

Sl. No. 1

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.07.2024 AT 03:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
TCP(IB)/87/7/AMR/ 2019	Admitted	7 of IBC	Stressed Assets Stabilization Fund Vs Sarita Synthetics and Industries Ltd
	IA(IBC)/309/2022	Sec 43 and 44 of IBC	Niran Miriyala, RP of Sarita Synthetics & Industries Limited Vs. Sri Vasavi Industries Limited & 11 others

ORDER

IA(IBC)/309/2022:

Present: Ms. Arushi, Proxy counsel for the Applicant.

Orders pronounced. IA(IBC)/309/2022 is allowed and recorded vide separate sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

IA (IBC)/309/2022

In

TCP (IB)/87/7/AMR/2019

Under Section 43 and 44 of the Insolvency and Bankruptcy Code, 2016

In the matter of

M/S SARITA SYNTHETICS & INDUSTRIES LIMITED

Between:

Mr. Niranjan Miriyala,
Resolution Professional of Sarita Synthetics
& Industries Limited

.....Applicant/Resolution Professional

AND

1. **Sri Vasavi Industries Limited**
V.R Agraharamrajam,
Andhra Pradesh-532127 ...Respondent No.1
2. **Mynah Industries Limited**
S No 66/2 Mugalapalli Village Hosur,
Tk Dharmapuri,
Tamil Nadu-635105 ...Respondent No.2
3. **Prashant Boorugu**
B 04 Oakyard Apartments 38th Cross Eastend C Main Road
9th Block Jayanagar
Bangalore, Karnataka ...Respondent No.3
4. **Chandra Sekhara Rao Kotla**
13-170, Puchchala Veedhi, Rajam,
Srikakulam 532127 AP ...Respondent No.4
5. **Kurella Venkata Narasimha Murthy**
No.701, 7th Main V V Nagar, HMT Layout,
Ganganagar, RT Nagar Post,
Bangalore, 560032, Karnataka ...Respondent No.5

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- 6. Butchi Venkata Ramana Murthyadavalli**
5-102, Main Road, Saradhi,
Rajam, Srikakulam,
Andhra Pradesh, 532127 ...Respondent No.6
- 7. Sahindra Jagannath Bhawale**
B/2/14, Nirman Classic,
Katraj - Kondhwa Road,
Pune, Maharashtra, 411046 ...Respondent No. 7
- 8. Arati Shindra Bhawale**
B/2/14, Nirman Classic,
Katraj - Kondhwa Road,
Gokulnagar, Pune,
Maharashtra, 411046 ...Respondent No. 8
- 9. Pawan Traders**
Bilia, Pur Road,
Bhilwara, Rajasthan – 311001 ...Respondent No. 9
- 10.ER Textiles Ltd.,**
1/433, Gariahat Road,
Block – 4a (4th Floor),
Jodhpur Park, Kolkata, Kolkata WB700068
ertextiles@gergroup.net ...Respondent No. 10
- 11.Shree Ratan**
Puchchala Veedhi, Rajam,
Srikakulam 532127 AP ...Respondent No. 11
- 12.Hero Wiretex P Ltd.,**
Anthakapally, Rajam,
Srikakulam Road,
Srikakulam AP 532127 ...Respondent No. 12

Date of order: 12.07.2024

CORAM:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

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Parties/Counsels Appearance:

For Applicant/RP : Mr. Y. Suryanarayana along with Mr. N N Sarma, Mr. Sachin Sharma, Advocates
For Respondents : None

ORDER
[Per: Bench]

1. The present Application is filed by the Applicant/Resolution Professional (“RP”) under section 43 and 44 of the Insolvency and Bankruptcy Code, 2016 (“IB Code”) seeking this Tribunal for cancellation and avoidance of preferential transactions and appropriate directions in respect of preferential transactions undertaken by the Corporate Debtor. The prayers as prayed in the application are as follows:

a. To pass an order directing Respondents as mentioned in the following table to whom preferential payments have been made under Section 43 of the Code, to repay the sums as mentioned hereunder against each Respondent

Sl. No	Respondent/Creditor	Amounts Rs.
1.	Sri Vasavi Industries Limited (R-1)	1,35,26,845
2.	Mynah Industries Limited (R-2)	1,67,581
3.	Pawan Traders (R-9)	1,57,500
4.	ER Textiles Ltd., - Hosur (R-10)	3,000
5.	Shree Ratan (R-11)	5,00,000
6.	Hero Wiretex P Ltd., (R-12)	13,00,000

b. In the alternative, direct Respondents 4 to 8, the members of the suspended board of the corporate debtor to contribute a sum of Rs.1,56,55,196/- to the corporate debtor.

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2. The brief facts leading to the instant application are as follows:
 - a. The Company Petition was filed by the Financial Creditor, Stressed Assets Stabilization Fund, Mumbai, and was admitted by this Tribunal on 01.10.2019, appointing the Applicant as the Interim Resolution Professional. Following the initiation of the Corporate Insolvency Resolution Process (CIRP), the suspended management of the Corporate Debtor appealed to the Hon'ble National Company Law Appellate Tribunal (NCLAT), which, on 07.02.2020, set aside the CIRP initiation order dated 01.10.2019 and dismissed the Section 7 Application. Aggrieved by this NCLAT order, the Financial Creditor appealed to the Hon'ble Supreme Court (Civil Appeal No. 3228 of 2020). The Supreme Court, on 15.04.2021, remanded the matter to the NCLAT for fresh consideration. Subsequently, the NCLAT, on 11.04.2022, upheld the validity of the CIRP order passed by the NCLT on 01.10.2019, thereby resuming the CIRP of the Corporate Debtor effective from 11.04.2022.
 - b. The Resolution Professional, after examining the records and books of accounts of the CD as provided by the suspended management and available at the registered office of the CD, is of the opinion that the CD has given preference to certain creditors. Therefore, such transactions clearly fall within the ambit of Section 43 of the IB Code.
 - c. Pursuant to the decision taken by the Committee of Creditors (CoC) in its meeting held on 27.10.2022, the Resolution Professional, on 05.08.2022, appointed M/s. R. Kabra & Co. LLP, Chartered Accountants, located at 6-3-1089, 1st Floor, Ramky House, Raj Bhavan Road, Somajiguda, Hyderabad – 500082, as the Transaction Auditor to

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conduct a Transaction Audit of the Corporate Debtor for the period from October 2017 to March 2022. The audit's scope includes:

- i. Verification of Preferential payments as laid down in section 43 of IBC
 - ii. Examination of transactions to determine any undervalued transactions as mentioned under Section 45 of IBC;
 - iii. Verification of Extortionate credit transactions involving the receipt of financial or operational debt as mentioned under Section 50 of IBC;
 - iv. Verification of fraudulent transactions under Section 66 OF THE IBC, 2016;
- d. The summary of the Transaction Audit made by the Transaction Auditor and further the observations made by the Resolution Professional from the information provided by the management of the corporate debtor are as under:

Preferential Transactions under Section 43:

(i) Respondent No. 1 – Sri Vasavi Industries Limited:

The corporate debtor had common directors with Sri Vasavi Industries Limited. During the audit period, the Corporate debtor has made repayment of Rs. 1,73,72,767/- and received an amount of Rs. 38,45,922/- in the bank accounts of the corporate debtor. Thereby, the company made net repayment of Rs. 1,35,26,845/-.

(ii) Respondent No. 2 – Mynah Industries Limited:

The Respondent No.3, Mr. Prashant Boorugu was a director and major shareholder of the Respondent No.2. During the audit period (i.e., from October 2017 till March 2022), the corporate debtor has made repayment of Rs. 1,67,851/- to the Respondent No.2.

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(iii) Knocking off of Creditors against receivables:

The corporate debtor has knocked off an amount of Rs.19, 60,500/- of certain creditors against receivables, details of which are as follows:

Name of the Party	Classification in Book	Date	Amount Debited (Rupees)	Party to whom Debited	Classification in Books
Pawan Traders (R-9)	Advance received from Customers	31.03.2019	1,57,500	Sun Enterprises	Trade Receivables
ER Textiles Ltd.,- Hosur (R-10)	Other Liabilities	02.04.2018	3,000	Chequered Flat Auto P Ltd.,	Trade Receivables
Shree Ratan (R 11)	Advance received from Customers	30.04.2019	3,00,000	JAK Traders P Ltd.,	Other Short terms advances
Shree Ratan (R 11)	Advance received from Customers	30.04.2019	2,00,000	K Kameswara Rao	Other Short terms advances
Hero Wiretex P Ltd., (R12)	Other Liabilities	30.04.2019	7,00,000	JAK Traders P Ltd.,	Other Short terms advances
Hero Wiretex P Ltd., (R12)	Other Liabilities	30.04.2019	5,00,000	Sampath Constructions Estates P Ltd.,	Other Short terms advances
Hero Wiretex P Ltd., (R12)	Other Liabilities	30.04.2019	1,00,000	Samvit Infrastructure P Ltd.,	Other Short terms advances
TOTAL			19,60,500		

- e. In view of the above transactions carried out by the Respondents as mentioned in the Transaction Audit report dated 08.10.2022 and as found by the Applicant, it is apparent that the business of the corporate debtor has not been conducted in the normal course and proper adherence to the sound and accepted principles of accounting and

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business practices have not taken place. The Respondents being the directors of the corporate debtor have not conducted the affairs of the corporate debtor properly and failed to discharge their statutory duties as provided by the law.

3. The Respondents numbered 1, 2, and 5 to 12 were set ex parte by this Tribunal vide order dated 22.08.2023, and the right to file a counter by Respondents numbered 3 and 4 was forfeited vide order dated 22.09.2023.
4. We have heard the submissions made by the learned counsel for the Applicant and perused the Application along with the documents enclosed therein.
5. Based on the information provided by the Applicant, it is evident that the transactions between the CD and R1, R2 and R 9 to R12 exhibit characteristics of being preferential in nature. The provision of Section 43 of the Insolvency and Bankruptcy code is reiterated below for reference:

Section 43: Preferential transactions and relevant time.

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if—

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

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(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfer —

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if—

(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

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6. In the instant case, the Corporate Debtor made payments to the R1, R2 and R 9 to R12, which squarely fall within the ambit of deemed transactions under Section 43 of the Code. Section 43(3) of the Code provides an exception for transactions conducted in the ordinary course of business, which are exempt from the provisions of Section 43. However, it must be established that such transactions are customary for both the Corporate Debtor and the recipient of the preference. Here, it cannot be demonstrated that the recipients were acting in the ordinary course of business, especially considering the Corporate Debtor's financial distress and the common directorship with Respondents 1 and 2. The payments made to Respondents resulted in placing the recipients, whether sureties, creditors, or guarantors, in a more advantageous position than they would have been under the asset distribution envisaged by Section 53 of the Code. These alleged preferential payments do not fall under any of the exceptions outlined in Section 43(3) of the Code.

7. The Hon'ble NCLAT in the case of **GVR Consulting Services Limited vs. Pooja Bahry 2023 SCC Online NCLAT 220** at para 23 states that *"There is no need to prove any fraudulent intent for a preferential transaction. When we look into the scheme of Section 43 of the Code, subsection (2), a clear statutory provision is that a corporate debtor shall be deemed to have given a preference if conditions as mentioned in paragraph 'a' and 'b' are fulfilled. When a provision provides for deeming fiction, 'deeming fiction' come into play on fulfilment of the requirement even if in fact it may not be so. In sub-section (3) of Section 43, certain exception has been provided. Thus those transactions which fall as exception under Subsection (3) can be*

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taken out of sub-section 2 of Section 43, rest shall be covered by deeming fiction”.

8. In the present case, as per the Transaction Auditor's Audit Report dated 08.10.2022, the transactions in question have been identified as preferential transactions, where the Corporate Debtor has displayed a preference in making repayments to related parties R1 and R2. Specifically, it has been observed that the Corporate Debtor offset an amount totaling Rs. 19, 60,500 against receivables owed to creditors R9 to R12, actions that fall within the purview of Section 43 of the Insolvency and Bankruptcy Code, 2016. The Transaction Auditor, in its report, has explicitly identified these transactions and concluded that they are governed by the provisions of Section 43 of the IB Code.
9. Therefore, in view of the foregoing observations, We hereby direct the following in accordance with section 43 of the Code :
 - i. Respondent No. 1 is directed to repay the amount of Rs.1,35,26,845/- to corporate debtor in terms of section 44(1) of the IB Code, 2016.
 - ii. Respondent No. 2 is directed to repay the amount of Rs.1,67,851/- to corporate debtor in terms of section 44(1) of the IB Code, 2016.
 - iii. Respondent No. 9 is directed to repay the amount of Rs.1,57,500/- to corporate debtor in terms of section 44(1) of the IB Code, 2016.
 - iv. Respondent No. 10 is directed to repay the amount of Rs.3,000/- to corporate debtor in terms of section 44(1) of the IB Code, 2016.
 - v. Respondent No. 11 is directed to repay the amount of Rs.5,00,000/- to corporate debtor in terms of section 44(1) of the IB Code, 2016.

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- vi. Respondent No. 12 is directed to repay the amount of Rs.13,00,000/- to corporate debtor in terms of section 44(1) of the IB Code, 2016.
10. Therefore, the above Respondents No.1, 2, 9, 10, 11 & 12 shall deposit the said amounts within a period of 30 days from the date of order with the corporate debtor who in turn should distribute the same to the erstwhile members of the CoC immediately in their respective share.
11. In the result, IA (IBC)/309/2022 in TCP (IB)/87/7/AMR/2019 is allowed and disposed of. No costs.



SANJAY PURI
MEMBER (TECHNICAL)



RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

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