

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.241 of 2018 in
C.P.(IB)No.15/BB/2017
U/ss 43, 45, 49, 66, 69 and other
Applicable Provisions or Regulations of the IBC, 2016

In the matter of:

Shri Vinod Kumar Kothari
Liquidator of

**M/s.Suvarna Karnataka Cements
Private Limited
Krishna Building, 224 A.J.C. Bose Road
Kolkata – 700 017.**

- Applicant/Liquidator

Versus

**1. M/s.Nagpur Highway Infracons
Private Limited (NHIPL)**

4th Floor Gupta Tower,
Temple Road, Civil Lines,
Nagpur – 440 001.

**2. M/s.Gupta Corporation
Private Limited (GCPL)**

Block No.204 & 205,
First Floor, Corporation House
Also known as Gupta Bhawan,
Mouza Ambazari,
Nagpur- 440 010.

**3.M/s.Gupta Global Resources
Private Limited (GGRPL)**

Block No.202 & 207,
First Floor, Corporation House
Also known as Gupta Bhawan,
Mouza, Ambazari,
Nagpur – 440 010.

**4.M/s. Gupta Coal India Private
Limited (GCIPL)**

Block No.201 & 208,
First Floor, Corporation House
Also known as Gupta Bhawan,
Mouza, Ambazari,
Nagpur – 440 010.



5. M/s.Gupta Energy Private Limited (GEPL)

Block No.202 & 207,
First Floor, Corporation House
Also known as Gupta Bhawan,
Mouza, Ambazari,
Nagpur – 440 010.

**6. M/s.Gupta Infrastructur (India)
Private Limited (GIPL)**

4th Floor Gupta Tower,
Temple Road, Civil Lines,
Nagpur – 440 001.

7. Mr.Anurag Padmesh Gupta

Hari-Nikunj, House No.190,
Museum Road, Civil Lines,
Nagpur – 440 001.

8. Mr. Ramakant Tekriwal,

Tekriwal Bhawan, Byranji Town
Nelson Square,
Nagpur – 440 013.

- Respondents

Date of Order: 26th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

Applicant/ Liquidator : Shri Vinod Kumar Kothari
For Respondent Nos.1, 7 & 8 : Ms. Reshma S.M.
For Respondent No.6 : Ms. Aradhna Lakhtakia

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.241 of 2018 and in C.P(IB).No.15/BB/2017 is filed by Shri Vinod Kumar Kothari, Liquidator of the M/s.Suvarna Karnataka (hereinafter referred to as 'Applicant/Liquidator') U/ss 43, 45, 49, 66, 69 and other applicable provisions or Regulations of the IBC, 2016, by inter alia seeking to give directions to then Directors of the

Company or other persons responsible for the same or being beneficiaries of the same, to pay such sums in respect of the benefits received by such person, or such other compensation as the Tribunal may direct, to the liquidation estate; to give directions to such investigating offices, or the ROC or IBBI or such other offices/regulators as the Tribunal may determine, to cause further investigation into the manner or running of the Corporate Debtor to detect any vulnerable, irregular or illegal transactions as may have taken place etc.

2. Brief facts of the case, as mentioned in the Application, which are relevant to the issue in question, are as follows:

- (1) The main Company petition filed by M/s.Suvarna Karntaka Cements Private Limited (SKCPL), a Corporate Applicant/Corporate Debtor under Section 10 of the IBC, 2016 R/w Rule 7 of the I&B (AAA) Rules, 2016. Shri Vinod Kumar Kothari holding IBBI Registration No.IBBI/IPA-002/IP-N00019/2016-17/10033, appointed as the Liquidator vide order dated 07.03.2018.
- (2) M/s.Nagpur Highway Infracons Private Limited i.e., Respondent No.1 (hereinafter referred to as "**NHIPL**"), Parent Company of the Corporate Debtor, bearing CIN: U45203MH2008PTC179951 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 4th Floor, Gupta Tower, Temple Road, Civil Lines, Nagpur-440001, Maharashtra. The Respondent No.1 is the holding company of the Corporate Debtor holding 99.75% shares. R-1 is the beneficiary of the preferential payment done by the Corporate Debtor during May 2015, that is, within 2 years preceding the CIRP date (28th April, 2017).
- (3) M/s.Gupta Corporation Private Limited i.e., Respondent No.2 (hereinafter referred to as "**GCPL**"), Ultimate Holding Company



of the Corporate Debtor, bearing CIN: U40100MH2005PTC154038 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Block No. 204 & 205, First Floor, Corporation House also known as Gupta Bhawan, Mouza, Ambazari, Nagpur-440010, Maharashtra. The Respondent No.2 is the beneficiary of alleged vulnerable transaction viz. undocumented unsecured loan/advance extended by the Corporate Debtor.

- (4) Gupta Global Resources Private Limited i.e., Respondent No.3 (hereinafter referred to as "**GGRPL**"), is an Associate Company of the Corporate Debtor, bearing CIN: U10100MH2001PTC130464. It is incorporated under the provisions of the Companies Act, 1956 having its registered office at Block No. 202 & 207, First Floor, Corporation House also known as Gupta Bhawan, Mouza, Ambazari, Nagput-440010, Maharashtra. The Respondent No.3 is the beneficiary of alleged vulnerable transaction viz. undocumented unsecured loan/advance extended by the Corporate Debtor to the tune of 12.44 odd crores.
- (5) M/s.Gupta Coal India Private Limited i.e., Respondent No.4 (hereinafter referred to as "**GCIPL**") is an Associate Company of the Corporate Debtor bearing CIN: U51909MH1989PTC051640. It is incorporated under the provision of the Companies Act, 1956 having its registered office at Block No. 201 & 208, First Floor, Corporation House also known as Gupta Bhawan, Mouza, Ambazari, Nagpur-440010, Maharashtra. The Respondent No.4 is the beneficiary of alleged vulnerable transaction viz. preferential payment of around 75 lacs done by the Corporate Debtor, within 2 years prior to the CIRP commencement date (28th April, 2017).
- (6) M/s.Gupta Energy Private Limited i.e. Respondent No.5 (hereinafter referred to as "**GEPL**") is an Associate Company of

the Corporate Debtor, bearing CIN: U4012MH2007PTC175497. It is a company incorporated under the provision of the Companies Act, 1956 having its registered office at Block No. 202 & 207, First Floor, Corporation House also known as Gupta Bhawan, Mouza, Ambazari, Nagpur-440010, Maharashtra. The Respondent No.5 is the beneficiary of alleged vulnerable transaction viz. undocumented unsecured loan/advance extended by the Corporate Debtor.

- (7) M/s.Gupta Infrastructure (India) Private Limited i.e., Respondent No.6 (hereinafter referred to as "**GIPL**") is an Associate Company of the Corporate Debtor, bearing CIN : U45200MH2005PTC157219, a company incorporated under the provision of the Companies Act, 1956 having its registered office at 4th Floor, Gupta Tower, Temple Road, Civil Lines Nagpur-440001, Maharashtra. The Respondent No.6 is the beneficiary of alleged vulnerable transaction viz. preferential payment of around 51 lakhs done by the Corporate Debtor in FY 15-16, and within 2 years before the CIRP commencement date (28th April, 2017).
- (8) Mr. Anurag Padmesh Gupta i.e., Respondent No.7, as per the MCA records, resident of Hari-Nikunj, House No. 190, Museum Road, Civil Lines, Nagpur-440001. The Respondent No.7 was the promoter director of the Corporate Debtor during the period when the impugned vulnerable transactions referred to in this Application were entered into.
- (9) Mr. Ramakant Tekriwal i.e. Respondent No.8, as per MCA records, resident of Tekriwal Bhawan, Byranji Town, Nelson Square, Nagpur-440013. The Respondent No.8 was the Director of the Corporate Debtor during the period when the impugned vulnerable transaction referred to in this Application were entered into.



(10) It is stated that in course of the liquidation proceedings, the Liquidator has come across facts pertaining to several transactions which may be regarded as preferential transactions, undervalued transactions or transactions defrauding creditors (collectively herein referred to as "Vulnerable Transactions"). The Liquidator submits that in the proceedings under the Code, a Liquidator does not have the functions or powers of an investigator. Therefore, while from the way the conduct of affairs of the Company has been carried, the same give reasonably strong hints of Vulnerable Transactions or other transactions that may either be regarded as breach of applicable law, or deleterious of the interests of creditors or stakeholders, or otherwise, not transactions designed to be in good faith, however, the Liquidator does not have the powers to call for evidence, require presence, or put officers/former Directors to examination for the purpose of gathering further evidence. There has been some degree of cooperation from the officers of the Corporate Debtor for carrying out the said checking. Based on the same, the Liquidator has appointed one M/s.A.C.Bhuteria & Company, Chartered Accountants, to conduct forensic audit of the affairs of the Corporate Debtor based on the documents/information available.

(11) It is also stated that in course of the Liquidation proceedings, the Liquidator has come across with various issues pertaining to transactions and accounting entries in the nature of borrowing, lending, settlement of dues etc. with related parties that gave Liquidator reasonably strong hints of the vulnerable transactions or other transactions that may either be regarded as breach of applicable law or deleterious of interest of creditors or stakeholders or otherwise transaction not designed in good faith. Since protecting and preserving the liquidation estate is the profound duty of the Liquidator, the Liquidator submits the



details of the following Vulnerable Transactions of the Tribunal for appropriate directions:

- a. Preferential repayment of unsecured loan to related parties;
- b. Undervalued advances (transfers of funds) to related parties, done with deliberate intent of keeping the assets of the Corporate Debtor beyond the reach of the creditors or stakeholders, or otherwise to adversely affect the interest of stakeholders;
- c. Depletion of assets of the Corporate Debtor through fake cash balance;
- d. Reduction in liabilities without actual payment, indicating possibilities that there might have been unaccounted cash balances.

(12) It is also stated that several of the Vulnerable Transactions are transactions of a continuing nature, having their adverse and prejudicial impact on the financial position of the Corporate Debtor, and therefore, the concept of any look-back period or claw back period is not applicable in the instant case. Moreover, the Applicant that in case of transactions covered by Section 49 and Section 66, there is no question of any clawback period at all, since fraud is a nullity forever. It cannot be contended that a transaction, done with a deliberate, culpable design, becomes washed of its gullibility merely because the liquidation proceedings are initiated certain number of years after the date of commission of the relevant transaction. As per the financial statements of the Corporate Debtor, it had seemingly borrowed unsecured funds from R-1 which is its holding company. It is to be noted that the Liquidator has not received any document with respect to the terms of such unsecured loan received by the Corporate Debtor. Also there is no document recording the end-use of the said borrowing. Given the circumstance of



undocumented borrowing from a related party, without any record of end-use, which is in itself questionable, the Corporate Debtor has further, during May 2015, paid R-1 (its holding company) a sum of Rs.3.31 Crores.

(13) It is also stated that the borrowing from the holding company was in the nature of quasi equity, and was designed to be available for payment to external creditors. However, while the Company had substantial liabilities to external creditors and lenders, the Company chose to pay a huge sum of money of Rs.3.31 Crores to the holding Company, thus creating an undue preference. The payment of debt to R-1 not been preferentially done by the Corporate Debtor to R-1 being its related party, R-1 would have stood in 4th rank in the priority of payment and in the current case of liquidation, the insolvency of the Corporate Debtor being deep enough, it is most unlikely that there would be any proceeds left to be served to a stakeholder at 4th priority.

(14) It is further stated that the repayment "benefitted" NHIPL, an unsecured inside creditor, as it had the impact of putting NHIPL in a beneficial position than it would have been in the event of distribution of assets being made under Section 53. Given that the liquidation value of the Company is insufficient even to repay the debts of secured creditors, there remains no scope of any preferential repayment to an unsecured creditor. As such, the repayment falls squarely within the ambit of 'preferential transaction' as explained under Section 43 of the Code. Thus it is clear that the Corporate Debtor and its management have conspicuously, realising the bad financial health of the Company, started disposing, paying back and shifting funds of the Company to its group companies. The *mala fide* intention of the Company and its then management to siphon away the funds of the Company is absolutely clear and accordingly the onus lies R-7 and R-8 to establish as to how they have



discharged their directorial duties even as the impugned transactions happened under their eyes, and as to why the Directors should not be charged with contributory negligence, lack of care, and breach of duty. In any case, the payment in question was within a period of 2 years before the commencement of the CIRP and hence is covered by Section 43 of the Code.

- (15) It is stated that M/s.Gupta Global Resources Private Limited (GGRPL), Respondent No.3 is an Associate Company of the Corporate Debtor. The Company, as per MCA data, has been in business since 2001 and is supposedly engaged in mining and agglomeration or hard coal. As evident from the financial statement for the FY 2016-17 of the Corporate Debtor, 'Short Term Loan and advances' amounting Rs.12.44 Crores has been given to Respondent No.3. The Liquidator (during this tenure as RP) vide an e-mail dated 27th October, 2017 and thereafter during Liquidation process, vide mail dated 19th March, 2018, has sought clarification w.r.t. the said advances extended to Respondent No.3. In response to the said e-mails, Mr. Vijay Panch, authorized representative of the Corporate Debtor, vide return mail dated 13th April, 2018 has submitted the following justification for the said advances to GGRPL marking the immediate ex-directors of the Corporate Debtor which reads as under:

"This has reference to your mail dated 6th April 2018 in respect of outstanding dues of Gupta Global Resources Pvt. Ltd. In this regard, we clarify that the amount due against Gupta Global Resources Pvt. Ltd. Is on account of the adjustments made by L & T Infrastructure Finance Ltd. Towards dues of Gupta Global Resources Pvt. Ltd. and its subsidiary company viz. Gupta Energy Pvt. Ltd. By disbursement



of loan in Suvarna Karnataka Cements Pvt. Ltd. There was no liquidity position available at Suvarna Karnataka Cement Pvt. Ltd. To pay unsecured loan to Group Companies. The actual position was reversed and Group Companies mainly Gupta Coal India Pvt. Ltd. had invested big amount into Suvarna Karnataka Cements Pvt. Ltd. towards expansion.

We will forward the supporting documents in respect of above facts shortly since all the documents are available at plant site only."

- (16) It is also stated that since the representative of the Corporate Debtor have seemingly alleged the transaction to have been done to circulate the money back to L & T Finance or one of their group companies, and since L & T Finance is one of the secured creditors, it was deemed appropriate to seek the clarifications from L & T finance as well. Towards this, the Liquidator sent email on 25th July, 2018 seeking the views of L & T Finance. There was no agreement available with the Corporate Debtor for such advances completely nor there was any purchase order, requisition or agreement of any kind for such advances. This clearly shows the fraudulent intent of the Corporate Debtor to deplete the assets. The Forensic Audit Report notes that Rs.75 lakhs was paid to Respondent No.4, an associate company of the Corporate Debtor, on 19th May 2015 from the bank account of the company maintained with Oriental Bank of Commerce, Whereas, there were no corresponding outstanding liability as such on the said date or any other consideration. A payment of Rs.51 Lakhs was made to Respondent No.6, another associate company of the Corporate Debtor, on 12th May 2015, again, without any corresponding outstanding liability or consideration received from GIPL.



(17) It is stated that the unsecured loans amounting Rs.6,00,000/- and Rs.7,64,982/- have been extended to Respondent No.5, an Associate company of the Corporate Debtor and Respondent No.2, the ultimate holding of the Corporate Debtor, respectively. Apart from the above, as evident from the forensic audit report, a sum of Rs.19.15 Crores is due from related parties. However, there are no movement in these accounts as on 31st March, 2017. The above shows the *mala fide* intension of the Corporate Debtor to block its fund in the account of its related parties and becoming insolvent for the other creditors.

3. The Respondent No.6 i.e., M/s. Gupta Infrastructure (India) Private Limited has filed Statement of Objections dated 13.08.2019, by inter alia contending as follows:

- (1) It is stated that the Liquidator of the Answering Respondent has been handed over the copy of the Application filed by the Resolution Professional under Section 43,45, 49,66, 69 and others applicable provisions of the IBC, 2016, thereby an allegation has been levelled against the Answering Respondent that the Answering Respondent had entered into a transaction with the Corporate Debtor whereby an amount of Rs.51,00,000/- was transferred from the account of the Corporate Debtor to the accounts of the Answering Respondent.
- (2) It is stated that no such Application is maintainable against the Answering Respondent as the Answering Respondent is already under liquidation upon failure of the CIRP and undersigned has been duly appointed to liquidate the assets of the Answering Respondent. Therefore, any relief as may be sought by the Resolution Professional of the Corporate Debtor can only be sought against the Directors of the company, whereas all the erstwhile directors of the Answering Respondent has not been made party to the present Application. Therefore, the present



Application is liable to be dismissed against the Answering Respondent.

(3) It is also stated that without prejudice to the above submission, the liquidator submits that after the appointment of the liquidator, the liquidator has also conducted the audit of the accounts of the Answering Respondent under the applicable provisions of Insolvency and Bankruptcy Code, 2016, where a Special Report dated 16.08.2018 was submitted. Upon perusal of the said Special Audit Report, it was found that the Answering Respondent had also entered into the transactions which seems to be covered under Section 43 and 44 read with Section 25(2)(j) of the IBC, 2016, and CIRP Regulations, 2016, with the Corporate Debtor among other entities. The amount covered under the said transaction is much more the amount being alleged to have been transferred by the Corporate Debtor in the accounts of the Answering Respondent, so in any case the Answering Respondent is still entitled to recover balance amount from the accounts of the Corporate Debtor even if the said transactions are found covered under the above said sections. Therefore, the liquidator of the Answering Respondent has also preferred an Application seeking appropriate remedy before the Adjudicating Authority, Mumbai. The said Application is still pending adjudication. The Corporate Debtor is also one of the parties which is impleaded in the said Application and against whom the appropriate relief has been sought.

(4) It is stated that the Answering Respondent is liable to be deleted from the array of parties and no relief can be sought against the Answering Respondent which is being liquidated by the liquidator in accordance with the provisions of IBC, 2016. As far as other allegations in the said Application are concerned, the liquidator is not in a position to answer the same and all the

allegations and contentions as raised by the Corporate Debtor are denied for the want of knowledge. All the Directors are required to be made parties by the resolution professional of the Corporate Debtor.

4. The Liquidator has filed Written Arguments dated 24.06.2019 by inter alia contending as follows:

(1) It is stated that none of the Respondents, to whom multiple opportunities have been given have responded at all, it is unlikely if there will be any significant monetary realisation. In any case, if there is any monetary realisation, the Liquidator submission would be that the entire recovery will be to the account of L& T Finance Limited, which is the second charge holder of the assets of the Corporate Debtor, as the first charge holder viz. Reliance ARC, has been paid in full from the realised proceeds by the Liquidator. The Liquidator has relied upon the judgements bearing *CA(IB)Nos.771, 844, 1004, 996/KB/2018 and CA(IB)No.274/KB/2019 in CP(IB) No.175/2017- Sreerampur Ispat Pvt. Ltd. Vs. Barjora Steel & Re-rolling Mills Pvt. Ltd.*

(2) It is also stated that the liquidation proceedings were declared completed after the sale of the Company's plant dated 05.12.2019. Details of amount available for distribution in terms of Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016 is mentioned below:

Particular	Amount (in Rs.)
Total Realisation (A) (Refer note 1)	326,03,775
Less; Total Expenses (B) (Refer note 2)	306,24,336
Balance (A-B)=(C)	19,27,439
Less: Amount retained in bank for meeting expenses till dissolution (D)	52,415
Balance (C-D)= E	18,74,609
Less: Liquidator's Fees as per Regulation 4 of IBBI (Liquidation Process) Regulations, 2016	30,499
Amount available for distribution	18,44,110

In pursuance of the decision dated 29.08.2018, the Liquidator has distributed part of the realised proceeds to the RARC being the first charge holder of the assets of the Corporate Debtor. Further, it has been noted that RARC was required to make contribution towards CIRP expenses to the extent of Rs.1,33,450/- which was never been made by RARC. However, RARC has confirmed that the amount to be reimbursed by RARC to liquidation estate may be deducted from the next distribution vide email dated 26.09.2018.

In view of the same, the amount of Rs.1,33,450/- is to be deducted from the amount due to RARC, and accordingly, the final distribution shall be as follows:

Name of the Stakeholder	Total Claim	Payment made vide interim distribution	Balance	Amount to be vide Final Distribution
RARC	2,48,50,598	2,30,00,000	18,50,598	17,17,148*
L& T	26,99,98,507	-	-	1,26,962
Total				18,44,110

5. Heard Shri Vinod Kumar Kothari, learned Applicant/Liquidator, Ms. Reshma S.M., learned Counsel for the Respondent Nos.1, 7 and 8 and Ms. Aradhana Lakhtakia, learned Counsel for Respondent No.6. We have carefully perused the pleadings of all the parties and extant provisions of the Code and the law on the issue.
6. The Applicant/Liquidator submits that M/s.A.C. Bhuteria & Co. (Chartered Accountants) was engaged vide engagement letter dated 25th June, 2018 and further letter dated 31.07.2018 to conduct the Forensic Audit of M/s.Suvarna Karnataka Cements Pvt. Ltd. (SKCPL) for the period 1st April, 2015 to 31st March, 2017. Accordingly, the Chartered Accountants filed their Report on 7th August, 2018 by concluding as follows:



"Based on the forensic audit observations reported above, it is evident that there are cases of financial statements fraud. This is also known as fraudulent financial reporting, and is a type of fraud that causes a material misstatement in the financial statements. The Company has inappropriately handled cash transactions and has created fictitious assets in its books of accounts. The Company has not maintained proper documentations w.r.t to transactions entered into the books of accounts. It can, therefore, be entered that such activities have been carried out with the intention of presenting the financial statements with a particular bias like concealing liabilities, creating fictitious assets, inappropriate disclosures etc. in order to improve any analysis of liquidity and gearing. We draw attention to Para 6 of Chapter 18 of "Study on Forensic Accounting and Fraud Detection" issued by the Institute of Chartered Accountants of India, wherein such transactions are regarded as Financial Statements Fraud

Financial Statement Frauds

6. 1 Financial Statement fraud can take many different forms, but there are several methods that are considered most common. This includes fictitious revenue, timing difference, concealed liabilities or expenses, improper disclosure, related-party transactions and improper asset valuations.

Further as per Para 6.4 a financial statement frauds could be termed as deliberate or intentional misrepresentation, misstatement or omission of factual or material financial statement data, with sole motive to mislead the readers for the purpose of creating a

false impression (better financial health than the actual position) of the organisation's financial strengths."

7. The learned Liquidator, while accepting that he does not have the functions or powers of an investigator, he has come across several transactions, which may be regarded as preferential transactions, undervalued transactions and vulnerable transactions. However, he has carried out some sort of checking records of the Corporate Debtor with degree of cooperation from the Officers of the Corporate Debtor. Since he does not have any power to call for evidence, require presence or put Officers/Former Directors to examination for the purpose of gathering further evidence, he has appointed M/s. A.C. Bhuteria & Company, Chartered Accountants to conduct Forensic Audit of the affairs of the Corporate Debtor based on the documents/information. Accordingly, Chartered Accountant has filed Forensic Audit Report by inter alia contending as mentioned supra. Therefore, the Forensic Audit Report has to be further substantiated by involving the concern Persons (Respondents herein) who are alleged to be responsible of those transactions. Admittedly, the other parties are not given proper opportunity to defend their case. Therefore, the Adjudicating Authority cannot straight away invoke provisions of the Code, order to them to make good for recoveries as sought for, without further investigation by Competent Authority. However, we are convinced that there is prima facie case is made out for the impugned action by learned Liquidator and also the Forensic Audit Report discloses to order further investigation.
8. In the similar circumstance, one application was filed under Section 66 R/w Section 25(2), 69, 70 and other applicable Sections of the IBC, 2016 before this Adjudicating Authority, the Adjudicating Authority passed by order dated 16.04.2019 in I.A. No.446 of 2018 in C.P.(IB)No.122/BB/2017 by directing the Central Government to refer matter to the SFIO for further investigation into the Affairs of the Corporate Debtor etc. And this order was questioned before the

Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No.498 of 2019 (Mr.M.Srinivas Vs. Smt.R.Bhuvaneshwari & 8 Others)* and it was dismissed by an order dated 24.07.2019 by upholding the order, by inter alia holding as follows:

Para 17 of the order reads as follows:

"Apart from the power conferred by Section 213 of the Companies Act 2013, the "National Company Law Tribunal" has inherent powers under Rule 11 of the National Company Law Tribunal Rules, 2016. Therefore, in public interest, it is always open to the "National Company Law Tribunal" after giving a reasonable opportunity of being heard to the parties concerned refer the matter to the Central Government for investigation, if the Tribunal/Adjudicating Authority forms a prima facie opinion that acts of fraud have been committed by Company or group of companies or its Director(s) or officers. In the present case 'Forensic Audit Report' alleged that the members of the 'Corporate Debtor' and its 'Group Companies' along with officers of the 'Bank of Maharashtra' have committed certain fraud, which, inter alia, suggest that a sum of Rs.3,172.25 Lakhs are receivable by the 'Corporate Debtor'. The Appellant and others were given reasonable opportunity of hearing by Adjudicating Authority. As such no interference is called for against the impugned order. In absence of any merit, the appeal is dismissed. No cost.

9. In view of above facts and circumstance of the case and the law as cited, we are of the considered opinion that issue raised in the instant Company Application are required to be further investigated by the Serious Fraud Investigation Office. Therefore, appropriate action can be taken against the erring Officials basing on the report.
10. In the result, by exercising powers conferred on this Adjudicating Authority, which being NCLT, U/s 213 of Companies Act, 2013,

I.A.No.241 of 2018 in C.P.(IB)No.15/BB/2017 are disposed of with the following directions:

- (1) Learned Liquidator is directed to forward all material documents, which is connected to the present case including a Forensic Audit Report prepared by M/s.A.C. Bhuteria & Co. (Chartered Accountant) copies of instant Interim Applications to the Central Government, within a period of three weeks from the receipt of the copy of the order with a copy to all concerned parties duly following principles of natural justice.
- (2) The Central Government is directed to consider the issue to refer the matter to the SFIO for further investigation into the Affairs of the Corporate Applicant/Corporate Debtor and the persons/officials concerned (Respondents) namely M/s.Suvarna Karnataka Cements Private Limited, (M/s.Nagpur Highway Infracons Private Limited, M/s.Gupta Corporation Private Limited, M/s.Gupta Global Resources Private Limited M/s.Gupta Coal India Private Limited, M/s.Gupta Energy Private Limited M/s.Gupta Infrastructure (India) Private Limited, Mr. Anurag Padmesh Gupta and Mr. Ramakant Tekriwal) and any other relating the issue.
- (3) The parties are at liberty to take appropriate legal course of action basing on the ultimate findings given by the SFIO in this case. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Puja

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No.291/2019 in
C.P.(IB)No.15/BB/2017
U/s. 42 and 60 of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016

In the matter of:

The Commercial Tax Officer (Audit), Chitradurga
SNR Building, 2nd Floor,
Behind Mahesh Motors,
RTO Office Road,
Chitradurga – 577 501 - Applicant/
Operational Creditor

VERSUS

1. M/s. Suvarna Karnataka Cements Private Limited
Flat No.2, Block No.6,
Celebrations Suncity,
Sarjapura Ring Road,
Bengaluru – 560 034 - Respondent No.1/
Corporate Debtor

2. Shri Vinod Kumar Kothari
Liquidator of
M/s. Suvarna Karnataka Cements Private Limited
No. 1006-1009, Krishna Building,
224 AJC Bose Road,
Kolkata – 700 017 - Respondent No.2/Liquidator

Date of Order: 26th September, 2019

Coram: 1.Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2.Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)



Counsel/Parties Present:

For the Applicant : Shri Sandeep Huilgol
For the Liquidator : Shri Vinod Kumar Kothari

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.291/2019 in C.P.(IB)No.15/BB/2017 is filed by The Commercial Tax Officer (Audit), Chitradurga, (Applicant/ Operational Creditor), U/s. 42 and 60 of the IBC, 2016 R/w Rule 11 of the NCLT Rules, 2016, against M/s. Suvarna Karnataka Cements Private Limited & Anr. (Respondents) by inter alia seeking to set aside the order dated 28.05.2019 passed by the 2nd Respondent rejecting the claim of the Applicant; to direct the 2nd Respondent to accept, verify and allow the claim of the Applicant under the provisions of the Insolvency and Bankruptcy Code, 2016, in the liquidation proceedings of the 1st Respondent Company.
2. Brief facts of the case, as mentioned in the Application, are as under:
 - (1) The Commercial Tax Officer (Audit) (herein after referred as Applicant), Chitradurga is statutory authority appointed under the provisions of Karnataka Value Added Tax Act, 2003 ('the KVAT Act').
 - (2) M/s. Suvarna Karnataka Cements Private Limited & Anr. (herein after referred as Respondents) is a private limited Company that was engaged in the manufacture and sale of cement. Accordingly, the 1st Respondent was registered as a dealer under the provisions of the



KVAT Act, and was borne on the files of the LVO-480, Chitradurga.

- (3) It is submitted that the Respondent Office was assigned with the responsibility of assessing the 1st Respondent under the provisions of the KVAT Act for the tax period April 2013 to March 2014. Accordingly, 1st Respondent was taken up for audit and assessment by the Applicant in July 2015 by calling upon the 1st Respondent to produce its books of accounts for the said tax periods, and Applicant was sent notice the 1st Respondent and same was returned with an endorsement that the addressee was unknown. Subsequently, when the Commercial Tax Inspector visited the place of business of the 1st Respondent Company, Applicant came to know that the 1st Respondent had closed its place of business without even informing the said Commercial Tax Department. Thereafter, the Applicant served a proposition notice on the said last known place of business of the 1st Respondent by affixture. However, no representative of the 1st Respondent appeared before the Applicant in response to the said notice and, consequently, after due verification of the books of accounts previously produced, the Applicant reassessed the 1st Respondent under the KVAT Act for the aforesaid tax periods by passing a reassessment order dated 20.04.2019, in terms of which the 1st Respondent is liable to pay tax, interest and penalty amounting to Rs.25,54,576/-.
- (4) Consequently, the Applicant sent the order and demand notice to the 2nd Respondent vide email dated 04.05.2019. However, in response to the said email, the


Page 3 of 8

2nd Respondent informed the Applicant that public announcement was made in pursuant to the said order; the last date of submission of claims in respect of the 1st Respondent Company was 12.04.2018. Thereafter, the Applicant sent the claim to the 2nd Respondent vide letter dated 28.05.2019.

- (5) However, the 2nd Respondent sent an email dated 28.05.2019 rejecting the Applicant's claim on the mere ground that the same was filed belatedly. Thus, for the technical reason alone, the 2nd Respondent did not process the claim and consequently rejected the same. Aggrieved by the same, the present application is filed.

3. Shri Vinod Kumar Kothari, learned Liquidator, has filed Statement of Objections dated 02.09.2019, by inter alia contending as follows:

- (1) It is submitted that in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016, he had made public announcement about commencement of liquidation of the Corporate Debtor by inviting claims from the stakeholders of the Corporate Debtor, vide newspaper publications published at "Business Standard" (English Daily) and "Sanyukta Karnataka" (Kannada Daily) at their respective publications dated 15.03.2018, whereby the last date of submission of claim was 12th April, 2018.
- (2) In terms of the Regulation 31 of the Liquidation Regulation, the Liquidator has submitted list of stakeholders with the Adjudicating Authority, based on the claims received as on the last date of submission of claim, on 24th May, 2018. Thereafter, the Liquidator



invited interest for the assets of the Corporate Debtor and based on interest received, the Liquidator has sold the assets of the Corporate Debtor to the Nujster Global Resources Private Limited, the Successful Buyer.

- (3) The amount realized pursuant to sale of assets of the Corporate Debtor was distributed among the stakeholders as per Section 53 of the Code R/w Regulation 42 of the Liquidation Regulations. Consequently, only secured creditors, as mentioned in list of stakeholders, received the proceeds of the sale of assets. In fact, the proceeds received by the secured creditors were also inadequate due to insufficient of realization from sale of assets of the Corporate Debtor, as were available with the Liquidator.
- (4) Thereafter, as per Regulation 45 of the Liquidation Regulations, the Applicant has submitted its final report, encompassing all the details relating to the conduct of liquidation proceedings, along with the Application for dissolution of the Corporate Debtor (I.A.No.292/2018) on 14th September, 2018 which is pending for consideration before the Adjudicating Authority.
- (5) The claim of the Applicant was received on 28.05.2019, i.e. much later than the last date of submission of claim. Whereas Section 38(1) of the Code permits the Liquidator to collect and receive the claims within a period of 30 days from the commencement of the liquidation process, and Applicant has submitted the claim after such last date and no action under Section



42 of the Code was taken by the Applicant, the claim was rejected by the Liquidator.

(6) It is stated that a creditor may come in and prove his claim at any time before the Company is dissolved but as long as the assets remains un-administered, i.e. as long as there are undistributed assets still available. Since, the Corporate Debtor has been liquidated successfully the liquidation proceedings is construed to be concluded and the claim of the Applicant cannot considered at this stage.

(7) It is submitted that, the realization of assets of the Corporate Debtor was not even sufficient to fully satisfy the dues of the secured creditors and in such circumstances, the Respondent No.2 submits that the admission of claim of the Applicant, which falls at the fifth position as per the waterfall mechanism laid down in Section 53, will not serve any purpose.

4. Heard Shri Sandeep Huilgol, learned Counsel for the Applicant and Shri Vinod Kumar Kothari, learned Liquidator for the Respondents No.1&2. We have carefully perused the pleadings of the parties and extant provisions of the Code and Rules made there under.
5. As stated by the Liquidator, public announcement was made in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations 2016, with reference to the commencement of liquidation of the Corporate Debtor by inviting claims form the stakeholders of the Corporate Debtor vide newspaper publications published at "Business Standard" (English Daily) and "Sanyukta Karnataka" (Kannada Daily) at their respective publications dated 15.03.2018. The Copies of the said public



announcement are also available at website of the Liquidator and at the official website of the IBBI, whereby the last date of submission of claim was 12th April 2018. Accordingly, the Liquidator has also submitted list of stakeholders with the Adjudicating Authority, based on the claims received as on the last date of submission of claim, i.e. on 24.05.2018.

6. The Liquidator has sold the assets of the Corporate Debtor and based on interests received, and has also filed a Application in I.A. No.292/2018 in C.P.(IB)No.15/BB/2017, U/s. 54 and other Applicable provisions of the IBC Code, 2016, by inter alia seeking to dissolve the 1st Respondent Company M/s. Suvarna Karnataka Cements Private Limited, and the same was pending for consideration before the Adjudicating Authority. The amount realized pursuant to sale of assets of the Corporate Debtor was distributed among the stakeholders as per Section 53 of the Code R/w Regulation 42 of the Liquidation Regulations. Consequently, only secured creditors, as mentioned in list of stakeholders, received the proceeds of the sale of assets. In fact, the proceeds received by the secured creditors were also inadequate due to insufficient of realization from sale of assets of the Corporate Debtor, as were available with the Liquidator.
7. The CIRP was initiated vide order dated 28.04.2017 against the Corporate Debtor, and thereafter Liquidation order was passed on 07.03.2018, and the last date for receipt of claims from the respective parties is 12th April, 2018. However, the Assessment of Tax was made by the Commercial Tax Department on 20th April, 2019 i.e., after initiation of CIRP, and thereafter, Demand notice was attempted to serve on the



Company on 20.04.2019. Subsequently claim in Form C was filed with Liquidator on 28.05.2019. However, the fact remains the CIRP was initiated against the Corporate Debtor as early April, 2017 followed by Liquidation on 7th March, 2018. The Proceedings under the Code are time bound and the Adjudicating Authority is not empowered to condone long delay for submission of claims. Moreover, if Liquidation process is not completed, and little delay occurred in submitting claim, the Adjudicating Authority can direct to consider such claim by condoning such little delay. In the instant case, delay is more than one year and the liquidation process was also over. Therefore, the Applicant is not entitled for condonation of delay to consider their claim and thus rejection of claim of the Applicant vide impugned letter held to be justified. We are not convinced with the reasons cited by the Applicant for condonation of delay.

8. It is relevant to point out here that we have passed order dissolving the Corporate Debtor vide order dated 26.09.2019 in I.A. No.292/2018 in C.P. (IB) No.15/BB/2017. Therefore, we are of the considered opinion that the instant Application is only liable to be rejected.
9. Hence, I.A. No. 291/2019 in C.P. (IB) No.15/BB/2017 is hereby rejected. No order as to costs.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

BENGALURU BENCH

I.A. No.292/2018 in

C.P. (IB)No.15/BB/2017

U/s. 54 and other Applicable provisions
of the IBC Code, 2016

In the matter of:

Shri Vinod Kumar Kothari

Liquidator of

M/s. Suvarna Karnataka Cements Private Limited

No. 1006-1009, Krishna Building,

224 AJC Bose Road,

Kolkata – 700 017

- Applicant/Liquidator

Date of Order: 26th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittalala, Member (Judicial

2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Counsel/Parties Present:

For the Liquidator : Shri Vinod Kumar Kothari

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.292/2018 in C.P.(IB)No.15/BB/2017 is filed by Shri Vinod Kumar Kothari (Applicant/Liquidator), on behalf of M/s. Suvarna Karnataka Cements Private Limited (Applicant Company in Liquidation) under Section 54 and other Applicable Provisions of the IBC, 2016, by inter alia seeking to dissolution of the Applicant Company M/s. Suvarna Karnataka Cements Private Limited.

15/12

2. Brief facts of the case, as mentioned in the Application, are as under:

- (1) M/s. Suvarna Karnataka Cements Private Limited (Applicant Company) (in Liquidation) is a Private Limited Company was incorporated on 06.11.2006 under the provisions of the Companies Act, 1956 in the State of Karnataka, vide CIN:U14106KA2006PTC040866 and having its registered office at Flat No.02, Block No.06, Celebrations Suncity, Sarjapur Ring Road, Bengaluru - 560 034. It is submitted that the main objects of the Company according to the Memorandum of Association, is to produce, manufacture, treat, process, prepare, all types and kinds of cement etc. Its Nominal Share Capital of the Company is Rs.2.00 Crores consisting of 20,00,000/- Equity Share Capital of Rs.10/- each. The Paid-up Share Capital of the Company was also Rs.2.00 Crores which has been divided into 20,00,000/- Equity Share Capital of Rs.10/- each. The Company has filed the audited financial statements and annual returns upto the period 7th March, 2018 to 5th January, 2019.
- (2) Earlier, the Adjudicating Authority, vide order dated 7th March, 2018 ordered liquidation of Suvarna Karnataka Cements Private Limited (Corporate Debtor), as per the provisions of the Chapter III Part II of the IBC, 2016 R/w IBBI (Liquidation Process) Regulations, 2016 and has appointed Vinod Kumar Kothari, Insolvency Professional, holding IBBI Reg. No. IBBI/IPA-002/IP-N00019/2016-2017/10033 as the liquidator of the Corporate Debtor. Accordingly, the Liquidator, caused a Public announcement, in terms of



Regulation 12 of the IBBI (Liquidation Process) Regulations, in one English newspaper "Business Standard" and one Kannada newspaper "Sanyukta Karnataka" on 16.03.2018, seeking claims from the stakeholders of the Corporate Debtor. Copy of the public announcement was also intimated to the ROC and IBBI as required under Section 59(4) of the IBC, 2016.

- (3) As per Section 38(1) of the Code, the liquidator is required to receive or collate the claims of creditors within a period of period of thirty days from the date of the commencement of the liquidation process, viz. 12.04.2018. Accordingly, the Liquidator collated all the claims received till 12.04.2018 and prepared a list of stakeholders. The list of financial creditors of the Corporate Debtor is as follows:

Sl. No.	Name of Financial Creditors	Total Amount Claimed (in Rs.)
1.	Reliance Asset Reconstruction Company Limited	2,48,50,598/-
2.	L & T Finance Limited	26,99,98,507/-
3.	SREI Equipment Finance Limited	13,29,83,141/-

- (4) It is submitted that apart from the above, the Liquidator has also received claim from the Operational Creditors and employees of the Corporate Debtor, However, there are no claims for workmen's dues. Accordingly, there are no claims to rank at par with the secured creditors' claims. On 29.08.2018, the Liquidator received claim from the Employees Provident Fund Act. Since the claim was filed substantially, after

the last date of submission of claims, as per Section 38 of the Code, the Liquidator has responded to the EPFO Office, vide email dated 29.08.2018 that the claim is barred by limitation, and that the EPFO may seek extension of time from the Adjudicating Authority. Even, if the said claim was to be considered, the claim is not for workmen's dues within the period of 24 months prior to commencement of liquidation.

- (5) In pursuant to the Regulation 35 of the Liquidation Regulation, the Liquidator appointed two registered valuers viz. Mr. S. K. Gulati and Mr. Charudatt Marathe for valuation of assets of the Corporate Debtor. The valuation arrived by them is Rs. 253.13 Lakhs and Rs. 250.45 Lakhs respectively, and considering the average of two estimates, the liquidation value was arrived at Rs. 251 Lakhs (approx.).
- (6) As per the requirement of Regulation 13 of the Liquidation Regulations, the Liquidator has already submitted the Preliminary Report with this Tribunal, vide mail dated 19.05.2018 (physical copy submitted on 28.05.2018), inter alia containing the following details:
- the capital structure of the corporate debtor;
 - the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the Corporate Debtor;
 - the proposed plan of action for carrying out the liquidation, including the timeline within which the liquidation proceedings is proposed to be carried out; and
 - the estimated liquidation costs.



- (7) As per Regulation 34 of the Liquidation Regulations, the Liquidator submitted the asset memorandum along with the Preliminary Report, which inter alia contained are as follows:
- the value of the asset, valued in accordance with Regulation 35;
 - intended manner of sale of the assets of the Corporate Debtor in accordance with Regulation 32, along with reasons thereof;
 - the intended mode of sale and reasons for the same in accordance with Regulation 33; and
 - the expected amount of realization from such sale.
- (8) Accordingly, As per Regulation 15 of the Liquidation Regulations, the Liquidator has submitted the First Progress Report on 04.07.2018, detailing all the relevant information and progress during the quarter March-June, including but not limited to the following:
- the fee due to and received by the Liquidator, together with a description of the activities carried out by him;
 - the fee paid to professionals appointed by the Liquidator, together with a description of activities carried out by them; and
 - other expenses incurred by the Liquidator.
- (9) It is submitted that the assets of the Corporate Debtor has been sold on slump sale basis, and in terms of Regulation 36 of the Liquidation Regulation, the Liquidator has filed Asset Sale Report along with Second Progress Report on 10.08.2018, by inter alia containing the following:
- the realized value;



- cost of realization;
- the manner and mode of sale; and
- the details of person to whom the sale is made;

(10) The assets of the Corporate Debtor has been liquidated, and the realized amount has been distributed to the stakeholder as per Section 53 of the Code read with Regulation 42 of the Liquidation Regulations, except for the final amount pending for distribution. Since, the Corporate Debtor has been liquidated successfully, the liquidation proceedings are construed to be concluded, the instant Application is being made for dissolution of the Corporate Debtor.

(11) As regards the likely recovery from proceedings, the Liquidator submits as follows:

- i. Since none of the Respondents, to whom multiple opportunities have been given, have responded at all, it is unlikely if there will be any significant monetary realization.
- ii. In any case, if there is any monetary realization, the Liquidator has given submission that the entire recovery will be to the account of L&T Finance Limited, which is the second charge holder of the asset of the Corporate Debtor as the first charge holder viz., Reliance ARC, has been paid in full from the realized proceeds by the Liquidator.

(12) In terms of the IBBI (Liquidation Process) Regulations, 2016 the Liquidator has sold the assets of the Company by way of slump sale vide auction dated 2nd July, 2018 at a bid amount of Rs.2,73,00,000/- (Rupees Two Crores Seventy Three Lakhs only) to Nujster Global Resources Private Limited.

- (13) Details of the amount available for distribution in terms of Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016 is mentioned below:

Particular	Amount (in Rs.)
Total Realization (A) (Refer Note 1)	326,03,775
Less: Total Expenses (B) (Refer Note2)	306,24,336
Balance (A-B) = (C)	19,27,439
Less: Amount retained in bank for meeting expenses till dissolution (D)	52,415
Balance (C-D) = (E)	18,74,609
Less: Liquidator's Fees as per Regulation 4 of IBBI (Liquidation Process) Regulations, 2016	30,499
Amount available for distribution	18,44,110

Note:

1. Total Realization (A) includes amount received from the Buyer towards sale proceeds, EOI received from bidder for visiting plant of SKCPL at the time of CIRP and interest received from Bank on FD (net off TDS).
 2. Total Expenses (B) includes fees of liquidator as on 13.09.2018, GST and TDS paid by Liquidator.
- (14) In pursuance to the decision dated 29th August, 2018, the Liquidator has distributed part of the realized proceeds to the RARC, being the first charge holder of the assets of the Corporate Debtor. Further, it has been noted that RARC were required to make contribution towards CIRP expenses to the extent of Rs.1,33,450/- which was never been made by RARC. However, RARC has confirmed that the amount to be reimbursed by RARC to liquidation estate may be deducted from the next distribution, vide email dated 26th September, 2018.



(15) In view of the same, the amount of Rs.1,33,450/- is to be deducted from the amount due to RARC, and accordingly, the final distribution shall be as follows:

Name of the Stakeholder	Total Claim	Payment made vide interim distribution	Balance	Amount to be vide Final distribution
RARC	2,48,50,598	2,30,00,000	18,50,598	17,17,148*
L&T	26,99,98,507	-	-	1,26,962
Total				18,44,110

*Note: *Excess amount paid to RARC amounting Rs.1,33,450/- has been reduced from the Final distributable amount. Post Dissolution, entire balance retained in bank, if any, shall be distributed to L&T.*

3. Heard Shri Vinod Kumar Kothari, learned Liquidator. We have carefully perused the pleadings of the party along with extant provisions of the Code and the Rules made there under.
4. As detailed supra, the learned Liquidator has complied with all conditions and procedural requirements as specified under various provisions of Section 54 of the Insolvency & Bankruptcy Code, 2016 for dissolution of the Corporate Debtor. As stated supra, there is no bar for dissolution of a Company, irrespective of Applications are pending filed Under Sections 43, 45, 49, 66, 69 and other Applicable provisions of Code. In the instant case, I.A. No. 241/2018 in C.P.(IB)No.15/BB/2017 is filed U/s. 43, 45, 49, 66, 69 and other Applicable provisions of IBC, 2016 and it is disposed of by separate order dated 26th September, 2019 by referring the matter for further investigation by SFIO. Therefore, we are of the considered view that the Liquidation of the Company is



complete except the said I.A.241/2018 and thus the instant Application deserves to be allowed as prayed for.

5. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 of the Code, the Interim Application bearing I.A.No.292/2018 in C.P.(IB)No.15/BB/2017 is disposed of with the following directions:

- (1) It is hereby dissolved the Corporate Person, M/s. Suvarna Karnataka Cements Private Limited with immediate effect;
- (2) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bangalore, within a period of two weeks from today;
- (3) The learned Liquidator is also directed to forward copies of this Order to all other statutory authorities connected with the affairs of the Company.
- (4) C.P. (IB)No.15/BB/2017 is also stands disposed of.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi