

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

C.A. 340 (PB) of 2018

In

Company Petition No. 422 of 2016

In the matter of:

Metaphor Exports private Limited
(Through its Resolution Professional)

Applicant

Vs

Mr. Sameer Khanna & Ors.

Non-Applicants

Judgment delivered on: 03.12.2018

CORAM:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant: Mr. Amol Vyas, Advocate
Mr. Ankit Jain, PCS

For Respondent: Mr. Hrishikesh Barvan, Advocate
Mr. Siddhant Kaushik, Advocate

ms

ORDER

S. K. Mohapatra, Member

This Company Application bearing no. 340 (PB) of 2018 has been filed by the Resolution Professional of the corporate debtor with prayer at the concluding para of the application which runs as follows:

“It is therefore, most humbly prayed that the application may kindly be allowed and non-applicant may be directed to return an amount of Rs. 1,34,65,686/- to the company and it be declared that the promoters of the company namely Sameer Khanna, Anju Khanna and Pran Nath Khanna have made false representation and has further committed frauds and therefore all the promoters as above named may be penalized under section 73 of the Insolvency and Bankruptcy Code, 2016.”

It is thus seen that two prayers have been made in the present company application.



With regard to the first prayer it is stated by the Resolution Professional that through an agreement of sale executed on 31.03.2012 a flat numbering 1201 at Block-2, 12th floor, Unitech Harmony, Sector 50, Gurugram, Haryana was agreed to be sold by two out of the three directors namely, Sameer Khanna and Anju Khanna to the corporate debtor at a consideration of Rs. 1,34,65,686/-. In addition to the aforesaid consideration Rs. 1,79,600/- was to be paid by the company to the aforesaid sellers being the reimbursement of security deposit.

It is stated that the consideration was paid by the corporate debtor on different dates through RTGS/Cheque/NEFT and also by way of allotment of shares. It has also been submitted that the corporate debtor has also settled the house loan of the sellers/flat owners.

The applicant Resolution Professional however has not furnished specifically the details of amount that were disbursed by the company on various dates to the sellers. Besides no supporting documentary proof has been relied



upon in support of the alleged disbursement by the company. In the absence of details of disbursements made by the company, no direction could be issued for refund of the claimed amount stated to have been paid by the corporate debtor to the sellers without transfer of the said property in its favour. That apart the extent of liability of respective directors has not been examined. The first prayer for return of an amount of Rs. 1,34,65,686/- from the directors to the company can be considered only when detail particulars of various payments are specifically elaborated with supporting documents.

Leave is granted to the resolution professional to file appropriate application in this regard.

The second prayer made in the application pertaining to commission of fraud by promoters/directors of the corporate debtor also cannot be considered in the absence of specific particulars and details of siphoning of funds. It has been alleged that the promoters have filed false affidavit before the Central Bank of India in securing the loan. However, neither Central bank of India has been made a



party nor their affidavit/contention is on record. A perusal of the order dated 30.07.2018 reveals that the aforesaid flat has been sold by the Central Bank of India during moratorium. However, it not clear when the auction was confirmed and transfer of the property was executed. In this regard affidavit of Central Bank of India regarding alleged fraud and in respect of details of sale of the said mortgage properties are necessary for proper appreciation of the matter.

Needless to say that heavy onus lies on the applicant to prove the allegations of fraud. Besides different and separate prayers have been sought. In respect of relief sought under Section 66, directions can be given for refund. Whereas in respect of relief sought under Section 73, separate penal action could be initiated by referring the case to the Central Government or IBBI in terms of Section 236 (2) of the Code. None cooperation by directors, recovery of diverted funds and criminal action for fraud are distinct and separate matters and should not be clubbed in one application with multiple prayers.



As a sequel to the aforesaid discussions C.A. 340 (PB) of 2018 is disposed of with leave to the Resolution Professional to file appropriate separate applications with relevant detail particulars duly supported by documentary evidence.

Let copy of the order be served to the parties.

Sd/-

(M.M.KUMAR) 3.12.201
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)