

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

I.A. 2607 OF 2022

Under Section 43 and 44 r/w Section 60(5) of
Insolvency & Bankruptcy Code, 2016

Mr. Raj Kumar Dad,

The Resolution Professional

...Applicant

Vs.

Mr. Laxminarayan Ramchandra Bhattad &

Others,

...Respondents

In the matter of

C.P.(IB) No. 4172/MB/2019

Rangbarshi Projects Private Limited

Financial Creditor

Vs.

Bhattad Brothers Realty Private Limited

Corporate Debtor

Order delivered on: 17.04.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. Aniruth Purusothaman, Advocate
For the Respondent : None

ORDER

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

1. This Application IA 2607/2022 is filed under Section 43 & 44 r/w Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) by Mr. Raj Kumar Dad, the Resolution Professional (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of Bhattad Brothers Realty Private Limited (“Corporate Debtor”), seeking following reliefs:
 - a. Declare the transaction(s) mentioned at **Point IV (A)** of the Application as Preferential Transactions as described and laid down in Section 43 of the Insolvency and Bankruptcy Code, 2016, and order that such transaction be reversed and paid back in the account of the Corporate Debtor,
 - b. Declare the transaction(s) mentioned at Point IV (B) of the Application as Undervalued Transactions as described and laid down in Section 45 of the Insolvency and Bankruptcy Code, 2016, and order that such transaction be reversed and paid back in the account of the Corporate Debtor,
 - c. Declare the transaction(s) mentioned at Point IV (C) of the Application as Extortionate Credit Transactions as described and laid down in Section 50 of the Insolvency and Bankruptcy Code, 2016, and order that such transaction be reversed and paid back in the account of the Corporate Debtor
 - d. Declare the transaction(s) Fraudulent Transactions as described and laid down in Section 66 of the Insolvency and Bankruptcy Code, 2016, and order that such transaction be reversed and paid back in the account of the Corporate Debtor

- e. Pass ad-interim and interim reliefs in terms of Clause A, B C and D;
2. It is submitted that on a Petition/ Application filed by the Petitioner/ Financial Creditor herein-named, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (referred to herein-after as the “**Code**”, for the sake of brevity), this Tribunal, vide its Order dated 15.12.2021, was pleased to initiate Corporate Insolvency Resolution Process (referred to herein-after as “**CIRP**”, for the sake of brevity) against the Corporate Debtor and appoint the Applicant herein as the Interim Resolution Professional of the Corporate Debtor.
- 2.1. It is submitted that during the Second (2nd) COC meeting held on 22nd February, 2022 a discussion pertaining to the appointment of transaction auditor took place to which approval/confirmation received from COC members regarding appointment of Transaction Auditor on 2nd March, 2022. Furthermore, the Applicant issued an appointment letter Darshan M. Pathak Co., Chartered Accountants.
- 2.2. It is further submitted that the Transactional Auditor, after having gone through the books of accounts, available audit balances etc. of the Corporate Debtor, prepared the Transactional Audit Report dated 7th August, 2022 and provided a copy of the same to the Applicant.

**OBSERVATION OF THE TRANSACTIONAL AUDITOR ON
PREFERENTIAL TRANSACIONS UNDER SECTION 43:**

3. It is submitted that upon the perusal of the Transactional Audit Report and while verifying unsecured loan, some cases which could be classified as preferential transactions under “Section 43” of the Code were identified which is described below.

Repayment of Loan to Respondent No.1: It is submitted that City Gold Investment of Rs.0.80 Crores has been completely utilized to make payment to the Respondent No.1 where the amount outstanding of Rs. 0.11 Crores has been repaid by Rs.0.80 Crores and leading to debit balance at the end of FY 2018-2019 at Rs. 0.6 Cr.

Repayment of Loan to Respondent No.2 and 3:It is further submitted that the Opening Outstanding Credit balance of Respondent No. 2 and 3 is of Rs. 0.32 Crores. Furthermore, it has been noticed that the amount has been received from Navratna Textiles Mills Private Limited during the financial year in totality of Rs. 4.20 Crores of which, an amount of Rs.3.35 Crores has been transferred to Respondent No.2 and 3 and regrouping Respondent No.2 and 3 as Rs.1.05 Crore as loan and advances outstanding to be received. It of further pertinence to note that the amount repaid to Respondent No.2 and 3 has been paid over and above the outstanding amount.

Repayment of Loan to Respondent No.4: It is submitted that in the Financial Year 2019-2020, Opening Outstanding Credit balance of the Respondent No.4 is of Rs. 1.99 Crores whereas, the further amount of Rs. 0.85 Crores has been paid to the Respondent No.4 from the amount received from Navratan Textiles Private Limited and balance of Rs.1.21 Crore is paid to the Respondent No.4 from the Funds that was received from Respondent No.2 and 3. Hence, the amount paid to the Respondent No.4 was over and above the outstanding amount and an excess amount of Rs. 0.06 Crores has been paid.

Excess Repayment of Loan to R.M Bhuther &Co: It is submitted that in the Financial Year of 2020-2021, it has been observed that the amount of loan which was lend to Navratna Textile Mills Private Limited of Rs. 8.25 Crore prior to FY 2018-2019 has been repaid by Rs.4.20 Crore in FY 2019-2020 and Rs.4.05 Crore in FY 2020-2021

out of the amount received in FY 2020-2021, Rs.4.05 Crore completely has paid to Respondent No.2 and 3 despite the fact that Opening Outstanding Debit balance of Respondent No.2 and 3 was Rs. 1.05 Cr which was further increased to Rs. 4.99 Crore at the end of the FY 2020-2021.

4. It is submitted that based on the above analysis it is noted that the amount to be paid to the related party has been preferred and paid over and above the outstanding amount, which is due and payable to the Creditors of the Corporate Debtor.

- 4.1. It is submitted that the observations in the said regard has been classified as Preferential Transactions carried out by the Corporate Debtor can be perused at page 12 of the Transaction Audit Report dated 7.08.2022.

5. OBSERVATION OF THE TRANSACTIONAL AUDITOR ON UNDERVALUED TRANSACTIONS UNDER SECTION 45:

- 5.1 It is submitted that while verifying transactions, some Transactions which could be classified under Undervalued Transaction under Section 45 of the Code were identified which is mentioned herein below.

Amount of Loan given to Mr. L.R Bhattad: It is submitted that the amount of Financial Debt which was received from City Gold Investment and on the same day / very next day, the said payment has been made to the Respondent No.1 who is the Related Party of the Corporate Debtor, to repay the outstanding credit balance of Rs.0.11 Crores whereas, the total payment cumulating an amount of Rs. 0.80 Crore have been made for regrouping the credit balance of Loans and liability to the debit balance of Loans and advances as Rs. 0.68 Crores as on

31/03/2019. It is of further pertinence to state that the amount has been paid without any interest income provision being made.

Excess Repayment of Loan to the Respondent No.2 and 3: It is submitted that as per the observations of the Transactional Auditor, the opening outstanding was Rs.0.32 Crore whereas, the closing outstanding of Rs. 1.05 Dr clearly indicates that the amount of loan has been given to Respondent No.3 without any interest being accrued.

Additional Remittance of funds to Respondents No.2 and 3: It is submitted that as per the observations of the Transactional Auditor, the opening Outstanding amount of Rs.1.05 Crore which has increased to Rs. 4.99 Crore which indicates that the amount has been lent to the Respondent No.2 and 3 without any interest.

It is submitted that based on the above stated analysis of the Transactional Auditor, it is of pertinence to note that the closing balance of the entities to whom loans were lent by Corporate Debtor has increased in comparison to the opening balance whereas there is no income in the form of interest has been received from the same entity hence the same can be considered as an under undervalued transactions.

It is submitted that based on the above analysis it is noted that the said transaction has been undertaken during the lookback period.

It is submitted that the observations in the said regard has been classified as Preferential Transactions carried out by the Corporate Debtor can be perused at page 13 of the Transaction Audit Report dated 7.08.2022.

**OBSERVATIONS OF THE TRANSACTIONAL AUDITOR ON
THE EXTORTIONATE CREDIT TRANSACTIONS AS PER
SECTION 50 OF THE CODE:**

6.1 It is submitted that while verifying transactions, some cases which could be classified under Extortionate Credit Transactions under "Section 50" of IBC were identified which is mentioned herein-below.

Amount of Loan Received by the Respondent No.1 in Financial Year 2018-2019: It is submitted that an amount of Rs.0.80 being a Financial Debt which was received by the Respondent No.1 from City Gold Investment was at the same day repaid to the Respondent No.1 as the outstanding credit balance is shown as Rs.0.11 Crores whereas, the total payment has been made of Rs. 0.80 Cr and regrouping the credit balance of Loans and liability to the debit balance of Loans and advances are Rs. 0.68 Cr as on 31/03/2019.

Amount of Loan Taken from the Respondent No.4 in the Financial Year 2018-2019: It is submitted that the amount of Loan taken from Respondent No.4 to the tune of Rs. 1.73 Crore has been utilized for repayment of the loan taken from Rangbarshi Projects Pvt Ltd to the tune of Rs.1.70 Crore.

Amount of Loan taken from Respondent No.2 and 3 in the Financial Year 2018-2019: It is submitted that an amount of Loan taken from Respondent No.2 and 3 has been utilized for repayment of the loan taken from M/s. Rangbarshi Projects Pvt Ltd to the tune of Rs.20 lakhs.

Repayment of Loan Amount to Respondent No.4 in the Financial Year 2019-2020: It is submitted that as per the observations of the Transactional Auditor's Report, it is seen that

the opening Outstanding Credit balance of the Respondent No.4 is of Rs. 1.99 Crore whereas, the further amount of Rs. 0.85 Crores has been paid to the Respondent No.4 from the amount received from Navratan Textiles Private Limited and balance of Rs.1.21 Crore is paid to the Respondent No.4 from the Funds that was received from the Respondent No.2 and 3.

Excessive repayment of Loan to Respondent No.2 and 3 during the Financial Year 2020-2021: It is submitted that as per the observations of the Transactional Auditor it is seen that the amount of loan which was lend to Navratna Textile Mills Private Limited of Rs. 8.25 Crore prior to the FY 2018-2019, has been repaid to the tune of Rs.4.20 Crore in FY 2019-2020 and to the tune of Rs.4.05 Crore in FY 2020-2021. Furthermore, out of the amount received in FY 2020-2021, an amount of Rs.4.05 Crore has paid to the Respondent No.2 and 3 despite the fact that Opening Outstanding Debit balance of the Respondent No.2 and 3 was Rs. 1.05 Crore which was further increased to Rs. 4.99 Crores at the end of the FY 2020-2021.

It is submitted that based on the above analysis it is noted that the said transaction has been undertaken during the lookback period.

It is submitted that the observations in the said regard has been classified as Preferential Transactions carried out by the Corporate Debtor can be perused at page 14 of the Transaction Audit Report dated 7.08.2022.

6. Heard learned counsel and perused the materials available on record.

6.1. The Respondents have not filed any reply.

6.2. The Transaction Audit report has summarized the transactions in the following table and these transactions have been referred in alternate as preferential transaction or undervalued transaction or extortionate transaction. In alternate, the applicant has prayed for holding these transactions as fraudulent transactions.

| | | | |
|-----------|--|-------------|--|
| 2018-2019 | Repayment of Loan to Rangbarshi Projects Pvt Ltd | Rs. 1.90 Cr | M.B Constructions to the tune of Rs. 1.70 Cr and Rs.0.20 Cr from R. M Bhutter & Co. |
| 2018-2019 | Repayment of Loan to LR Bhattad | Rs. 0.80 Cr | City Gold Investment of Rs.0.80 Cr has been completely utilized to make payment to LR Bhattad where the amount outstanding of Rs. 0.11 Cr has been repaid by Rs.0.80 Cr and leading to debit balance at the end of FY 2018-2019 at Rs. 0.6 Cr |
| 2019-2020 | Repayment of Loan to R.M Bhutter & Co | Rs. 3.38 Cr | Opening Outstanding Credit balance of RM Bhutter & Co. of Rs. 0.32 Cr It has been noticed that the amount has been received from Navratna Textiles Mills Private Limited during the financial year in totality of Rs. 4.20 Cr of which amount of Rs.3.25Cr has been transferred to R.M Bhutter & Co. and regrouping R.M Bhutter & Co. as Rs.1.05 Cr. as loan and advances outstanding to be received It is noted that the amount repaid to R.M Bhutter & Co. has been paid over and above the outstanding amount |
| 2019-2020 | Repayment of Loan to M.B Constructions | Rs.2.06 Cr | Opening Outstanding Credit balance of M. B Constructions of Rs. 1.59 Cr whereas further amount of Rs. 0.85 Cr has been paid to M.B Constructions from the amount received from Navratna Textiles Private Limited and balance of Rs.1.21 Cr is paid to M.B Construction from the Funds that was received from R.M Bhutter & Co. Hence, the amount paid to M.B construction was over and above the outstanding amount and an excess amount of Rs. 0.06 Cr has been paid. |
| 2020-2021 | Excess Repayment of Loan to R.M Bhutter & Co | Rs. 4.05 Cr | It has been observed that the amount of loan which was lend to Navratna Textile Mills Private Limited of Rs. 8.25 Cr prior to FY 2018-2019 has been repaid by Rs.4.20 Cr in FY 2019-2020 and Rs.4.05 Cr in FY 2020-2021 out of the amount received in FY 2020-2021 Rs.4.05 Cr completely has paid to Rs. R.M Bhutter & Co. despite the fact that Opening Outstanding Debit balance of R.M Bhutter & Co. was Rs. 1.05 Cr which was further increased to Rs. 4.99 Cr at the end of the FY 2020-2021 In this analysis it is noted that the amount to be paid to the related party has been |

6.3. On careful reading of the transactions, we note that a sum of Rs. 0.11 Crores was payable to the Respondent No.1, the Suspended Director by the Corporate Debtor and was paid out of the proceeds of City Gold Investments to Rs.0.80 Crores in the financial year 2018-19. The CIRP in this case commenced on 15.12.2021. Accordingly, this repayment is beyond the look back period of 2 years. Hence no order could be passed either in section 43 or 45 of the Code in relation to this Transaction. However, a sum of Rs. 0.6 Crores is stated to be recoverable form them. Since this amount became receivable and does not carry interest, we hold that this transaction is in the nature

of undervalued transaction with a fraudulent intent to keep the assets of Corporate Debtor.

- 6.4. A sum of Rs.3.35 Crores is stated to be transferred to Respondent No.2 and 3 which resulted into paying of their credit balance of Rs.0.32 Crores and left an amount of Rs.1.05 Crores to be recoverable from them. The excess amount so paid does not bear any interest and this amount has been paid in the financial year 2019-20 and Respondent No.2 and 3 are not stated to be a related party. The CIRP in this case commenced on 15.12.2021. Accordingly, this repayment is beyond the look back period of 1 years. Hence no order could be passed either in section 43 or 45 of the Code in relation to this Transaction.
- 6.5. A sum of Rs.2.06 Crores is stated to be transferred to Respondent No.4 which resulted into paying of their credit balance of Rs.1.99 Crores and left an amount of Rs.0.06 Crores to be recoverable from them. The excess amount so paid does not bear any interest and this amount has been paid in the financial year 2019-20 and Respondent No.4 are not stated to be a related party. The CIRP in this case commenced on 15.12.2021. Accordingly, this repayment is beyond the look back period of 1 years. Hence no order could be passed either in section 43 or 45 of the Code in relation to this Transaction.
- 6.6. It is also pointed out that a sum of Rs.4.05 Crores has been paid to Respondent No. 2 and 3 out of the money received from Navratan Textile Mills Private Limited in the year 2020-21 prior to this a sum of Rs.1.05 crores was recoverable at the opening of financial year 2020-21. The CIRP in this case commenced on 15.12.2021. The evidence placed before us does not reflect the date on which the payment of Rs.4.05 Crores was made. However, the Applicant has pleaded that the said payment is within the lookback period. The transaction audit report also does not specify the date of which the transaction was made. Nonetheless, considering the pleadings in the

Application, we take this amount to have been within the lookback period. Since this amount has been paid as interest free loan despite the fact the Corporate Debtor owed huge sums to the Financial Creditor which were interest bearing also. Accordingly, we hold that grant of interest free advance of Rs.4.05 Crores is an undervalued transaction and accordingly direct the Respondent No.2 and 3 to refund this amount within 30 days from the date of this order.

6.7. The Applicant has in alternate submitted that aforesaid transaction also falls under section 66 of the Code. On perusal of the pleadings, we note that the Applicant has simply stated that *the aforementioned transactions are mainly with related parties and funds has been fraudulently transferred to the aforementioned related parties with intent to defraud creditors of the Corporate Debtor, violating provisions of Section 66 of the Code*. There are no other pleadings except this bald statement. We are of the considered view that transaction with the related does not ipso facto be held to be fraudulent transaction falling under Section 66 unless the basic ingredients as embodied in that section are met with and the pleadings demonstrate so. Accordingly, we are of considered view that no order can be passed in terms of Section 66 of the Code.

7. In view of the forgoing, the I.A. 2607/2022 is partly allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)