

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

I.A. 3249 OF 2023

Under Section 43 & 44 of Insolvency &
Bankruptcy Code, 2016

Dr. Mamta Binani
The Resolution Professional

...Applicant

Vs.

Rolta Middle East FZ LLC & Others

...Respondents

In the matter of

C.P.(IB) No. 530/MB/2020

Union Bank of India

Financial Creditor

Vs.

Rolta India Limited

Corporate Debtor

Order delivered on: 02.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant/RP : Ms. Aakanksha Nehra a/w Mr/
Aashish Darne and Ms. Gunjan
Nayyar and Ms. Adya Singh,
Advocates

For the Respondent : Mr. Ameya Gokhale a/w Mr.
Manas Kotak, Advocates for
Respondent No.1 & 3

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 3249/2023 is filed by Dr. Mamta Binani ("Applicant") against Rolta Middle East Financial Creditor LLC & others, in the matter of Rolta India Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs :
 - a. Declare the transactions for a cumulative amount of Rs. 44,87,14,000/- described in 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. 1-3 to pay back the cumulative amount of Rs. 44,87,14,000/- 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;
2. The Present application is being filed under Section 43 and Section 44 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "Code")

on behalf of the Resolution Professional (hereinafter referred to as the "Applicant") of Rolta India Limited (hereinafter referred to as "Corporate Debtor") for avoidance of the preferential transactions in form of adjustment of a cumulative credit balance of Rs. 44,87,14,000/- of Respondent No. 1 Rolta Middle East FZ LLC (hereinafter referred to as "Rolta ME") appearing in the books of the Corporate Debtor against debit balance appearing in the books of the Corporate Debtor owed by the Corporate Debtor to the Respondent No. 2 Rolta Saudi Arabia Limited (hereinafter referred to as "Rolta Saudi"); during the period commencing from 19.01.2021 to 19.01.2023 (hereinafter referred to as "Relevant Period") in preference to the other creditors of Corporate Debtor.

- 2.1. The said transaction was identified by the professional appointed by the Applicant for reviewing of the transactions of the Corporate Debtor during the Relevant Period and on conducted further study, the Applicant has also found that these transactions that have been identified by the professional, fall under the scope of Section 43 of the Code.
- 2.2. Furthermore, in the humble submission of the Applicant even as on date huge amount is appearing to be due and payable to the Corporate Debtor from the Respondent No. 1 and hence, consequential directions of payment of the money equivalent to the value of transactions being avoided, deserves to be passed along with interest against all the Respondents being jointly and severally liable.
- 2.3. That the explanation provided in the response sent by the management of the Corporate Debtor to the professional appointed by the Applicant, on being notified of these transactions, also does not fall under any of the exceptions provided under Section 43 of the Code.

2.4. That hence, the present application seeking directions under Section 43 and 44 of the Code against the Respondents.

3. Heard learned counsel for the both sides and perused the records.

3.1. Section 43 of the Code deals with preferential transactions and relevant time. Section 43 of the Code is as follows:

“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 subsection (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. The Respondent No. 1 & 2 has stated that Between 2013 and 2018, Rolta Middle East made several advances to Rolta India (in United States Dollars and Euros), which amounted to Rs. 16,925 lakhs (after applying applicable conversion rates) [Exhibit A to the Reply at Page No. 12]. These advances were made against provision of IT services by Rolta India to Rolta Saudi Arabia during 2018-20. Therefore, while services were rendered to Rolta Saudi Arabia by Rolta India, advance for such services had already been paid by Rolta Middle East. Accordingly, Rolta India had a debit balance of Rs. 16,925 lakhs in its books as on March

30, 2020 which continued to remain as on March 30, 2022, since the amounts were converted in 2020 and there were no further outstanding amounts in this regard. On account of services being provided to Rolta Saudi Arabia by Rolta India, Rolta India had a credit balance of Rs. 4,550.74 lakhs (amount converted to Indian Rupees) as on March 31, 2020. However, since the adjustment was made in March 2022, due to fluctuations in the rate of United States Dollar, this amount had become Rs. 4,487.15 lakhs [Exhibit B to the Application at Page No. 13] as on March 31, 2022. To that extent, Rolta India continues to maintain a debit balance with Rolta Middle East.

5. The Respondent No.3, Sh. Kamal Singh Krishan, the suspended board member during the relevant period and Chairman cum Managing Director of Corporate Debtor, has filed affidavit in reply dated 02.01.2024 stating that the Application is stated to have been filed based on a Transaction Review Report dated 14th June 2023 ("TRR") pursuant to a "detailed inquiry" conducted by the Auditor appointed by the Applicant viz. M/s Kansal Singla & Associates and the said report does not contain any finding against me. In the absence of a finding in the TAR and any concrete allegation even in the Application, there is no case made against me and on this ground alone the application should be dismissed qua me. The paragraph 1.1.2.2 of the Application makes it clear that it is the Applicant's case that the purported benefit from the impugned transaction was only received by Respondent No. 2. Further, there is no allegation that I have derived any benefit from the Impugned Transaction. On this ground alone, it is submitted that the present Application ought to be dismissed qua Respondent No. 3.

6. Heard the learned counsel for the both sides and perused the records.

6.1. Section 43 of the Code deals with preferential transactions and relevant time. Section 43 of the Code is as follows:

“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 subsection (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.”

6.2. One of the ingredient for bringing a transaction within section 43 is “a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor”. In this case, the Respondent No. 2 is a wholly owned subsidiary of Respondent No.1 and Respondent No.1 is a stepdown subsidiary of the Corporate Debtor. The investment in the subsidiaries by the Corporate Debtor are reflected in its balance sheets and a part of resolution process of the Corporate Debtor. In the present case, the receivables from Respondent No.2 which is the wholly owned subsidiary of the Respondent No.1 has been set off against the payable to Respondent No.1. In other words, the set off has resulted into NIL impact on the considered basis qua corporate debtor which is the ultimate holding company. Accordingly, we do not find any case of preference having been given to third party by way of such adjustment because the liability and assets of subsidiary and further stepdown subsidiaries are reflected in the value of investments held by the Corporate Debtor of the asset side.

Nonetheless, it has been stated by the Respondent No. 1 and 2 that the Respondent No.1 has made certain advances to the Corporate Debtor for the services provided by the Corporate Debtor to Respondent No.2. In other words, these accounts were required to be settled, which in any case stand settled qua the Corporate Debtor at consolidation level.

6.3. In view of above, we are of the considered view that no preference can be said to have been given in terms of Section 43 of the Code in this case.

7. In view of the foregoing, IA 3249/2023 is dismissed and disposed of accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)