

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

**I.A. 589 OF 2022**

Under Section 43 of Insolvency &  
Bankruptcy Code, 2016

**Mr. Devarajan Raman**  
The Resolution Professional  
...**Applicant**

Vs.

Mr. Praful N Satra & others  
...**Respondents**

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited  
**Financial Creditor**

Vs.

Satra Properties India Limited  
**Corporate Debtor**

*Order delivered on: 25.04.2024*

*Coram:*

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

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

*Appearances:*

For the Applicant : Mr. Pulkit Sharma, Advocate

For the Respondent : Mr. Rohit Gupta, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA 589/2022 is filed under Section 43 of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 by Mr. Devarajan Raman, Resolution Professional (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Properties (India) Limited (“Corporate Debtor” or “CD”), to seeking following reliefs:
  - a. That this Tribunal may be pleased to declare transaction in Para 9 to 11 as Preferential in terms of S.43 I & B Code, 2016;
  - b. That this Tribunal may be pleased to direct the Respondents to contribute towards loss caused to the Corporate Debtor in terms of S.44(d) of I & B code, 2016;
  - c. That this Tribunal may decide whether the nature of transaction in Para Nos. 7 and 8 is Preferential;
  - d. Any other Order or direction that this Hon'ble Court may deem fit & proper.
2. The Corporate Debtor (CD) was admitted to Corporate Insolvency Resolution Process (CIRP) by virtue of Order dated 03.08.2020 in Company Petition No. 1632 of 2019. The Applicant was appointed as Interim Resolution Professional (IRP) by NCLT and later confirmed as Resolution Professional (RP) by COC in 1<sup>st</sup> COC Meeting.
  - 2.1. The Respondent No. 1 was the Managing Director of Corporate Debtor. Respondent Nos.2 to 5 were the Directors of Corporate Debtor. The Applicant after perusal of the records of the CD formed an opinion on

the existence of avoidance transaction in the books of the CD. The CD being a listed company with a history of sale of subsidiaries in the last 5 to 10 years it was decided to conduct a Forensic Audit for ten years. Accordingly, a mandate was given to BDO India LLP on 15.02.2021. There were serious challenges in getting the information and document due to the non-cooperation of the Directors of the CD. The Forensic Auditor (FA) and the RP team searched the available records and based on the available records from various sources with great difficulty, the report was completed by the FA. The pandemic posed its own challenges in the process. However, Stamped and Signed Copy was received only on 31.01.2022.

- 2.2. The Unsigned Forensic Audit report (FAR) was submitted on 15.11.2021. The report, without the conclusions of the FA, was sent to the Suspended Directors of the CD by e-mail for their comments and clarifications/ explanations on 16.11.2021 and reminder was sent on 23.11.2021. Many telephonic reminders were also made to the Respondent No. 1. However, till date there is no response from the Suspended Directors of the Corporate Debtor.
- 2.3. The FAR has identified Preferential Transactions U/s.43, Undervalued Transactions U/s.45, Fraudulent Transactions U/s.66 and other suspicious transactions under the Code. This Application details the Preferential Transactions that have been identified.
- 2.4. The FA in para 5.1 of the report has classified the payment made to Praful N Satra, Managing Director of the CD, a related party, an amount of Rs.0.18 Crores during the look back period for which there is no documentation or details are available. Hence, it is classified as a related party transaction requiring appropriate directions of the Hon'ble Tribunal under section 44 of the Code.
- 2.5. In para 5.1 of the FAR an amount of Rs. 1.05 Crores were repaid to non – related parties Anupam Stock Broking P Ltd and Divyagyan Trading

- P Ltd., within the look back period, has been indicated. There are no supporting documents available for these payments. Incidentally Divyagyan Trading P Ltd is a member of the COC. Hence, these have been classified as Preferential Transaction attracting suitable Directions of the Hon'ble Tribunal as per the provisions of section 44 of the Code.
- 2.6. Honda CRV bearing registration No. MH 43 AF 2414 which belonged to CD was given to/adjusted against unsecured loan of Novelty Marbles on 01.04.2020 for Rs.1,37,942/- which is within a look-back period.
3. The Respondents have filed affidavit in reply dated 04.07.2022 stating that the payment made to Anupam Stock Broking Pvt. Ltd. was done during normal course of business. Considering the amount paid to Dvyagyan Trading Pvt. Ltd., the same was paid under the conditions of the Consent Term which were entered between the parties and the same has been duly explained to the Resolution Professional and a copy whereof has been already provided to the Applicant and after which the Applicant had revised/approved the claim of Divyagyan Trading Private Limited, who is also one of the COC member. The same matter is sub judice and there is nothing on record which proves that the said transaction can be considered to be Preferential transactions.
- 3.1. It is stated that at the relevant time, CIRP was not admitted against the Corporate Debtor and there was no express or implied bar on the Corporate Debtor to discharge its several liabilities as a part and parcel of being a going concern and in its ordinary course of business. The Applicant or the Forensic Auditor has failed to establish any specific nexus whatsoever between the Respondent and/or the said Novelty Marbles to show that the transaction is preferential as alleged or at all. The Respondent denies repeat, reiterate and confirm what is stated herein above and denies what is inconsistent thereto.
4. Heard learned Counsel and perused the material on record.
- 4.1. Section 44 (1) of the Code, reads as under:

**Section 44: Orders in case of preferential transactions.**

44. The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of [section 43](#), by an order:

- a. require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
- b. require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- c. release or discharge (in whole or in part) of any security interest created by the corporate debtor;
- d. require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
- e. direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
- f. direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
- g. direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or

*operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:*

- 4.2. The Applicant has prayed for directions to the Respondents to contribute towards loss caused to the Corporate Debtor in terms of S.44(d) of I & B code, 2016. The Applicant has made Managing Director and Directors as Party Respondents in the present Application. However, the pleadings do not demonstrate that any benefit was received by the Respondents while giving the alleged preference to the Parties in the Impugned Transactions. It is pertinent to note that Section 44(1)(d) require the person to pay sums in respect of benefits received by him from the Corporate Debtor. Since, no benefit has been received by the Respondent, we are of the considered view that even if these transactions may be considered to be preferential in nature in terms of Prayer “a”, no order can be passed calling upon the Respondents in the present case to contribute.
- 4.3. None of the Parties who are one of the Party to the impugned transactions with the Corporate Debtor have been arrayed as Party Respondent in the Application. Accordingly, no order could be passed qua the beneficiary Party to whom the preference is alleged to have been given.
- 4.4. The Applicant has also prayed this Tribunal to decide the nature of transaction stated in Para 7 & 8 of the Application, which deals with the transaction with IIFL & IIHFL. This Tribunal has already decided about these transactions in IAs 1686 & 1687 wherein the claim rejected by the Applicant/RP was found admissible by this Tribunal. The Applicant has sought finding of this Tribunal; however, the Applicant has himself stated in Para 8 that “*according to the Applicant after perusing all the relevant documents in this regard it does not appear to be preferential transactions for the following*

*reasons.....*”. Section 43 of the Code mandates the Resolution Professional to form an opinion that the transaction in question is preferential in nature and there upon apply to this Tribunal for declaration. Since, in the present case, the Applicant has formed an opinion that such transaction is not a preferential in nature, we are of the considered view that the prayer “c” is not maintainable.

5. In view of the above, the Application bearing IA No. 589 of 2022, is disposed of as dismissed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)