

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, BENCH-II

CA-840/C-II/ND/2018

IN

IB-35(ND)/2017

IN THE MATTER OF:

Liquidator of Helpline Hospitality Private Ltd.

...Applicant

Versus

1. Shri T.S. Murali (Ex -Director)

G-158, Sector-41

Noida-201301

2. Smt. Reema Murali (Ex-Director)

G-158, Sector 41

Noida-201301

3. Vikraman Pillai Sivarama Pillai (Suspended Director)

T-1433/1, 2nd Floor

Gali No.-7, Wazir Nagar,

Kotla Mubarakpur, Near Timber Market

Delhi-110003

4. Yesodha Devi Koonaniyil Chellappan Pillai (Suspended Director)

T-1433/1 2nd Floor

Gali No.7, Wazir Nagar

Kotla Mubarakpur, Near Timber Market

Delhi-110003

...Respondents



Delivered on: 20.12.2019

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For Applicant : Mr. Sameer Rastogi, Advocate for Liquidator
For Respondent : Mr. M.S. Vishnu Sankar, Advocate for R-3, 4
Mr. Santosh Paul, Sr. Advocate with Mr.
Ayush for R-1 & R-2

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Application is preferred under Section 25(2)(j) read with Section 66 of the IBC 2016. The Prayer of the Ld. Liquidator, which remains for consideration is reproduced below :

“(c) Direct the Respondent no.1 to transfer the property bearing Plot No. G-158, Sector 41, Noida Uttar Pradesh-201302 in the name of Helpline Hospitality Pvt. Limited, which has been fraudulently transferred in his own name and for which they are liable to be punished under section 68 & 69 of the Insolvency and Bankruptcy Code, 2016;”




2. It is averred by the Ld. Liquidator :

“5. That Corporate Debtor had taken a housing loan of Rs.36,59,250/- vide Loan Agreement No. LBDEL00000921645 dated 30.10.2004 from ICICI Bank for a tenure of 104 Months (8 Years and 8 Months) period ended on 22.07.2013, for purchasing an immovable property located at Plot No. G-158, Sector-41. Noida, Uttar Pradesh-201302. Total purchase consideration of the above said property was paid as follows:

Mode of Payment	Date	Amount
By Cheque No.422310 drawn on Punjab National Bank, Jor Bagh issued by Helpline Hospitality Private Limited	11.01.2005	4,00,000
By Cheque No.149194 drawn on ICICI Bank Limited, Mumbai against Loan account taken by Helpline Hospitality Private Limited	31.12.2004	25,00,000
By Cheque No.149195 drawn on ICICI Bank Limited, Mumbai against which Loan account taken by Helpline Hospitality Private Limited	31.12.2004	7,00,000
	Total	36,00,000

Copy of Loan Account Statement for Loan Account Number LBDEL00000921645, Repayment Schedule Report and Bank Statement of Punjab National Bank are attached herewith...”



3. That the Ld. Liquidator has placed a copy of the Sale Deed of property bearing, Plot No.158, Block-G, Sector 41, Noida, Dist. G.B. Nagar, executed in the name of Respondent No.1 on record.

4. It is further submitted by the Ld. Liquidator :

“8. That in addition to EMI paid from Bank Account Number 630005006943 against Loan Agreement No. LBDEL00000921645 dated 30.10.2004 an amount of Rs. 20,00,000/- (Rupees Twenty Lacs only) was also paid as pre-payment of loan vide Chq No. 399980 dtd. 31st March, 2012 from Company’s Bank Account Number 172502000000730 maintained with the Indian Overseas Bank, Kribhco, Sector-1, Noida. Copy of Bank Statement of Indian Overseas Bank is attached herewith....”

“9. That total loan amount of Rs.65,29,836.56/- (Rupees Sixty Five Lacs Twenty Nine Thousand Eight Hundred Thirty Six and paise Fifty Six only) was paid from Company’s Bank accounts against said Loan Agreement No. LBDEL00000921645. The facts are not addressed by auditors in their audit report for the financial year 2004-05 to 2013-14.”

“10. The amount withdrawn from the company’s bank account for creating their personal wealth is carried on with an intent to defraud creditors of the Corporate Debtor which are mainly government authorities.....”

5. Further, the Ld. Liquidator has placed on record the report of the Forensic Auditor where the following has been observed :



FINDINGS IN BRIEF

Upon a detailed investigation, it has been found that the Company and its directors are liable for prosecution under various provisions of the Indian Penal Code, 1860, Companies Act, 2013 and any other relevant laws on the following accounts:

FINDING NO.1 FRAUDULENTLY DIVERSION OF FUND FROM SOURCE COMPANY HELPLINE HOSPITALITY PRIVATE LIMITED TO PERSONAL ESTATE OF DIRECTORS AT NOIDA WORTH RS 65,29,836/-

The Company has taken a loan of Rs. 36,59,250/-vide agreement dated 30.10.2004 for a tenure of 104 Months (8Years 8 Months) period ended on 22.07.2013 for asset located at Plot No.G-158, Sector-41, Noida, Uttar Pradesh-201302 for personal assets in the name of Mr.Thondiyil Sivarama Pillai Murali (T.S. Murali) Director, being a Co-applicant of said assets. The facts are not addressed by auditors in their audit report for the financial year 2004-05 to 2013-14. The Amount withdraw from company account for creating their personal wealth is treated as siphoning of money and cheating, fraud, misrepresentation of facts to company financial position.

The Agreement No. is LBDEL00000921645 from ICICI bank and the said Loan EMI is auto debit from account No.630005006943. Hence on the basis of facts it is evident that directors made a willful attempt for diversion of funds from company account to their personal benefits fraudulently hence the same amount is liable to be recovered along with interest @18%. The Total Amount diverted as an consolidated installment in view of loan statement taken from ICICI bank dated 30.08.2018 is Rs. 65,29,836.56/-

The Present estimated market Value of above said property around 4 Crores which is created from the funds of company moving fraudulently for repayment of the loan taken for purchase of this house. This House shall be transfer to Company immediately to safeguard the interest of stakeholders specially Service Tax department, Government of India. RS.3,91,04,886/- were overdue of Service Tax Department which can be recovered to sale this property. It is recommended that an early action will support the claim overdue of different stakeholders, the amount can be recovered by the court



of law from their personal estate of directors or sale their property for which loan has taken by transfer into company account.

FINDING NO.2 EVASION OF SERVICE TAX AND NON PAYMENT THERE OF RS.3,91,04,886/- PLUS PENALTY RS 4,13,29,014/- SUM TOTAL RS (8.04 CRORES)

As Per Order passed by Ms. Aruna N. Gupta, Commissioner of Service Tax, New Delhi-II dated 25.01.2017 of Service Tax No. DLISVTAX002COM0511617 of Helpline Hospitality Private Limited vide letter No.IV(16) Hqrs/ST/Adj/HHPL/21/2015/3452 has levied a Penalty of 41329014/- and service Tax Amount due Rs 39104886/- .It is appears from the records that HHPL is irregular in paying government dues and evaded government revenue which is cheating and fabrication of records under law. Same is treated as fraud and misappropriation of funds towards their personal benefit by directors hence liable to pay personally. Government can recover the sum selling their estate too.

FINDING NO.3 NON-MAINTENANCE OF BOOKS OF ACCOUNTS AND STATUTORY RECORDS OF THE COMPANY AS WELL AS ITS GROUP AND SUBSIDIARY COMPANIES

The Company have registration under different applicable laws which is not complied by the directors of company not only Helpline Hospitality but group companies too. Some Registration are shown as under:

S.No.	Source of Document	Registration Number
1	SERVICE TAX NUMBER	AAACH6905LST001
2	INCOME TAX PAN NUMBER	AAACH6905L
3	ESI NUMBER	20000274400001001
4	PF NUMBER	KRKKD0023374000



6. That the Respondents No. 1 & 2 have filed their written submissions and have submitted that the Respondent No.1 and Respondent No.2 were the Directors of the Company till 2006 and they had resigned from the Company since 01.11.2006.

7. In this regard, the Ld. Liquidator vide para 14 of his application has submitted the following :

“14. That Mr. Murali Sivaramapillai Thondiyil and Ms. Reema Murali are the promoters of the company and holding 100% shareholding in the Company. That Mr. Murali Sivaramapillai Thondiyil and Ms. Reema Murali were also designated as a Managing Director respectively of M/S Helpline Hospitality Private Limited, however they have resigned from the post of Directorship of the Company w.e.f. 01/11/2006. On the contrary, they have signed the Financial Statements for the Financial year ended on 31/08/2008, 31/03/2009, 31/03/2010, 31/03/2011 and 31/03/2012. It is noteworthy that Mr. T.S. Murali, Resident of G-158, Sector-41, Noida, India-201301, PAN-ABOPT2055R, DIN-00399183 former director of the company has been running the affairs of the Company and he has been solely incharge of all the activities affirmed of the Company. This fact has also been observed in the “Order-in-Original no. DLISVTSX002COM0511617” passed by Ms. Aruna N. Gupta, Commissioner of Service Tax Delhi.”

8. That the Ld. Liquidator on a clarification sought by this Bench has filed a supplementary Affidavit submitting additional documents on record in support of his averments. That the Ld. Liquidator has placed



the Audited Balance Sheets for the Financial Years 2007-08 to 2011-12 reflecting the signatures of Mr. T.S. Murali and Ms. Reema Murali on the said Balance Sheets in the capacity of Directors.

9. Further, Ld. Liquidator has placed on record the Order dated 25.01.2017 passed by Ms. Aruna N. Gupta, Commissioner of Service Tax in Original Application No. DLISVTAX002COM0511617, whereby, the Ld. Commissioner had made the following observations:

*“21. Shri. TS. Murali again appeared under summons to tender his statement on 09.09.2014 (RUD-33) and stated that in HHPL, he was only an authorized signatory. On being shown the balance sheets for the year 2009-10 to 2011-12 of HHPL received from Registrar of Companies (RUD-21) where his name was written alongwith his position in the company as ‘Director’, he admitted that he was working as Director in HHPL. He was also shown copy of Balance Sheet of HHPL for 2011-12 along with ITR (Income Tax Returns) (RUD-34) resumed from his Noida office on 20.03.2014 vide S. No.19 of Annexure to Panchnama and asked to identify the signature of Directors. **He identified the signatures as of himself and that of his wife Mrs. Rema.**”*

10. Basing on the certificate issued by the Company Secretary Sh. Alok Chandra Singh, the Ld. Liquidator has confirmed that Forms DIR-12 towards resignation of Directors Sh. T.S. Murali (Murali Sivaramapillai Thondiyil DIN:00399183) and Ms. Reema Murali (Rema Murali DIN:00399270) were digitally signed by Sh. Vikraman Pillai Sivarama



Pillai, Director (DIN06928280) on 08.08.2014. Date of filing of the said form as on the website www.mca.gov.in is 18.08.2014.

11. From the additional documents and clarifications submitted by the Ld. Liquidator, it is unequivocally clear to this Bench that Sh. T.S. Murli and Ms. Reema Murali, who claimed to have resigned w.e.f. 01.11.2006, were signing the Financial Statements and were in effect managing the affairs of the company.

12. In the written submissions, the Respondent No.1 has admitted that they have taken the home loan from the ICICI Bank as a co-applicant for an amount of Rs.36,59,250. It is further submitted by the Respondents that *".....out the total Rs.65,29,836/- in question, the Respondent No.1 has repaid Rs.51,60,000/- as per the record which was once accepted by the Liquidator as per the audit report, the rest of the amount has been waived off by the Company Directors considering the aspect that the applicant was the Ex-director and was running the company in their absence"*.

13. After hearing submissions of both the parties, this Bench is of the view that the plea advanced by the Respondent No. 1 and 2, that they had resigned from the Company in the year 2006 does not merit any consideration. Further, in response to the clarifications sought by this Bench, the Ld. Liquidator has reconfirmed that as per the books of accounts of the Corporate Debtor, duly certified by the Forensic Auditor, an amount of Rs. 51,60,000 alleged to have been repaid by the



Respondents, has not been received by the Corporate Debtor. There is no document/receipt placed by the Respondent Director, which could suggest that they have reimbursed the loan amount to the Company i.e., M/s. Helpline Hospitality Pvt. Ltd. Thus, Respondents have failed to bring anything on record which is contrary to the observations made by the Forensic Auditor in its report. Mere resignation of Director from the Company does not absolve the Director/Respondent concerned from any financial impropriety/irregularity committed during his tenure as Director.

14. Further, perusal of the 'Loan Account Statement' of ICICI Bank on record makes it amply clear that the loan to purchase the property bearing No. G-158, Sector 41, Noida, U.P. was availed by the Corporate Debtor i.e., M/s. Helpline Hospitality Pvt. Ltd. The said Loan's EMIs were being deducted as auto-debit from the accounts of the Corporate Debtor, as confirmed by the report of Forensic Auditor. Moreover, the Cheques reflected towards payment of EMIs of Rs. 36,00,000 in the Transfer Deed cum Sale Deed dated 09.02.2005 matches and are from the Bank Accounts of the Corporate Debtor. Hence, it is clear that the property in question has been procured by utilizing the funds of the Corporate Debtor and, hence, the same deems to be the asset of the company. Here it is worthwhile to refer to the Judgement of the Hon'ble High Court of Delhi in the matter of **Reserve Bank of India Vs. M/s. JVG Finance Ltd. in CO. APPL. 1818/2011 IN CO. PET. 265/1998** wherein, it has been upheld

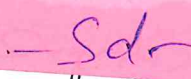


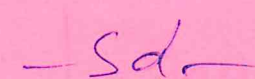
that the property purchased in *Benami* name from the funds of a company belongs to the company. In the instant case, the property having been purchased out of the funds of the Corporate Debtor, should naturally vest in the Corporate Debtor Company.

15. In the light of the facts and circumstances of the case, submissions made by the Liquidator, documents including report of the Forensic Auditor and other material on record, the prayer at serial (C) of the Application is allowed. Since the property belongs to the Corporate Debtor i.e., M/s. Helpline Hospitality Pvt. Ltd. and the Ex-Director Sh. T.S. Murali have fraudulently recorded the same in his name, the property bearing Plot No. G-158, Sector-41, Noida, Uttar Pradesh-201302 is hereby attached. Warrants of attachment be affixed to the said property by the Liquidator, who shall take further steps for public auction of the same. The Sale of the immovable property shall however, be confirmed after due Orders of this Bench. The Respondents are directed to not to alienate, lease or create any kind of encumbrance or third party interest in the property in question till the Order is fully complied.

16. Ld. Liquidator is also directed to act upon the other findings of the Forensic Report in an appropriate manner so as to maximise the liquidation value of assets of the Corporate Debtor.

17. The Application is disposed off accordingly.


(L. N. Gupta)
Member (T)


(Ina mainotra)
Member (J)