

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 25
IA 3669/2023

In
C.P. (IB)/530(MB)2020

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **03.04.2024**

NAME OF THE PARTIES: UNION BANK OF INDIA V/s ROLTA INDIA
LIMITED

Section 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Mr. Sandeep Bajaj a/w Mr. Aashish Darne, Ld. Counsel for the Applicant present. Mr. Ameya Gokhale, Ld. Counsel for the Respondent present.
2. This Application has been filed by the Resolution Professional u/s 43 and 44 of the Code seeking following reliefs:
 - a. Declare the transaction described in Paragraph 4.6 of the present application being an entry booked for an amount of Rs. 36,15,88,000/- (Rupees Thirty Six Crores Fifteen Lakhs Eighty Eight Thousand Only) in the ledger relating to Respondent No. 1 as 'Building (Premises)' at Entry Number 25 in the table available at internal Page 214 of the Report dated 14.06.2023 issued by the Transaction Auditor (extracted and reproduced as Appendix "A" to the present application) as preferential in nature in terms of Section 43 of the Insolvency and Bankruptcy Code, 2016 (hereinafter

referred to as "Code") and pass an order for avoidance of these transactions under Section 44 of the Code;

- b. Direct the Respondent No. 1-2 to pay back the amount of Rs. 36,15,88,000/- (Rupees Thirty Six Crores Fifteen Lakhs Eighty Eight Thousand Only to the Corporate Debtor being the value of the treatment prayed to be avoided in prayer clause 5.1.1 along with interest at such rate as deemed appropriate to this Tribunal to be paid till the actual date of payment;
3. The Applicant has filed this Application u/s 43 of the Code which provides for avoidance of preferential transactions. It is the case of the Applicant that the Respondent transferred the property and incurred loss on such transfer, accordingly, such loss is recoverable from the Respondent/Suspended Board. Section 43 reads as under

“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

(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 transfers—

(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.”

4. On perusal of these provisions, it is clear that section 43 is applicable in case any antecedent debt is paid in part or full to the creditors in priority of other creditors. In the present case there is no such pleading that any payment has been made to any creditor in priority over other creditors which may have caused prejudice to the interest of the creditors in liquidation. Accordingly, we are of the considered view that this application does not plead the basis ingredients of section 43 and no orders can be passed by this Tribunal on such this Applications.
5. The I.A. 3669/2023 is dismissed and disposed of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
/NP/

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)