

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

Rule 11 of NCLT Rules, 2016

IA 1860 OF 2020

IN

CP (I&B) No. 2300 OF 2018

Mr. Ankur Kumar

...Applicant

Vs.

Mr. Manas Enterprises and Others

...Respondents

In the matter of

Company Petition No. 2300 of 2018, Under
Section 43&44 of Insolvency and Bankruptcy
Code, 2016

Bank of India Limited

...Financial Creditor

Vs.

M/s Mahavir Roads & Infrastructure Private
Limited

... Corporate Debtor

Order delivered on: 10.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Harsh Sharma i/b Mr. Nahush Shah

For the Respondent : -----

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ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Application IA 1860 of 2020 in CP No. 2300 of 2018 is filed by the Mr. Ankur Kumar under Section 43&44 of the Insolvency and Bankruptcy Code, 2016 the matter of M/s Mahavir Roads & Infrastructure Private Limited seeking following relief;
 - a) *This Hon'ble Tribunal be pleased to declare that the transactions executed with parties as detailed in paragraph (m) are within the ambit of section 43(4)(b) and such transactions are made one year prior to the commencement of insolvency proceedings and such transactions be declared as preferential transaction.*
 - b) *This Hon'ble Tribunal be pleased to pass an order under Section 44(d) of the Code directing such non-parties who have entered into preferential transaction with the Corporate Debtor one year prior to the insolvency commencement date, to pay such sum in respect of benefits received by them from the corporate debtor to the Resolution Professional.*
 - c) *Issue such orders as may be necessary in the matter.*
2. The application for Corporate Insolvency Resolution Process is filed by the Bank of India having its head office at Star House, C-5 G Block, Bandra Kurla Complex, Bandra East, Mumbai-400051 and having its branch at Andheri LCB MDI Building, 1st Floor, 28, S.V. Road, Andheri (W), Mumbai-400058 (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

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was admitted by Hon'ble NCLT at Mumbai Bench vide order no. CP (I&B) 2300/NCLT/MB/20218 dated 21.02.2019 (order was received on 12.03.2019) where in Mr. Ankur Kumar (Regn. No. IBBI/IPA-002/IP-N00113/2017-18/10283) the under signed, was appointed as Interim Resolution Professional.

3. The applicant states that in the third CoC meeting held on 15.10.2019, M/s BKA & Company, Chartered Accountants was appointed to undertake transaction audit of the Corporate Debtor for the period commencing from 01.04.2017 to 12.03.2019. The appointed transaction auditor had provided the audited transaction report specifically highlighting the transactions of the Corporate Debtor under Section 43 of the Code, the Applicant further informed the CoC that the Corporate Debtor was involved in preferential transactions with non-related parties within the look back period as prescribed under the code, i.e. during the period of 01 year preceding the insolvency commencement date which is 12.03.2019 i.e. during 2018-19.
4. Thereafter, the Applicant after verifying the said transactions entered into between the Corporate Debtor and the non-related parties during the look back period, was of the view that the same be placed before the Adjudicating Authority seeking appropriate directions/relief from this Hon'ble Tribunal.
5. Applicant is the Resolution Professional of the Corporate Debtor appointed as an Interim Resolution Professional by an Order dated 21st February, 2019 passed by this Hon'ble Tribunal and appointed as Resolution Professional of the Corporate Debtor by the Committee of Creditors ("CoC") on 17th July, 2019
6. The Respondents are Manas Enterprises (Respondent No. 1), Deepak Freight Carriers (Respondent No. 2), GGS Infrastructure Private Limited (Respondent No. 3), Mahavir Construction (Respondent No. 4) and Hemera Enterprises (Respondent No. 5), of which Respondent Nos. 1

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and 4 are customers of the Corporate Debtor and Respondent Nos. 2, 3 and 5 are vendors of the Corporate Debtor and are parties other than related parties described u/s 24 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) who have entered into preferential transactions with the Corporate Debtor as laid down u/s 43 of the Code.

7. The details of payments in the nature of the Preferential Transactions made to the Respondents is as follows:

Sr. No.	Party	Relations hip with CD	F.Y.	Nature of transaction & section	Amount (in Rs).	Remark
1.	Manas Enterprises	Non-Related Party	2018 - 2019	Preferential Transaction - Section 43	9,96,597/-	Receivable amount adjusted with MSSC in February 2019 Ref: Page No. 22 & 23 of the transaction audit report
2.	Deepak Freight Carriers	Non-Related Party	2018 - 2019	Preferential Transaction - Section 43	22,13,000/-	Sanjose Supreme Mahavir from whom the corporate Debtor had to receive money, paid

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						amount to Deepak Freight Carriers on behalf of the CD even though there was no trade transaction between Deepak Freight Carriers and the CD since April 2017.
3.	GGS Infrastructure s Pvt Ltd ("GGS")	Non-Related Party	2018 - 2019	Preferential Transaction - Section 43	20,32,464/-	Sanjose Supreme Mahavir from whom the corporate Debtor had to receive money, paid amount to GGS on behalf of the CD even though there was no trade transaction between GGS and the CD since April 2017.
4.	Mahavir Construction and Hemera Enterprises	Non-Related Party	2018 - 2019	Preferential Transaction - Section 43	14,16,550/-	Amount receivable from Mahavir Construction was adjusted with payable balance of Rs. 25.29 Lakhs of Hemera Enterprises as on April 2017 though no transaction was made in FY 2017-18 between CD and Hemera Enterprises.

8. Respondent No. 3 has filed the reply stating that the Answering Respondent is a well-established business and on account of subsisting business relation, it empathized with the financial constrains faced by the Corporate Debtor and gave liberty to the Corporate debtor to remit the pending dues in pursuant to the numerous invoices raised, as and when

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the Corporate Debtor is financially stable. The Answering Respondent and the Corporate Debtor were transacting since 2011 and the Corporate Debtor was consistent in making delayed payments. Due to this, the Corporate Debtor directed one of its transacting parties, from whom he was to receive payments to directly transfer to the answering Respondent's account, as the Corporate Debtor owed a substantial amount of debt to it. In these circumstances, an amount of Rs. 20,32,464/- was transferred to answering Respondent's account by Sanjose Supreme Mahavir in the financial year 2018-19. Further, the transactions in Ordinary Course of business are out of purview of deeming fiction of Section 43 of the Code.

9. Heard the Ld. Counsel and perused the material on record.
10. On perusal of the Transaction audit of report placed with the application we find that the account of M/s Sanjose Supreme Mahavir Joint Venture had a credit balance of Rs. 919858 as on 01.04.2018 and an amount of Rs. 2213000 and Rs. 2032464, payable to Respondent No. 2&3 respectively as per books of account of the Corporate Debtor was transferred to M/s Sanjose Supreme Mahavir Joint Venture account. This transfer had merely affect of increasing the credit balance of M/s Sanjose Supreme Mahavir Joint Venture on one hand and decreasing the amount payable to Respondent no. 2&3/ In other words, the amount to be payable to creditor namely Sanjose Supreme Mahavir Joint Venture, Respondent NO. 2&3 together remained the same. It is not the case where the amount receivable from a debtor was sought to be adjusted again the amount payable R 2&3. Accordingly, we are of the view that no preference could be said to have been given to R 2&3 in the present facts and circumstances.
11. As regard Respondent NO. 1, we find that the Corporate Debtor had receivable from Mahavir Stone Supply Company, a related party and the said receivable is stated to have been adjusted against the amount payable

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to the Respondent NO. 1. No reply is filed by the Respondent NO. 1 ,accordingly, we are not aware whether any payment was actually made by the Mahavir Stone Supply Company to the Respondent No. 1 so as to discharge the liability of the Corporate Debtor. Nonetheless, the transfer of the amount receivable from a related party to a Creditor in preference of other creditors certainly amounts to a preferential transaction. In the absence of the any reply received from the Respondent NO. 1 we are unable to comment whether this transaction was in ordinary course of business.

12. As regard Respondent NO. 4, we find that the Corporate Debtor had receivable from Mahavir Construction, a related party and the said receivable is stated to have been adjusted against the amount payable to the Respondent NO. 4. No reply is filed by the Respondent NO. 4 accordingly, we are not aware whether any payment was actually made by the Mahavir Construction to the Respondent No. 4 so as to discharge the liability of the Corporate Debtor. Nonetheless the transfer of the amount receivable from a related party to a Creditor in preference of other creditors certainly amounts to a preferential transaction. In the absence of the any reply received from the Respondent NO. 4 we are unable to comment whether this transaction was in ordinary course of business.

13. Accordingly, we set aside the transaction with Respondent NO. 1 & 4, as more particularly stated in the Application and direct Respondent No. 1 & 4 to make payment of Rs. 9,96,597/-, and Rs. 14,16,550/- to the Corporate Debtor within 30 days from the date of communication of this Order, in case M/s Mahavir Stone Supply Company and M/s Mahavir Constructions has already remitted the money to them. If, M/s Mahavir Stone Supply Company and M/s Mahavir Constructions has not yet remitted the money to Respondent NO. 1 & 4, M/s Mahavir Stone Supply Company and M/s Mahavir Constructions shall be liable to make

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payment of Rs. 9,96,597/-, and Rs. 14,16,550/- to the Corporate Debtor within 30 days from the date of communication of this Order. In case the payment so ordered or any part thereof is made beyond 30 days, the amount remaining unpaid upon expiry of 30 days shall carry interest @ 12% p.a. and the amount remaining unpaid shall be paid along with interest.

14. In view of the foregoing, **IA 1860 of 2020** is **partly allowed** and **disposed of** accordingly.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE V.G. BISHT
MEMBER (JUDICIAL)**