IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH-I

MA No. 1574/MB/C-I/2018

In

C.P (IB) No.1024/MB/C-I/2017

An application under Section 43,45 and66 of the Insolvency and Bankruptcy Code, 2016
Filed by

Mr. Anil Goel
Liquidator of
Charbhuja Industries Private Limited

...Applicant

Versus

Mr. Chandrakant RaoSaheb Gawade & Ors.

...Respondents

In the matter of

Punjab National Bank

...Financial Creditor

Versus

Charbhuja Industries Private Limited ... Corporate Debtor

Order Pronounced on: 21.02.2024

Coram:

Hon'ble Member (Judicial)	:	Justice V.G. Bisht (Retd.)
Hon'ble Member (Technical)	:	Mr. Prabhat Kumar

Appearances:

For Applicant	:	Ms. Prashansa Agarwal i/b Ms. Shalya, Advocates.
For Respondent No.1 and 2	:	Mr. Amir Arsiwala, Advocates
For Respondent No. 4 and 6	:	Mr. S.K. Jain, Ld. Authorized Representative

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. The Applicant has filed the present Application for avoidance of transactions impugning certain transactions. CIRP commenced against the Corporate Debtor vide order dated 19.06.2017. On 06.12.2017, the Applicant herein (in his capacity as the RP) appointed Mr. Vishal Sharma (Chartered Accountant) from Advarisk, SLO Technologies Pvt. Ltd. (hereinafter "Forensic Auditor") for conducting the transactional audit of the Corporate Debtor.

2. The Corporate Debtor deals in agro-based products and has its registered office in Mumbai, Maharashtra. Respondent Nos. 1 and 2 are suspended directors and shareholders; Respondent No.3 is the erstwhile shareholder who held 36% of the shareholding of CD until 2015. Respondent No.4 is the wife of R3 who held 26% at the time of initiation of CIRP and R5 is the HUF of R3 which held 14%. R6 is the mother of R3. Respondent Nos. 7 to 45 are sundry creditors and Respondent Nos. 47 to 56 are sundry debtors.

3. The Applicant submits that the Forensic Audit has been performed on the Corporate Debtor for a period from 19.06.2015 to 19.06.2017 (hereinafter "scrutiny period") and in its report dated 26.02.2018 (Forensic Audit Report), has reported grave discrepancies and mismatches in the accounts of the Corporate Debtor that are either preferential and/ or undervalued and/or fraudulent or wrongful under various provisions of the IBC and are not only categorically barred under the IBC, but also attract prosecution. The Forensic Audit Report was prepared based on the Financial Statements and other public documents of the Corporate Debtor as other

information such as back-up of accounting software "Tally" was not made available by the Key Managerial Personnel of the Corporate Debtor.

4. The Forensic Audit Report was received on 26.02.2018. However, to identify parties involved in avoidable transactions and for correct classification of the transactions under section 43, 45, 50 and 66 of the IBC the Applicant requested complete back-up of books of account of the Corporate Debtor from the Key Managerial Personnel through email. After following up rigorously the complete back-up of books of account being maintained in two different accounting software "Tally" and "SAP" was provided through email on 26.10.2018.

Part – I Preferential Transactions

5. For the purpose of transactions under section 43(1) of the Code, the Applicant based on the Forensic Audit Report and from the Financial Statements has observed that the Corporate Debtor has undertaken preferential transactions explained in subsequent paragraphs, which are avoidable under the IBC. The Applicant submits that the Corporate Debtor has made payments to certain creditors and has thereby put them in a beneficial position than they would have been in the event of distribution of assets being made in accordance with section 53 and therefore Respondents who are beneficiaries to the Preferential Transactions explained hereunder are referred as **"Beneficial Creditors".**

6. It is submitted that at the closure of Financial Year 2014-15 the Corporate Debtor had outstanding trade payables to the tune of INR 7.26 crores of which INR 6.99 crores was owed to **Respondent No.7 to 45**. The aforementioned Respondents are operational creditors of the Corporate Debtor and the debt of INR 6.99 crores to these Respondents is for the period before the initiation of CIRP therefore it is an

antecedent operational debt of the Corporate Debtor. The details of debt and amount payed is tabulated hereinbelow:

Sr. No	**Beneficial Creditor**	**Opening balance as on 31.03.2015**	**Payment made in F.Y. 2015-16**	**Amount of Liability of Beneficial Creditor under section 45(1)(d)**
1	Giriraj Industries (Respondent No.7)	(3,899,700)	3,899,700	3,899,700
2	Guru Trading Co (Respondent No.8)	(5,279,600)	5,280,000	5,280,000
3	Ishwarlal & Co. Junagadh (Respondent No.9)	(5,056,000)	5,056,000	5,056,000
4	Kaushal Enterprise (MUM) (Respondent No.10)	(359,820)	359,820	359,820
5	Natvarlal Harivallabhai Patel. (Respondent No.11)	(6,731,400)	6,732,000	6,732,000
6	Pabari Commission Agency (Respondent No.12)	(1,387,350)	1,387,350	1,387,350
7	Maheshbhai B. Rupareliya (Respondent No.13)	(1,500,000)	1,500,000	1,500,000
8	Sureshkumar V. Mashru (Respondent No.14)	(222,300)	222,300	222,300
9	Kanji Ramji Nathani (Respondent No.15)	(950,000)	950,000	950,000
10	Kanji Ramji Nathani Patel	(300,000)	300,000	300,000

	(Respondent No.16)			
11	Hariram Kanaram (Respondent No.17)	(950,000)	950,000	950,000
12	Ramchandra Jagmalram (Respondent No.18)	(950,000)	950,000	950,000
13	Jagmalram Rajuram (Respondent No.19)	(550,000)	550,000	550,000
14	Vishnaram Ruddharam (Respondent No.20)	(1,500,000)	1,500,000	1,500,000
15	Fangaluram Bagaduram (Respondent No.21)	(750,000)	750,000	750,000
16	Pragatya Impex (Respondent No.22)	(9,239,300)	9,240,000	9,240,000
17	Davra Ajaybhai Babubhai (Respondent No.23)	(1,500,000)	1,500,000	1,500,000
18	Barasiya Jentilal Ravajibhai (Respondent No.24)	(1,500,000)	1,500,000	1,500,000
19	Prashantbhai M Rooparelia (Respondent No.25)	(1,400,000)	1,400,000	1,400,000
20	Kamleshbhai G Sorathiya (Respondent No.26)	(1,500,000)	1,500,000	1,500,000
21	Zala Varshaben (Respondent No.27)	(1,500,000)	1,500,000	1,500,000
22	Maganlal Viradiya (Respondent No.28)	(1,200,000)	1,200,000	1,200,000

23	Sanjay B Thummar (Respondent No.29)	(1,000,000)	1,000,000	1,000,000
24	Vijaybhai M Nasit (Respondent No.30)	(2,224,880)	2,225,000	2,225,000
25	Nileshbhai M Nasit (Respondent No.31)	(1,499,976)	1,500,000	1,500,000
26	Mukeshbhai G Mungara (Respondent No.32)	(1,500,000)	1,500,000	1,500,000
27	Hareshbhai V Pipaliya (Respondent No.33)	(1,499,946)	1,500,000	1,500,000
28	Rajeshbhai R Virani (Respondent No.34)	(1,400,352)	800,000	800,000
29	Rajendrasinh V Gohel (Respondent No.35)	(799,770)	1,400,000	1,400,000
30	Mansukhbhai Nasit (Respondent No.36)	(1,199,780)	1,200,000	1,200,000
31	Rajnikant K Vekariya (Respondent No.37)	(299,788)	300,000	300,000
32	Dineshbhai N Thummar (Respondent No.38)	(1,399,794)	1,400,000	1,400,000
33	Sanjaykumar G Savaliya (Respondent No.39)	(1,499,976)	1,500,000	1,500,000
34	Jagdish D Thummar (Respondent No.40)	(500,499)	500,000.00	500,000
	Kantilal G		2,000,000	2,000,000

35	Thummar (Respondent No.41)	(1,999,992)		
36	Bhagirathsinh M Gohil (Respondent No.42)	(1,200,158)	1,200,000	1,200,000
37	Ashokbhai J Thumar (Respondent No.43)	(1,199,895)	1,200,000	1,200,000
38	Pramodbhai K Lakhadharia (Respondent No.44)	(1,299,752)	1,300,000	1,300,000
39	Narendrabhai R Thumar (Respondent No.45)	(1,199,895)	1,200,000	1,200,000
	TOTAL	**(69,949,923)**	**69,952,170**	**69,952,170**

7. The Applicant submits that the said antecedent debt of INR 6.99 crores has been paid by the Corporate Debtor in full to all the Respondent No.7 to 45 in F.Y 2015-16. It is submitted that payment of antecedent operation debts owed to Respondent No.7 to 45 by the Corporate Debtor has resulted in putting the aforementioned Respondents in a beneficial position then they would have been in the event of a distribution of assets being made in accordance with section 53 of IBC and therefore Respondent No.7 to 45 are Beneficial Creditors.

8. The Applicant submits that the said antecedent operation debt owed to the Beneficial Creditors was satisfied out of an inward cash flow from sale of stake held in Lasenor India Private Limited (hereinafter 'Lasenor'). The transactions undertaken by the Corporate Debtor with the Beneficial Creditors during the F.Y 2015-16 are preferential transactions as explained in section 43 of the Code.

9. As far as second transaction is concerned of paying-off installments of unsecured loans, the Corporate Debtor's accounts were declared NPA on 18.11.2015. It is

therefore submitted that the officers of the Corporate Debtor were well aware of the importance of paying-off debts of secured creditors and exercise due-diligence in minimizing any loss to the Corporate Debtor.

10. The Applicant submits that it is evident from the Financial Statement for F.Y 2016-17 and 2017-18 the Corporate Debtor has made payments of approximately Rs.18.35 lakhs and Rs.5.35 lakhs respectively, towards payment of installments of an unsecured loan extended by Kotak Mahindra Bank Limited (Respondent No.46). It is submitted that being an unsecured creditor, the debt owed to Respondent No.46 has a lower priority as compared to debts owed to Secured Creditors of the Corporate Debtor.

11. The payment of a total sum of approximately Rs. 23.70 Lakhs to Respondent No.46 as payments towards installments of an unsecured loan during F.Y 2016-17 and 2017-18, the Corporate Debtor has put Respondent No.46 in a beneficial position then it would otherwise be in the event of distribution of assets being made in accordance with section 53 of IBC.

PART II- Undervalued Transactions

12. It is submitted that the Corporate Debtor has divested the shareholding held in Lasenor India Private Limited at an undervalued price. Corporate Debtor was holding 49.93% equity stake in Lasenor from F.Y. 2012-13 to F.Y 2014-15. The Corporate Debtor sold-off its entire stake in FY 2015-16 for a total consideration of Rs.7,23,00,161/- (Rupees seven crores twenty-three lakhs one hundred sixty-one only) to one Ms. Rekha Agarwal (Respondent No.4), who is also a shareholder in the Corporate Debtor with an ownership of 26.83% and also a director of Lasenor and one Ms. Aparna Agarwal (Respondent No.6). The Applicant submits that as per Lasenor's net worth for the F.Y 2015-16, the net worth attributable to the

Corporate Debtor's stake in Lasenor ought to have been Rs. 9,13,69,306/- (Rupees nine-crore thirteen lakh sixty-nine thousand three hundred six only). Therefore, the Corporate Debtor disposed of its entire stake in Lasenor at an undervalue of Rs.1,90,69,145/- (Rupees one crore ninety lakhs sixty-nine thousand one hundred forty-five only) and such a transaction of disposing of its stake in another company does not lie in the ordinary course of business of the Corporate Debtor. The tabular representation of the aforesaid transaction for ready reference is reproduced hereinbelow:

Sr.No.	Beneficial Transferee	Stake of Lasenor sold by Corporate Debtor	Value as per net worth of Lasenor for F.Y 2015-16	Value at which stake is sold to Beneficial Transferee	Amount of Contribution to be made by the beneficial transferee
1	Aparna Agarwal	39.69%	7,26,40,540 /-	5,74,80,161 /-	1,51,60,379 /-
2	Rekha Agarwal	10.23%	1,87,28,767 /-	1,48,20,000 /-	39,08,767/-
Total		**49.93%**	**9,13,69,306 /-**	**7,23,00,161 /-**	**1,90,69,145 /-**

13. The Applicant submits that the aforesaid amount of Rs. 7.23 cr. so realised from sale of shares from Respondent No. 4 and 6 was used by the Corporate Debtor to repay sundry creditors during April 2015 to August 2015. The Applicant submits that the identity/addresses of these sundry creditors is not known. No records/ documents of the Corporate Debtor provide the details thereof. There are no invoices on record or KYC details of the accounts of these creditors. The suspended directors and shareholders have also stated that they are not aware of their details. It is thus submitted that these are 'dummy transactions' merely created for the purpose of taking out

funds of the Company.

14. For the purpose of ascertaining relevant time, the Applicant submits that the insolvency commencement date in this matter is 19.06.2017 and the Forensic Auditor at the instance of the Applicant has, for the purpose of assessing evidence relating to the value of transactions considered a scrutiny period of two years immediately preceding the insolvency commencement date i.e. 19.05.2015 to 19.05.2017. Respondent No. 4, Ms. Rekha Agarwal being a 26.83% shareholder in the Corporate Debtor is a related party under section 5(24)(j), IBC. Moreover, the Applicant has a reasonable apprehension that Respondent No. 4, Ms. Rekha Ashwin Agarwal and Respondent No. 6 Ms. Aparna Agarwal are inter-related and both are related to Respondent No. 3 and plausibly members of Respondent No. 5, Ashwin Agarwal (HUF). Also, the aforementioned undervalued transaction is not disclosed as a related party transaction in the financial statement for F.Y 2015-16.

15. The second undervalued transaction sought to be impugned by the Applicant is that of write-off of bad debts in the books of the Corporate Debtor. In the F.Y. 2015-16 the Corporate Debtor had trade receivables of INR 23.47 crores however, the same were reduced to INR 1.47 crores in the F.Y 2016-17 as is evident from the Financial Statement as on 31st March 2017 of the Corporate Debtor.

16. The Applicant submits that a significant sum of Rs. 22.52 crores out of the total trade receivables of INR 23.47 crores was due from ten debtors of the Corporate Debtor i.e. Respondent No.47 to Respondent no.56. The Corporate Debtor received a meagre amount of Rs. 1,11,71,059/- (Rupees one crore eleven lakhs seventy-one thousand fifty-nine only) from all the said Respondents against the total trade receivable of INR 22.52 crores in cash during the F.Y 2016-17. The

balance amount of approximately INR 21.40 crore was written-off by the Corporate Debtor without any reasonable grounds and efforts for recovery. It is submitted that trade receivables are property of a Corporate Debtor and by writing-off trade receivables to the tune of INR 21.40 crores the Corporate Debtor has waived-off its right to claim this due from the Respondents and thereby in effect has caused transfer of property of the company in favour of the Respondents without any consideration and such transaction is equivalent to making gift of the property of the Corporate Debtor.

Part III - Fraudulent and Wrongful Trading Under Section 66

17. It is submitted that the aforesaid undervalued transactions were carried out and/or tantamount to defrauding the creditors, or can be classified as wrongful trading. Further, the Corporate Debtor was not in operation as at FY 2015-16 and the Corporate Debtor being declared an NPA on 18.11.2015, proceedings by secured creditors for recovery of dues was imminent and that the Respondents, particularly Respondent Nos. 1 and 2, being the directors of the Corporate Debtor would have known, or ought to have known, or anticipated such recovery actions against the Corporate Debtor.

18. The Applicant has also brought in the following transactions within the purview of fraudulent and wrongful trading under Section 66 of the Code.

    i. The entire 49.9% stake of the Corporate Debtor in Lasenor was disposed of at an undervalued price of INR 7,23,00,161 (Rupees seven crores twenty-three thousand one hundred sixty-one only) instead of the fair and accurate value of the shareholding of Rs. 9,13,69,306/- (Rupees nine-crore thirteen lakh seventy-one thousand nine hundred only). The Applicant iterates that Lasenor was a profit making entity with an increasing net worth and the sale was executed at a price lower than the book value only to receive a ready and immediate cash flow.

ii. The shareholding was transferred to Respondent Nos. 4 and 6, who are related parties and the sale proceeds were utilized to pay off outstanding trade payables of INR 6,30,00,000/- (Rupees six crores and thirty lakhs only). It is submitted that as the Corporate Debtor was not a going concern, no reasonable presumption can be drawn that the pay-off was effected with the purpose of continuing and keeping up with the ordinary trade and course of business. Further, that the trade payables were paid-off to the benefit of certain creditors with a view to keep the Corporate Debtor's assets out of the access of secured creditors.

iii. Out of trade receivables to the tune of INR 23.47 crores at the closure of F.Y 2016, INR 21.40 crores were written-off and only INR 14.47 crores was entered as trade receivables in the Corporate Debtor's Balance Sheet as at 31.03.2017.

Submissions advanced by Respondent No.1 and 2.

19. The Respondents No. 1 and 2 on the issue of transfer/sale of the Corporate Debtor shareholding in Lasenor at an alleged undervalued price submits that the entire claim of the Applicant for undervaluation is based on the basis of price of Rs. 15.50 per share in respect of fresh equity issued to Lasenor. However, the divestment of the Corporate Debtor's holding was carried out in April 2015, whereas the issue of fresh equity was carried on 12 January, 2016 - after passage of a substantial amount of time. Furthermore, issue of fresh equity to an existing partner is carried out on completely distinct basis therefore the criteria for valuation, especially in the case of private company, are completely different. The Respondents further state that, in or

around March 2015, a valuation of the said shares held by the Corporate Debtor in Lasenor was carried out by one A.S. Daga and Company, Chartered Accountants. As per the said valuation, the value of each share was determined to be Rs. 11.27.

20. The Respondents submits that the divestment was carried out as the Corporate Debtor was trying to remain afloat and generate funds to pay its creditors, the Corporate Debtor decided that the sale/transfer was necessary. The Corporate Debtor therefore attempted to have the shareholding of the Corporate Debtor in Lasenor sold to various other investors. However, the said attempts did not bear fruit. Consequently, the Respondents authorized the sale/transfer of the Corporate Debtor's shareholding in Lasenor to Respondents No. 4 and 6 at the rate of Rs. 11.40 and Rs. 10.10 respectively.

21. Further, the Respondents qua the allegation of the Applicant that an amount of Rs.6,99,52,170/- was paid to the various creditors of the Corporate Debtor i.e. Respondent Nos.1 to 39 from the proceeds of the said undervalued sale / transfer submit that the Corporate Debtor suffered sudden losses. Therefore, in the due course of the Corporate Debtors business certain creditors were paid out. The creditors were all business partners of the Corporate Debtor in the regular course of the its business. These persons needed to be paid so as to have any chance of keeping the business ongoing and recovering the losses which were incurred due to the unfortunate circumstances leading to loss of inventory due to disease and infestation.

22. Further, the Respondents submit that the transaction is beyond look back period of 1 year prescribed for non-related parties. The Respondents submit that the order initiating the Corporate Insolvency Resolution process was dated 19th June 2017. Therefore, for a transaction to fall within the ambit of this Section, the transaction

need to necessarily have taken place on or after 19th June 2016. However, the transactions that the Applicant seeks to impugn are all for the Financial Year of 2015 to 2016, i.e., outside the ambit of the period specified under Section 43(4)(b).

23. As far the writing off of trade receivables, amounting to Rs.21,40,93,758/- is concerned, the Respondents submits that, in or around January 2015, a large cargo consisting of groundnuts exported by the Corporate Debtor to Vietnam was found to be infested with Oliver Bugs. Consequently, a Notification dated 6th February 2015 was issued by the Government of Vietnam suspending the import of groundnuts from India. The said goods were destroyed in Vietnam. However, at the same time it was found that goods stored in the local warehouses were also infected with the bugs. In an attempt to mitigate its losses, the Corporate Debtor sold the goods in the warehouses to various operators i.e. Respondent Nos.47 to 56, specializing in the production of peanut oil. After the said sale, the Corporate Debtor received some amounts as payments from the said operators. However, as the said goods that was sold to the operators were too heavily infested with the said Oliver Bugs, the said cargo was unmarketable even in the form of peanut oil. Consequently, the Corporate Debtor was forced to write off the amounts that were due to the Corporate Debtor by the said operators.

24. Lastly, qua clearing of the Corporate Debtor's loan with Kotak Mahindra Bank i.e. Respondent Nos. 46, Respondent No.1 and 2 submit that the loan due to Kotak Mahindra Bank, was unsecured and therefore a higher rate of interest was payable. Hence, as the loan could be discharged completely, and the interest burden could be reduced as it made commercial to clear the said loan at the earliest.

25. The Respondents for allegations under Section 66 of the Code is concerned submits that the Applicant has not shown any mala fides on part of the Corporate Debtor or

Respondents No. 1 and 2. It is submitted that the steps taken by the Respondents were to keep the Corporate Debtor a going concern and mitigate the loss.

Submissions advanced by Respondent No.4 and 6

26. The Respondent No.4 and 5 submits that the Applicant has alleged that Respondent No.4 & 6 are Beneficial Transferees in alleged undervalued transactions under section 45 (2) (a) of IBC, 2016 and have made undue benefit of Rs. 1,90,69,145/ - and the Applicant has prayed this Tribunal to pass an Order under Section 48 (1)(c) of IBC, 2016 directing Respondent No.4 & 6 to pay a sum of Rs. 1,90,69,145/ - in proportion to the alleged benefit received by each of them through the undervalued transaction.

27. It is submitted that under section 46 of IBC, 2016 the Relevant Period of avoidable transactions made with a Related Party is two years preceding the Insolvency Commencement date. Hence, the Relevant Period is 19.06.2015 to 19.06.2017. It is submitted that the Corporate Debtor was holding 69,91,105 shares of Lasenor India Pvt. Ltd. (Lasenor) constituting 47.92% of the Paid-up Share Capital of Lasenor comprising of 1,45,87,060 shares. The Corporate Debtor had sold 56,91,105 shares of Lasenor (39.01 %) to Respondent No.6 and 13,00,000 shares of lasenor (8.91%) in favor of Respondent No.4. Lasenor had registered transfer of the said 56,91,105 & 13,00,000 shares in 14.04.2015 favor of R4 & R6 on 14.04.2015. Accordingly, the alleged transaction is beyond look back period of two years.

28. It is submitted that since Corporate Debtor had sold its entire stake in Lasenor and the transferor took place on 14.04.2015 the latest available audited account was for F.Y 2013-14 hence, the very basis of arriving at Undervalued price is manifestly

erroneous and shows complete lack of application of mind on the part of the Applicant.

29. The Respondents have relied on Forensic Audit report dated 26.02.2018 which in turn relies on page 48 of Special Investigation Report dated 30.10.2015 of M/s Desai Saksena & Associate, Chartered Accountant, the said Para 4.4 is reproduced as under

"Since, we have not received the underlying workings for the calculation of sale price of Rs. 10.10 per share in case of M/s Lasenor Charbhuja Pvt,. Ltd. we are unable to determine whether the valuation is correct or not"

Therefore, the Respondents submits that there was no basis of arriving at Undervalued Price as arrived at by the Applicant and no case has been made out as against R4 and R6 in the said Application.

Findings:

30. At the outset it is essential to examine whether the transactions alleged by the Applicant meet the threshold required to satisfy the ingredients stipulated in Section 43,45 and 66 respectively. The Applicant has impugned following two transactions under Section 43 of the Code preferential transactions, which are laid down hereinbelow

i. The antecedent debt of INR 6.99 crores has been paid by the Corporate Debtor in full to all the Respondent No.7 to 45 in F.Y 2015-16.

ii. The Corporate Debtor has paid Rs.23.70 lakhs towards installment of unsecured loans during FY 2016-2017 and 2017-2018 to an unsecured Creditor i.e. Kotak Mahindra Bank Limited (Respondent No. 46)

31. For the purpose of ascertaining relevant time under Section 43 of the Code, it is important to look at the date of initiation of CIRP i.e. 19.06.2017, the look back period for non-related party is 19.06.2016. It is the Applicant's case that the trade creditors were paid in FY 2015-2016 and accordingly the said transaction is clearly beyond the look back period.

32. Further, for the purpose of undervalued transactions under Section 45 of the Code the Applicant has impugned the transaction whereby the Corporate Debtor divested its shareholding to the extent of 49.93% held in Lasenor at an undervalued price and secondly, the Corporate Debtor has written of trade receivables to the tune of Rs.21.40 Crore receivable from Respondent No. 47 to 56.

33. The transactions need to be examined in tandem. The trade creditors were paid by the Corporate Debtor from proceeds received from sale of shareholding held by the Corporate Debtor in Lasenor. The Applicant contends that the Respondents No. 4 to 6 have received undue benefit of Rs.1,90,69,145/- as the shares of Lasenor were sold to them at an undervalued price. It is observed that the transfer was registered on 14.04.2015 which is prior in time to the relevant period for related party i.e. 19.06.2015. Accordingly, the said transaction is beyond the look back period. However, the applicant has alleged that the transfer of these shares is also in nature of fraudulent trading and is covered under section 66 of the Code, accordingly the look back period condition is not applicable to the present case. We find that look back period is not applicable even to cases of undervalued transaction which falls under Section 49 of the Code.

34. The case of the Applicant rests on the fact that fresh equity shares were issued at Rs.15.10 per share whereas the Respondents were sold the shares at Rs.10.10 per share. We note that the shares were issued at a premium of Rs.15.10 per share in January 2016, whereas the transfer took place in 14.04.2015. Nonetheless, we note that the fair market value of shares of Lasenor was determined @ INR 11.27 per share around March 2015 by A.S. Daga and Company, Chartered Accountants and the shares have been transferred at a value of Rs. 10.10 per share, which is at discount of 10%. It is undisputed fact that these shares have been sold to the related party of the Corporate Debtor, who were well aware of business potential of Lasenor, hence the discount of 10% certainly leads to conclusion that the shares were sold at price lower than the fair value of shares of Lasenor, moreso the fresh allotment of shares to same persons was made @ 15.50 per share after 9 months. The Applicant has also stated that the net worth attributable to transfer of shares is 9,13,69,306/- which is less than 26.37% of the price realized from sale of shares. These facts clearly indicate that the shares were transferred to the related persons at undervalued price for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor. It is pertinent to note here that the major portion of consideration came to be utilized for payment of sundry creditors, which the applicant alleges to be not genuine, instead of payment to its secured creditors. Accordingly, we have no hesitation to hold that these transactions squarely fall under the ambit of Section 49 of the Code and this Tribunal has no option but to pass the Order to restore the position as it existed before the transaction. However, we find that the buyers have paid the consideration and the same has been paid to pay off its sundry creditors by the Corporate Debtor. Though these creditors have

been alleged to be not genuine, however, in the absence of any cogent material placed before evidencing the receipt of cash back from these parties, we resist from holding so. Accordingly, we consider it appropriate to order restitution of the amount of loss, that is caused to the Corporate Debtor from this transaction. Hence, we direct the beneficiary of these transactions i.e. Rekha Agarwal and Aparna Agarwal the Respondent No. 4 & 6 to pay an amount of Rs. 39,08,767/- and Rs. 1,51,60,379/- to the Corporate Debtor within 15 days from the date of this Order.

35. As regards paying-off installments of unsecured loans taken from Kotak Mahindra Bank, we note that the Corporate Debtor's accounts were declared NPA on 18.11.2015. However, these amounts were paid in ordinary course of business to a lending institution because repayment of debt by a borrower to its lender is a transaction in ordinary course of business qua both Corporate Debtor and Kotak Mahindra Bank Limited.

36. As far as the contention of the Applicant that the write off of trade receivables to the tune of Rs.21.40 Crore is concerned, we hold that the write-off does not take away the right to recover from the creditors, accordingly, we do not find any merit in argument that such transaction is undervalued or fraudulent in the absence of any cogent material placed before contending that the amounts from these parties was pocketed by the Suspended Board out of books. The write off is an Internal Accounting Procedure which is necessarily to be followed by any corporate entity and these write off do not demonstrate any fraudulent trading. The contention of the Applicant that said write-off takes the character of gift made by the Corporate Debtor cannot be considered for the purpose of maintaining an Application under Section 45 of the Code. The Corporate Debtor shall be at liberty to claim these amounts from the respective debtors.

37. In view of the foregoing, MA 1574 of 2018 is partly allowed and disposed of accordingly.

Sd/-	**Sd/-**
PRABHAT KUMAR	**JUSTICE V.G. BISHT**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

21.02.2024

Priyal