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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW
DELHI Company Appeal (AT) (Insolvency) No. 944 of 2020

IN THE MATTER OF:

**Mohan Lal Jain, In the capacity of Liquidator of
Kaliber Associates Pvt. Ltd.**

...Appellant

Versus

Lalit Modi & Ors.

...Respondents

Present:

**For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Anirban
Bhattacharya, Advocate.**

**For Respondents: Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Geetika
Sharma, Advocates.**

ORDER
(Through Virtual Mode)

16.12.2020: Ministry of Corporate Affairs has been arrayed as party Respondent No. 46 in terms of the direction given in order dated 6th November, 2020. However, there is no appearance on behalf of Respondent No. 46, though Mr. Sanjay Shorey, Director (Legal), MCA has appeared previously.

2. Heard learned senior counsel representing the Appellant and learned counsel representing for the Financial Creditor. Since the issue raised in this appeal is limited to direction given in terms of impugned order by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench in regard to CA 1342/2019 only, we dispense with the appearance of Respondent No. 2 to 45.

Cont'd.../

3. In terms of impugned order dated 27th February, 2020, apart from making a modification in its earlier direction in respect of CA702/2019 which is not the subject of challenge in this appeal, the Adjudicating Authority when approached by the Liquidator for invoking the provisions of Sections 43/66 of the I&B Code for taking action in regard to preferential transactions and fraudulent trading/ wrongful trading, the Adjudicating Authority having regard to different versions in regard to such transactions emanating from both parties, observed that it would be beyond the scope of powers of the Adjudicating Authority to look into the transactions which attract the provisions of Sections 43/66 of the I&B Code and explanation of the opposite party, if required, can be offered to the Investigating Agency.

4. It is submitted on behalf of the Appellant that while the jurisdiction of the Adjudicating Authority was rightly invoked by the Resolution Professional/ Liquidator as specifically provided by Section 43 and Section 66 of the I&B Code, respectively, it was not permissible for the Adjudicating Authority to abdicate its powers and refer the matter to the Ministry of Corporate Affairs or an Investigating Agency. It is submitted that the allegations on the basis of which jurisdiction of the Adjudicating Authority was sought to be invoked with reference to preferential transactions and fraudulent trading/ wrongful trading

falling within the ambit of Sections 43 and 66 of the I&B Code respectively, lies within the domain of the Adjudicating Authority and the express provisions of these sections leave no room for ambiguity in this regard. Shri Arun Kathpalia, learned senior counsel representing the Appellant has referred to observations of Hon'ble Apex Court made in **“Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Ors., 2019 SCC OnLine SC 1542”**, paras 51 and 52, in this regard, which are extracted hereinbelow:-

“51. The objection of the appellants in this regard is well founded. Section 65 specifically deals with fraudulent or malicious initiation of proceedings. It reads as follows:

“65. Fraudulent or malicious initiation of proceedings. – (1) *If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

*52. Even fraudulent tradings carried on by the Corporate Debtor during the insolvency resolution, can be inquired into by the Adjudicating Authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently **“for any purpose other than for the resolution of insolvency or liquidation”**.*

5. It is abundantly clear that allegations of preferential transactions as also fraudulent trading/ wrongful trading carried on by the Corporate Debtor during the insolvency resolution can be inquired into by the Adjudicating Authority.

This being the settled position of law, we are of the considered opinion that it was not open to the Adjudicating Authority to link the fate of CA-1342/2019 with CA-702/2019. All that the Adjudicating Authority was required to do was to take cognizance of the complaint emanating from the Liquidator in regard to the alleged preferential transactions and fraudulent trading/wrongful trading having occurred qua the Corporate Debtor. Unfortunately, the impugned order, to the extent of disposal of CA-1342/2019 is not in conformity with the statutory provisions and the dictum of the Hon'ble Apex Court. The impugned order to the extent indicated, cannot be supported and the same is modified by providing that the Adjudicating Authority will inquire into such alleged dealings in accordance with law with expedition, preferably within two months. Appeal is accordingly disposed of.

6. A copy of this order be communicated to the Adjudicating Authority forthwith.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[V. P. Singh]
Member (Technical)

am/gc

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