

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301  
IA 787 of 2020 in CP(IB) 257 of 2019

**Order under Section 43 & 44 IBC**

**IN THE MATTER OF:**

George Samuel RP For Jason Dekor Pvt Ltd  
V/s  
Yogeshkumar Jashwantlal Thakkar & Ors

.....Applicant

.....Respondent

**Order delivered on: 13/05/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**  
**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-Sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE ADJUDICATING AUTHORITY  
THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT - 2**

**IA No. 787 of 2020  
in  
CP (IB) No. 257/ NCLT / AHM / 2019**

(Application under Section 43 and 44 of the Insolvency and Bankruptcy Code, 2016 seeking directions for avoidance of preferential transactions with the directors of the Corporate Debtor)

Mr. George Samuel, RP

... Applicant

**Versus**

Yogeshkumar Jashwantlal Thakkar and Ors.

... Respondents

**MEMO OF PARTIES:**

George Samuel  
Resolution Professional of Jason Dekor Private Limited  
110, Atria - B,  
Sargasan Circle,  
Gandhinagar - 382421

...Applicant

**Versus**

Yogeshkumar Jashwantlal Thakkar  
A-501, Palak-2,  
Opp. Shreeji Enclave,  
Anandnagar,  
Ramdevnagar Road, Satellite,  
Ahmedabad - 380015

Jayeshkumar Kantilal Thakkar  
R/7, Sharanam-5,  
Prernatirth Road,  
Jodhpur, Satellite,  
Ahmedabad - 380015

Sonal Yogeshkumar Thakkar  
A-501, Palak-2, Opp. Shreeji Enclave,  
Anandnagar, Satellite,  
Ahmedabad-380015

...Respondents

**Order pronounced on: 13.05.2024**

**Coram: Mrs. Chitra Hankare, Member(J)**  
**Dr. Velamur G Venkata Chalapathy, Member(T)**

Appearance:

For the RP	: Mr. Arjun Sheth, Adv. a.w Mr. Rajiv Chawla, Adv
For the SRA	: Mr. Nipun Singhvi, Adv. a.w Ms. Pragati Tiwari, Adv.
For the IOB/CoC	: Mr. Anip Gandhi, Adv. a.w Mr. Raju Kothari, Adv.
For the SM	: Mr. Dhruvit Shah, Adv. a.w Mr. Kiran Shah, FCA
RP in person	: Mr. George Samuel

**JUDGMENT**

1. This application is filed by the Applicant under Sections 43 and 44 of the Insolvency & Bankruptcy Code, 2016 ("the Code hereinafter) for seeking necessary directions against the Respondents for avoidance of preferential transactions and making personal contributions to the assets of Jason Dekor Private Limited ("the Corporate Debtor" hereinafter).
2. The brief facts of the case are that a petition under Section 7 of the Code being Company Petition (IB) No. 257 of 2018 was filed by Indian Overseas Bank against the Corporate Debtor. This Tribunal was admitted the said petition vide order dated

19.12.2019 and declaring moratorium and initiating Corporate Insolvency Resolution Process ("CIRP" hereinafter) of the Corporate Debtor. It is submitted that this Tribunal appointed the applicant as the Interim Resolution Professional of the Corporate Debtor and subsequently confirmed the applicant as the Resolution Professional. A public announcement dated 26.12.2019 was made by the applicant inviting claims from various class of creditors of the Corporate Debtor.

3. It is further submitted that it has come to his knowledge on going through the books of accounts of the Corporate Debtor about certain transactions which prima facie seem to be preferential in nature under Section 43 and 44 of the Code. The applicant brought the same to the notice of the CoC during the course of the fifth meeting convened on 02.06.2020. It is submitted that the nature of the transactions was again discussed during subsequent meetings of the CoC. The applicant as well as CoC members sought clarification with regards to the nature of the transactions from the suspended management. However, no explanation to substantiate that the transactions are not preferential has been forthcoming from the suspended management till date and the explanations provided are only of general nature.

4. It is submitted that the transactions have been undertaken through the respective loan as well as current accounts of the Respondents. The applicant has stated that R 1 and R 2 are the suspended management of the CD and R 3 is related party who have routed the preferential transactions. It is stated that the application that R1 received a net amount of Rs.51,35,462, R 2 received net amount of Rs.37,49,445 and R 3 received a net amount of Rs.3,69,274. The total amount received under the alleged transactions amounted to Rs 92,54,181 transacted through respective loan as well as current account of the respondents.
5. The following prayers are made by the applicant in this application :
- a) order and direct the Respondent No. 1 to pay Rs. 51,35,462/- being the preferential amount given to the director during the period of two years preceding the insolvency commencement date in accordance with Section 43 and 44 of the Code; and/or
  - b) order and direct the Respondent No. 2 to pay Rs. 37,49,445/- being the preferential amount given to the director during the period of two years preceding the

insolvency commencement date in accordance with Section 43 and 44 of the Code;

c) order and direct the Respondent No. 3 to pay Rs. 3,69,274/- being the preferential amount given to a related party during the period of two years preceding the insolvency commencement date in accordance with Section 43 and 44 of the Code;

d) Any such order and or other further relief as the Hon'ble Tribunal deems fit and proper in the interest

6. The affidavit in Reply filed by Respondent No.1 – Mr. Yogeshkumar Jashwantlal Thakkar/Suspended Management of the Corporate Debtor – M/s. Jason Dekor Private Limited, wherein it is submitted that the applicant / RP has observed that Respondent no. 1 has withdrawn Rs. 12,36,316/- from the bank account of Corporate Debtor during the financial year 2017-18 and out of which deduction of Rs. 6,42,593/- as business expenses is allowed and thus, the applicant has arrived to Rs.5,93,767/- as preferential transaction for the said year. In response of the above observations the Respondent no.1 submitted that on account of the financial crunch in the Corporate Debtor and in absence of non-availability of the financial instructions/ banks to the

Corporate Debtor, it was the duty of the R1 and other directors to arrange funds to run the Corporate Debtor and accordingly, R1 has obtained loans in personal capacity which was transferred directly to the Corporate Debtor. Hence, it was also the duty of the R1 to serve the loan against its principal amounts and interest thereon which was met out from the bank account of the Corporate Debtor as the said loan was utilized by the Corporate Debtor for the business purpose. Further, the said transaction can be verified from the ledger account of R -1 maintained with Corporate Debtor as well as loan account of R -1 with Kotak Mahindra Bank Limited as well as Bank of India in order to justify that the loan received was transferred to the Corporate Debtor for the consent period. It is further submitted that out of the amount of the total withdrawals of Rs.5,963,767/- as observed by the applicant, the total of Rs.19,34,605/- was utilized for repayment of above referred loan which result into excess payment of Rs.13,40,838/-.

7. It is further submitted by the R1 that the applicant has observed the balance withdrawal of Rs.8,24,193/- during the financial year 2018-19 as preferential transaction against which R1 had paid Rs. 36,000/- as against the payment of

loan obtained by R1 which is taken into account of the Corporate Debtor being the same having actually availed by the Corporate Debtor and balance Rs.7,88,193/- utilized for other expense for the Corporate Debtor during the liquidity crunch and non-availability of financial facilities. Hence, the said utilization of Rs.7,88,193/- is for business purpose only. Therefore, the amount withdrawn of Rs.7,88,193/- by the R-1 as observed by the applicant as preferential transaction is an incorrect observation.

8. It is also submitted that the loan account of the R1 as maintained with the Corporate Debtor for the financial year 2019, the applicant has observed Rs.9,90,628/-. The said withdrawal from the loan account against which R1 has paid Rs.12,52,239/- for repayment of term loan obtained by R1 which is taken into account of the Corporate Debtor which results into contribution of Rs.2,61,611/- by the R -1 to the Corporate Debtor and not to be reconsidered as preferential transaction by the R1. Hence, the utilization of Rs.9,90,628/- is for business purpose only. Therefore, the amount withdrawn by the R1 and observed by the Applicant as preferential transaction is an incorrect observation. In addition to the above, R1 submitted that there is a credit balance of



Rs.48,29,813.93/- in the name of R-1 as on 19.12.2019 as reflected in the loan ledger account of the R1 maintained by the Corporate Debtor. Hence, the question of preferential transaction as observed by the applicant does not arise.

9. It is further submitted by the R1 that the present application is defective and non-maintainable for the above mentioned reasons where the applicant has failed to understand the transactions which the R1 had entered into in the interest of the Corporate Debtor and the said transaction was made during the ordinary course of business for which the respondents have utilized their personal funds and even taken loans for the ultimate survival of the Corporate Debtor. Hence, it can be stated that the present application so preferred by the applicant has ultimately hampered the Corporate Insolvency Resolution Process of the Corporate Debtor.
10. The affidavit in reply filed by the Respondent no. 2 – Mr.Jayeshkumar Kantilal Thakkar/ Suspended Management of the Corporate Debtor – M/s. Jason Dekor Private Limited, wherein it is submitted that the same grounds/ reasons which are mentioned by the respondent no.1 in its reply and summarized by us in the above paragraphs. Further submitted by the R2 that the present application is defective and not

maintainable for the above mentioned reasons where the applicant has failed to understand which the R2 had entered into in the interest of the Corporate Debtor.

11. The affidavit in reply filed by the Respondent no. 3 – Mrs. Sonal Yogeshkumar Thakkar / Suspended Management of the Corporate Debtor – M/s. Jason Dekor Private Limited, wherein it is submitted that the same grounds/ reasons which are mentioned by the respondent no.1 in its reply and summarized by us in the above paragraphs. Further submitted by the R3 that the present application is defective and not maintainable for the above mentioned reasons where the applicant has failed to understand which the R3 had entered into in the interest of the Corporate Debtor.
12. The applicant filed their rejoinder, wherein it is submitted against the reply of respondent no.1 that the R1 has failed to provide following proof;
  - a.) Date and amount of Personal Loans taken and how much amount was brought into the business of Corporate Debtor.
  - b.) By what authority the personal loans of Respondent no. 1 were utilized for the business to consider the same as for the ordinary course of business of the Corporate Debtor.

c.) The dates when Rs.19,34,605/- said to have paid for the repayment of personal loans and proof that the same is repayment of loans taken for the Corporate Debtor.

The copies of bank statements/loan accounts of Kotak Mahindra Bank Limited and Bank of India as provided by the R1 do not substantiate any statements made in paragraph nos. 4 and 5. With respect to content of para 4 and 5 of the Affidavit in Reply, the Respondent no. 2 has stated that he has made payment of Rs. 7,06,752/- towards the repayment of loans in his personal name with HDB Financial Services (Gold Loan) from his account with the Bank of India, and to L&T Finance (Home Loan Account) which was taken for the purpose of business of the Corporate Debtor.

The Respondent No. 2 has also stated that the balance amount of Rs. 4,29,095/- was used to pay the loans from other parties and for meeting expenses of the Corporate Debtor. As proof, the Respondent No. 2 has presented copies of his bank statement with L&T Finance, HDB Financial Services and Bank of India. However, the Respondent No. 2 failed to provide any proof of the following:

- a) Date and amount of Personal Loans taken and how much amount was brought into the business of Corporate Debtor;
- b) By what authority the personal loans of Respondent No. 2 were utilized for the business to consider the same as for the ordinary course of business of the Corporate Debtor;
- c) The dates when Rs.11,35,947/- have been utilized for repayment of personal loans and the proof that same is repayment of loans taken for the CD.

The copies of Loan Accounts with L&T Finance, Bank of India and HDB Financial Services as provided by the Respondent No. 2 do not substantiate any statements made in Para 4 or 5.

13. It is further submitted with respect to content of para 4 and 5 of the Affidavit in reply, the Respondent No. 3 has stated that she has made payment of Rs.1,55,438/- towards the repayment of loans amounting to Rs. 32,00,000/- availed in the year 2014 in the personal name of Respondent No. 3 with Kotak Mahindra Bank Limited which was taken for the purpose of business of Corporate Debtor. The Respondent No. 3 also stated that Rs.16,852/- was utilized for meeting expenses of the Corporate Debtor. As proof, the Respondent No. 3 presented copies of Bank statement with Kotak Mahindra Bank Ltd from 1.12.2017.

However, the Respondent No. 3 has failed to provide any proof of usage of Rs. 32,00,000/- in the business of the Corporate Debtor. The copies of bank statement of Loan Accounts of Kotak Mahindra Bank Ltd as provided by the Respondent No. 3 do not substantiate any statements made in para 4 or 5.

14. The Respondent No.1 to 3 as well as Applicant has filed their written submissions which are taken on record.
15. Heard the submissions made by the counsels of both the parties and perused the documents on record.
16. Observations:
  - i. It is observed from the documents of the minutes of 7<sup>th</sup> COC held on 02.09.2020, the PUFEE transactions reported by the RP amounted to Rs.6,97,401 (Mrs. Sonal Thakkar – wife of Director), Rs.63,14,611 (Mr Yogesh Thakkar (Director), Rs 38,14,445 . The members of suspended board stated that amounts that were withdrawn was for business purpose only and when the accounts were frozen, they had borrowed personal loans to fund the business, which was repaid. The RP did not agree with the contention and directed them to provide proof in writing before 15<sup>th</sup> Oct 2020.

- ii. There is no cooperation from the suspended management who have also objected to the plan that was approved without giving proper details of the transactions mentioned by RP.
- iii. We have not been submitted any proof of financial statement, board approval or auditor certificate that the Directors had provided loans to the company during the stated period. There is no denial of the transactions reported in the application through account statement by the respondents. The respondents were not transparent in using the funds of the CD which amounts to diversion or utilising the funds for their preferential use as they have not performed the duty of protecting the funds of CD and even if a loan was to be given the same has to be accounted. Any financial transactions in to the CD or out of the CD should be accounted properly and audited and balance sheet prepared and signed stating the financial affairs, which apparently is not done. The submissions of the Respondents have been examined and found that there is an admission but reasons are not satisfactory. The RP has established the charge in terms of Sec 43(4)(a) and the transactions tantamount to withdrawal of funds for their personal use or repaying their own debt or liability in terms of 44(1)(d) of the IB Code.

17. Hence, we pass the following order:

**ORDER**

I. Application is allowed.

R1, R2 and R3 named in the petition are directed to deposit the amount of Rs. 51,35,462/-, Rs.37,49,445/- and Rs. 3,69,274/- respectively within 15 days from the date of this order with the CD(RP/Liquidator) who in turn should distribute the same to erstwhile members of COC immediately in their respective shares as per the provisions of IBC 2016.

-Sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-Sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**