petitioner to take Police help to take Physical possession of Documents, Vouchers, Bank Statements and Records, Agreements of Contracts with All Parties, Accounts Data from TALLY online, Offline from the Computer or Hardware or Hard Disks Pen Drives or Emails with whom So Ever kept, the place where so ever kept by breaking Lock and Door if need necessary when such situation arises.

d. To permit the Petitioner to appoint Forensic Auditor to conduct Forensic Audit of the transactions of the CD with special reference to CD Books of accounts and Records including the business transactions done by the company with the Aaryavart (Cooperative Bank, Lucknow UP; Books of accounts and Records from Inception of Company under Reg7 of IBBI (Liquidation Process) Regulations, 2016.

e. To permit the Petitioner to get Officially all information and documents from Singapore Corporate Governance Authorities about Bartronics Singapore Pte Limited having registered office at Singapore who is Holding Company of BGSL having 99.98% shares in Corporate Debtor till September 2018.

f. Any other order or Orders as the Hon'ble Adjudicating Authority deems fit and proper in the circumstances of the case.

The Counter:

8. Only Respondent No.1 filed Counter Affidavit and other Respondents No. 2 to 4 have filed Memos, adopting the Affidavit filed by the Respondent No.1.

9. Preliminary objections have been taken in the Counter reply claiming that, since M/s. Bartonics Global Solutions Limited the CD has not been impleaded in

the Application, it is liable for dismissal. Another objection is about the Affidavit filed along with the Application for which it is claimed that, it is not in proper Form. The Respondents have asserted that the Petition is frivolous and no cause of action is made out. Claiming that this Petition under Section 66 of IBC is not maintainable. It is argued that the Applicant Liquidator has not correctly disclosed all the material facts which have bearing on the adjudication of the issues raised in the case.

10. The Respondents have thereafter listed the details about the initiation of CIRP and liquidation process and appointment of the current Liquidator. The Respondents main lament is that the Liquidator has not completed the liquidation process as per the timelines provided in the Code, caused abnormal delay in the process.

11. On the anomalies, deficiencies and irregularities alleged in the Application, the Respondents have given a stock reply, by stating:

"The contents of this para are disputed as being incorrect and misleading and the petitioner is put to strict proof of the same."

Only in respect of maintenance of Registered Office, a reply has been given stating that, the Registered Office was shifted to a new address on 09.09.2022 a week before the Liquidator took over on 16.09.2022, and that necessary filings before RoC were made in that regard.

The Rejoinder:

12. In his rejoinder, the Applicant Liquidator has broadly reiterated the allegations besides pointing out that there existed claims of GST of Rs.8,92,14,842/-, Income Tax of Rs.21,57,640/- and ESI of Rs.12,21,970/-. This according to him suggests that large number of transactions were made, details of which have not been made available either to RP or the Liquidator.

13. The Applicant Liquidator has also castigated the erstwhile RP who failed to prepare even the basic document i.e. Information Memorandum. He has also alleged that the RP enjoyed close relationship with the FC. Reportedly the RP was drawing a remuneration of Rs.1.00 lakh per month and he had also engaged Legal Counsel on Rs.50,000/- per month and claimed miscellaneous expenses of Rs.50,000/- per month, and gave the Applicant empty charge when he took over as Liquidator on 16.09.2022.

The decision:

14. Having gone through the submissions and the pleadings of the Applicant and the Respondents, we are of the opinion that there is a prima facie case made out in the Application against the Directors of CD. Additionally, there is prima facie evidence indicating collusion between the CD and the Financial Creditor (FC), and to some extent erstwhile Resolution Professional (RP). The misuse of the Insolvency and Bankruptcy Code (IBC) process also cannot be dismissed

 

outright. The transactions reported in the Application potentially have the characteristics of money laundering, round tripping, misappropriation and diversion of funds which may be punishable under various Laws.

15. It is therefore, ordered that:-

A) Copy of the Application may be forwarded to the Enforcement Directorate, for them to take cognizance of the transactions reported by the Applicant Liquidator for necessary investigation and action.

B) Since the Registrar of Companies (RoC) was impleaded as one of the Respondents in this Application, they are also directed to take necessary action on the issues reported in this Application.

C) The Applicant Liquidator may appoint Forensic Auditor to conduct Forensic Audit of the transactions of the CD and bring on record specific findings about the transactions conducted for any fraudulent purpose and/or with malicious intention for any purpose other than for the resolution of the Insolvency or Liquidation as the case may be.

D) The Respondents are directed to fully cooperate with the Applicant Liquidator and provide all records, documents, certificates, etc., necessary to facilitate completion of the liquidation process in accordance with the aforementioned directions.

E) The Liquidator is also directed to complete the liquidation process within the prescribed time frame and file the Final Report in terms of under Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and also make an Application under Regulation 44(A) reporting the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.