

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

IA 5629 of 2024

Under Rule 11 read with 34 and 51 of the National
Company Law Tribunal Rules, 2016 ("NCLT Rules")

ANURADHA KAPUR

...Applicant

**DINKAR T. VENKATASUBRAMANIAN ERST.
RESOLUTION PROFESSIONAL METALYST
FORGINGS LIMITED**

...Respondent

IA 5630 of 2024

B. LUGANI

...Applicant

**DINKAR T. VENKATASUBRAMANIAN ERST.
RESOLUTION PROFESSIONAL METALYST
FORGINGS LIMITED**

...Respondent

IA 3 of 2025

YOGESH KAPUR

...Applicant

**DINKAR T. VENKATASUBRAMANIAN ERST.
RESOLUTION PROFESSIONAL METALYST
FORGINGS LIMITED**

...Respondent

IA 4 of 2025

ANKITA WADHAWAN

...Applicant

**DINKAR T. VENKATASUBRAMANIAN ERST.
RESOLUTION PROFESSIONAL - METALYST
FORGINGS LIMITED**

...Respondent

IA 600 of 2025

VIVEK KUMAR AGARWAL

...Applicant

**DINKAR T. VENKATASUBRAMANIAN
ERSTWHILE RESOLUTION PROFESSIONAL
METALYST FORGINGS LIMITED**

...Respondent

In the matter of

COMPANY PETITION NO. 1555 OF 2017

STATE BANK OF INDIA

...Petitioner/Financial Creditor

V/s

METALYST FORGINGS LIMITED

...Respondent/Corporate Debtor

Order delivered on: 31.10.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances:

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

For the Applicant : Adv. Raishabh Jaisani a/w Adv. Siddhant
Marathe.

For the Respondent : Mr. Alok Dhir a/w Mr. Kanishk Khetan,

Mr. Janhavi Respondent No.2, 4, 6, 7, 8,
9 and 12 and Mrs. Princi Jaiswal.

ORDER

1. This Application IA 5629/2024 is filed by Anuradha Kapur (Applicant) under Rule 11 read with 34 and 51 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") read with Order I Rule 10 of the Code of Civil Procedure, 1908, seeking following reliefs:-
 - a) Allow the present application and delete the name of the Applicant from the array of parties in I. A. No. 2839/2024, being neither a necessary nor a proper party;
 - b) Pass any such other and further order(s) as this Hon'ble Board may deem fit and proper in the facts and circumstances of the case.
2. The present application is being preferred by Mr. Anuradha Kapur ("Applicant") under Rule 11 read with 34 and 51 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") read with Order I Rule 10 of the Code of Civil Procedure, 1908, seeking deletion of his name (appearing as Respondent No. 12) from the array of parties in the Application bearing I.A. No. 2839/2024 in CP (IB) 0. 1555/MB/2017 filed by Dinkar T. Venkatasubramanian ("Respondent") under Section 66 of the Insolvency & Bankruptcy Code, 2016 ("Code").
3. Similar Applications i.e. IA 5630/2024, IA 3/2025, IA 4/2025, and IA 600/2025 are filed by other Respondents i.e. B. Lugani-Respondent No. 7, Yogesh Kapur-Respondent No. 9, Ms. Ankita Wadhawan-Respondent No. 8, and Mr. Vivek Kumar Agarwal-

Respondent No. 6 in IA No. 2839 of 2024 respectively seeking deletion of their names as Respondents in IA 2839 of 2024. While, the Respondent No. 12, 7, 9 and 8 were independent director, the Respondent no. 8 was non-executive director. These persons held office of director in the Corporate Debtor for following period :

Sl. No.	Name	Period
1.	Anuradha Kapur	25.8.2017 to 18.10.2019
2.	B. Lugani	31.7.2003 to 22.7.2017
3.	Yogesh Kapur	25.8.2017 till Insolvency commencement
4.	Ankita Wadhawan	28.9.2016 to 25.8.2017
5.	Vivek Kumar Agarwal	25.10.2008 to 1.6.2018

4. Since, all the applications have been filed raising similar ground for deletion, the same are being taken together and the facts in IA 5629 of 2024 are taken up for analysis.

Applicant's case in IA 5629 of 2024

5. It is stated that the Applicant was appointed as an Independent Non-Executive Director of the Corporate Debtor The relevant

period for the review in the current transaction commenced on 16.12.2015 to 15.12.2017. It is case of the Applicant that she has been made a party to the instant proceedings arbitrarily and maliciously as the Applicant cannot be impleaded as a party, as being the erstwhile an Independent Non- Executive Director, there was no involvement in the day-to-day affairs of the Corporate Debtor and more so, had no knowledge of the alleged transactions of the Corporate Debtor.

6. It is also submitted that the Applicant has been wrongly arrayed as a Respondent in his personal capacity for the transactions undertaken by the Corporate Debtor, and the legal position is well settled that Directors cannot be made personally liable for any alleged offence on the part of the company. It is also stated that it is a settled position of law that mere allegation qua such transactions alleged to be done by a Director is of no consequence, unless there is specific evidence and pleadings in respect of such Director being guilty of any misfeasance or breach of trust in relation to the said Company. The Hon'ble High Court of Delhi in Security and Finance Pvt. Ltd. Vs. B.K Bedi & Ors., (1991) 71 CompCas 101 (Delhi), had observed the same in the mentioned judgement.
7. It is further submitted that the present proceedings under Section 66 are not maintainable against the Applicant in view of the fact that as the Applicant is an Independent Non-Executing Director of the Corporate Debtor. It is submitted that in SEBI vs. Gaurav Varshney, the Hon'ble Supreme Court held that the liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not

holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. The Hon'ble Supreme Court in Sunil Bharti Mittal vs. Central Bureau of Investigation &Ors. held that a Director can only be prosecuted if there was sufficient evidence of his active role or where the statutory regime attracts the doctrine of vicarious liability. Hence the Applicant is not liable for the transaction as alleged by the Respondent.

8. It is further submitted that that a proceeding under Section 241-242 of the Companies Act, 2013 has been preferred by Union of India bearing C.P. No. 296/2021 before this Tribunal in respect of the Corporate Debtor on the basis of the transaction Audit Report dated 17.08.2018, as also relied upon by the Respondent herein in I. A. 2839/2024. In the said proceedings, through Order dated 15.09.2021, the Applicant was also deleted from the arrays of parties as no case was made out against the Applicant and that the Applicant was an Independent Director.
9. In view of the directions issued by the Hon'ble Supreme Court in **Anuj Jain, Interim Professional for Jaypee Infratech Limited v. Axis Bank &Ors (2020) 8 SCC 401**, it is a settled position that any application under Section 66, IBC must entail detailed and specific pleadings against the parties pleaded. No such pleadings have been made by the Respondent herein qua the Applicant herein. It is relevant to take note of the fact without prejudice that the Respondent also has failed to make out any submission as regards the alleged claim of the Respondent

against the Applicant being legally tenable in terms of the law of limitation.

10. The Applicant accordingly, has been constrained to prefer the instant application seeking deletion of its name from the array of Respondents as the Applicant is not.

Respondent Resolution Professional's submissions

11. The Respondent Resolution Professional has filed a reply stating that (i) Applicant cannot abscond from her role and responsibilities for the period when he was the director of the Corporate Debtor, (ii) Section 66 of the Code does not differentiate between independent/ non-independent director, and (iii) There is no requirement of specific gain to be attributed to the Applicant or any other director under the ambit of Section 66 of the Code. It is further submitted that the circular dated 02 March 2020 bearing no. 1 of 2020 of the Ministry of Corporate Affairs ("MCA Circular") stating that ".. an erstwhile Independent Non-Executive Director cannot be made liable in any alleged transaction carried on by the Company ... " can not be made applicable to the Code which is a complete legislation and that circular was issued under the Companies Act, 2013. Further, the removal of the Applicant's name from Company Petition No.296 of 2021 filed under the Companies Act, 2013 cannot automatically translate into the removal of the Applicant's name from the Section 66 Application filed under the Code the reliefs therein were primarily only sought against the concerned KMPs and promoter directors of the Corporate Debtor; and this Tribunal has allowed Union of India's said application for deletion without making any findings / observations qua the individuals (including the Applicant).

Analysis and Decision

12. Heard the learned counsel and perused the material on record.
13. The Respondent Resolution Professional has filed an application IA 2839 of 2024 u/s 66 of the Code seeking contributions from the directors seeking declaration of transactions stated therein as fraudulent in terms of section 66(1) of the Code and appropriate order(s) consequent thereto. The Applicants are arrayed as party respondents, as they were directors during the relevant period. The following transactions have been impugned :
 - a. Certain loans/advances were made by the Corporate Debtor to the account of the related parties/potentially related parties of the Corporate Debtor, during the Review Period, as identified from the party ledger and transactional trial balance by the Transaction Auditors.
 - b. The Transaction Auditor has come across transactions with several related parties / potentially related parties, whereby the Corporate Debtor made purchases / sales with these parties, and there were adjustments of balances in the form of inter party debit and inter party credit adjustments in the books of the Corporate Debtor without any supporting or reasoning for these adjustments, without involvement of banking transactions, which has resulted into a different closing balances with these entities.
 - c. The Corporate Debtor during the Review Period had capitalised Capital Work in Progress ("CWIP") into Fixed Asset Register, without any underlying document substantiating the CWIP, and the Corporate Debtor has

failed to maintain CWIP register. Further the Corporate Debtor during the Review Period has adjusted the receivables from few related/potentially related parties by crediting these party accounts and debiting the CWIP account, without providing any underlying document to identify the rationale and nature of such additions.

- d. Book Debts of INR 224.23 Crores have been outstanding for a period of more than six months. In absence of records indicating any efforts having been made for recovery of the overdue balances from related parties/potentially related parties for more than 180 days, i.e., INR 167.39 Crores, it clearly indicates that this is merely a tool for diversion of money.
 - e. On a review of transactional trial balance during the Review Period, the Corporate Debtor had written off receivables of related/potentially related parties and had further written off inventory and charged additional depreciation, without any underlying documents or without providing any proper reason for the same.
 - f. The loans received from banks have been utilised towards related party payment just one year prior to the insolvency commencement date.
14. The Corporate Debtor was listed on Stock Exchange(s) in India. Accordingly, its quarterly financial results as well as annual Financial Statements have been placed before the Board of Directors, including the Independent Directors, for their approval and publication thereof after such approval. An Audit Committee comprising of Independent Directors is responsible for reviewing such statements for placement thereof for approval before the Board of Directors of the Corporate Debtor. The

Transaction Auditor has flagged the transactions with related parties and sticky debts/CWIP/Inventory as well as write off, which could have been discernible with reasonable diligence. Accordingly, we do not find any merit in the contention of the applicants that they, being independent directors, can not be alleged to have knowledge of what was transpiring in the Corporate Debtor during the period they held the office of Independent/Non-executive directors. The question before us is whether they could have with reasonable diligence flagged the wrong doings in the Corporate Debtor, which they have failed to. This aspect requires detailed examination of role of each of the applicant(s) with reference to the period during which such transactions occurred.

15. As regards reliance upon MCA circular no. 1 of 2020, the said circular takes note of Section 149 (12) which provides that the liability of an independent director (ID) or a non-executive director (NED) not being promoter or key managerial personnel would be only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. At para 4 of said circular, it has been stated that *“All instances of filing of information/records with the registry, maintenance of statutory registers or minutes of the meetings, or compliance with the orders issued by the statutory authorities, including the NCLT under the Act are not the responsibility of the IDs or the NEDs, unless any specific requirement is provided in the Act or in such orders, as the case may be. The responsibility of the NEDs, ordinarily arise in such cases, where there are no WTDs and KMPs.”* Accordingly, in our considered view, the said circular is not applicable to the

case made out in Section 66 of the Code, which requires existence of knowledge on part of Directors and makes them liable if it is proved that such knowledge on their part existed. Hence, we do not find any merit in the contention of the applicant in this relation that circular no 1 of 2020 exonerates the Independent/Non-executive directors from a liability in relation to fraudulent conduct of business, even if they can be said to be having knowledge of same. Section 66(1) of the Code makes any persons who were knowingly parties to the carrying on of the business liable to make contribution. Further, Section 66(2) of the Code makes a director liable to contribute, who has failed to exercise due diligence in minimising the potential loss to the creditors of the corporate debtor, when he ought to have known prospect of avoiding the commencement of a corporate insolvency resolution process. At this stage, we can not conclude that the Applicants either were not knowing parties or could not have known the imminent admission of Corporate Debtor into insolvency on the basis of quarterly financial results and annual financial reports provided to them.

16. As regards reliance on the deletion of names of the Applicants in C.P. 296 (MB) of 2021 filed by Union of India u/s 241-242 read with 339 of the Companies Act, 2013, it is noted that such deletion was ordered on the specific request of the petitioner Union of India that no relief is being claimed against the applicants therein. We appreciate that provisions of Section 66(1) of the Code and Section 339 of the Companies Act, 2013 are similar in nature, however, this Tribunal had not examined whether any order can be passed against the applicant(s) in terms of Section 339 of the Companies Act, 2013 as the deletion was ordered on withdrawal plea qua applicant(s) made by the

petition. Section 66 of the Code requires framing an opinion by the Resolution Professional, which, undisputedly, is reflecting as averments made in IA 2839 of 2024. The opinion of Union of India in a different proceedings, though on same facts, can not vitiate the opinion framed by the Resolution Professional, which is required to be considered and adjudicated by this Tribunal de hors the absence of relief sought by the Union of India in CP 296 of 2021.

17. In view of aforesaid, we are of considered view that the applicant's prayer for deletion can not be considered at this stage without examination of pleadings in IA 2839 of 2024 in full with respect to the culpability of the applicants in the affairs of the Corporate Debtor. Needless to say, the Applicant(s) shall be at liberty to argue their case on merit with respect to their role and no observation made in this order shall prejudice their case on this aspect.

18. In terms of the above, IA 5629 of 2024, IA 5630 of 2024, IA 3 of 2025, IA 4 of 2025 and IA 600 of 2025 are dismissed and disposed of.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)