

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

MA/653/2018 in CP/185/IB/CB/2018

(Filed under Section 43 & 44 of the Insolvency and Bankruptcy Code, 2016)

In the matter of **RAAJ INTERNET INDIA PRIVATE LIMITED**

VASUDEVAN GOPU

Resolution Professional

M/s Raaj Internet India Private Limited

... Applicant

-Vs-

1. Mr. Baskaran Sathya Prakash
(Former Director of the Corporate Debtor)
2. Mrs. Rathnamala
(Shareholder of the Corporate Debtor)

...Respondents

Order Pronounced on 19th February 2024

C O R A M

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant: S.Sathiyarayanan, Advocate

For Respondents: Mohammed Wasif Khan, Advocate

ORDER
(Heard Through VC)

Under Adjudication is the Application filed by the Applicant Resolution Professional seeking the following relief:-

“In view of the facts mentioned above, the petitioner/ Applicant prays for the Return/refund of Rs.2,83,00,000/- transferred from Corporate Debtor on preferential basis to the related parties of the Corporate Debtor.”

2. It is stated that CIRP of the Corporate Debtor was initiated by this Tribunal vide order dated 19.09.2018 in CP/185/CHE/2018. Subsequently, liquidation was ordered against the Corporate Debtor vide an order dated 24.03.2021 in MA/1398/2019.

3. It is stated that, without any commercial transactions between R1 and the Corporate Debtor, amounts of Rs.2.43 crore and Rs.5.0 Lakh were transferred on 02.08.2017 & 22.03.2017 respectively to the account of R1 from the current account of the Corporate Debtor.

4. It is stated that, without any commercial transactions a total of Rs.35.0 Lakh was transferred to R2 on various dates, which are as follows:
- (i) Rs. 10,00,000/- on 06.10.2017
 - (ii) Rs. 15,00,000/-on 12.10.2017
 - (iii) Rs. 10,00,000/- on 06.02.2018
5. It is stated that Mr. Baskaran Sathya Prakash (R1 herein) was the director of the Corporate Debtor from 25.05.2015 to 01.08.2017 and his wife Mrs.Rathnamala (R2 herein) was a shareholder, holding 2500 equity shares of the Corporate Debtor.
6. The Applicant has attached the copies of the bank statements of the Corporate Debtor as Appendix A to the Application typeset.

REPLY OF R1 & R2

7. The Respondents have filed the Reply/Counter statements.
8. It is stated that, R1 was one of the Directors of the Corporate Debtor from 25th May, 2015. He was then appointed as the Director (Operations) with effect from 1st August, 2015 on a remuneration of Rs. 5,00,000/- per month till his last working day ie.,31.07.2021.

9. Subsequently, R1 was paid a total remuneration of Rs.1,20,00,000/-. After deducting TDS of Rs.40,42,106/-, a sum of Rs79,57,894/- was paid but the TDS was not remitted. (Copy of Income Tax Returns and acknowledgement for having filed are enclosed as Exhibit-3 of the Application typeset.)
10. It is stated that, a Sum of Rs.20,00,000/- was due to R2 towards unsecured interest free short term loan repayable within 3 months from the date of disbursement, extended by her, as the company was facing financial crisis.
11. It is stated that R2 issued cheques and transferred money by way of NEFT to the Company aggregating to Rs.55,27,067/- (Rupees Fifty Five Lakhs Twenty Seven Thousand and Sixty Seven Only) between 17.6.2017 and 14.7.2017. The funds were either transferred from M/s. Rasiksas, wherein R2 was the Sole Proprietor or the Personal Bank Account.
12. It is stated that the sum of Rs.35.0 Lakh was paid in the normal course of business that too without interest. The repayments were made as per the agreed terms and the allegations of the Applicant

that these are "Preferential Transaction" are false, misconceived and imaginary. Date wise remittances as averred in the Reply statement of R2 is extracted hereunder

| Transactions related to Raaj Internet (I) P Ltd | | | | | | |
|---|-------------|---------------------|---------------------|------------------|--------------|------------------|
| Financial Year | Bank | Account belongs to: | Date of Transaction | Transaction Type | Chq/Ref No | Amount (Rs.) |
| 2017-18 | Canara Bank | Rasikaas | 17-06-17 | Payment | 000000402474 | 2,500,000 |
| | | | 29-06-17 | Payment | 000000402479 | 800,000 |
| | | | 03-07-17 | Payment | 000000690721 | 55,000 |
| | | | 04-07-17 | Payment | 000000402480 | 145,000 |
| | | Rathinamala R | 29-06-17 | Payment | 000000273120 | 100,000 |
| | | | 05-07-17 | Payment | - | 300,000 |
| | | | 11-07-17 | Payment | 000000621601 | 698,000 |
| | | | 13-07-17 | Payment | 000000621608 | 200,000 |
| | | | 14-07-17 | Payment | 000000621609 | 729,067 |
| | | | | | | |
| TOTAL | | | | | | 5,527,067 |

13. It is stated by R1 and R2 that, the transactions were done in the normal course of business and the allegations of the Applicant that they are preferential in nature, are vexatious.

REJOINDER FILED BY THE RP:

14. It is stated that, R1 has not produced any proof to substantiate that, his salary was not remitted on a monthly basis.

15. In para (e) of the rejoinder it is stated that, TDS has not been remitted by the Government exchequer and as per the provisions of the Income tax act, 1961, the Tax Deducted at Source (TDS) on salary has to be remitted on monthly basis whether or not the salary has been paid.
16. It is stated that, the company always makes payment from its current account for all the business activities and R1 alleging that he paid on behalf of the company from his personal account is totally false and cannot be considered as a commercial transaction done on behalf of the Corporate Debtor.
17. It is stated that from the bank statement of the Corporate debtor it is seen that the Company had availed loans to the tune of Rs.1.0 crore and Rs.5.0 crore and which were enhanced to Rs.7.0 crore during the year(s) 2015 and 2016 and one can presume that the Company had sufficient funds to meet out its expenses including the working capital expenses. Per contra, R1 claims that the Company was facing financial difficulties and hence he spent the money from his pocket for every expenses.

18. It is stated that, in the invoices appended to the reply the Respondents have also included the bills relating to his personal expenses and they are fraudulently claiming it as the money spent on behalf of the Corporate Debtor.

FINDINGS OF THIS TRIBUNAL:

19. Heard the submissions made in detail. The relevant section is extracted hereunder for reference:-

Section 43:

“...(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...”

20. Sub – section (2) Section 43 of IBC, 2016 lays down the scope of preference given by the Corporate Debtor, which is as follows;

(i) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of

(a) a creditor or

(b) a surety or

(c) a guarantor for or on account of an antecedent financial debt or operational debt or

(d) other liabilities owed by the corporate debtor;

21. The Applicant has sought reversal of the amount paid by the 1st & 2nd Respondent under different heads which are detailed as follows;

| | | |
|---|---|--|
| 1 | Remuneration of Rs. 5,00,000 per month from 1 st August,2015 to 31 st July 2017 as Director operation after TDS | Sathya prakash Remuneration: Rs.12,000,000 TDS deducted : Rs.40,42,106 ----- Remuneration after TDS: Rs.79,57,894 |
| 2 | Payments made to creditors of the Company directly by him | Rs. 1,51,33,332/- |
| 3 | Payment to Ms. Rathinamala(2 nd Respondent) towards hand loan extended by her | Rs.20,00,000 |
| | Total | Rs. 25,091,226 |

22. From the above table, in so far as the payment of remuneration, it is seen that the 1st respondent was the Director of the Corporate Debtor. He resigned from the said post on 01.08.2017. On account of his employment, he was paid salary by the Corporate Debtor. The 1st Respondent in support of the contention has placed on record his Income Tax Returns which show that the TDS was deducted for the payment of the salary to the 1st Respondent. In any case the payment made to the 1st Respondent cannot be treated as Preferential Transaction since payment of salary to the Directors comes within the ambit of 'ordinary course of business' and is notified to any creditor or a guarantor as provided in Section 43 (2) of the Insolvency and Bankruptcy Code ,2016. Thus, the

sum of Rs.1,20,00,000/- does not fall within the purview of 'Preferential Transaction'.

23. In relation to 2nd head, it is seen that the 1st Respondent had made various payments to the Creditors of the Company to the tune of Rs.1,51,33,332/- out of which the Corporate Debtor reimbursed a sum of Rs.1,48,42,106/-. In support of the same, the 1st Respondent has produced the bills and invoices which are annexed at page no. 13 to 106. It is stated that the Corporate Debtor instead of paying the amount directly to the Operational Creditors, has made the 1st Respondent to pay the Operational Creditors and thereafter the Corporate Debtor transferred the amount to the 1st Respondent. Thus, as per Section 43(1)(b) of Insolvency and Bankruptcy Code , 2016 the transfer of amount by the Corporate Debtor to the 1st Respondent has the effect of putting 1st Respondent in beneficial position than it would have been in the event of a distribution under section 53 of Insolvency and Bankruptcy Code, 2016. Further, no documents have been placed by the 1st Respondent to show that the said transfers were made during the ordinary course of business. Hence, the said transaction squarely falls under Section 43 of IBC, 2016.

24. In so far as the 2nd Respondent is concerned, (who is the wife of the 1st Respondent), it is seen that she herself has admitted that a sum of Rs.55.0 Lakhs was given as Loan by her to the Corporate Debtor as Unsecured Interest Free Short Term Loan repayable within 3 months from the date of disbursement. However, the 2nd Respondent has not placed on record any document to prove the disbursement of Unsecured Interest Free Short Term Loan, other than copy of the bank statement. It is seen that the Corporate Debtor has repaid a sum of Rs.35.0 Lakhs to the 2nd Respondent. Under Section 43(1)(b) of Insolvency and Bankruptcy Code , 2016 if the transfer of amount by the Corporate Debtor 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, then that transaction is required to be treated as 'Preferential Transaction'. Hence, the repayment of hand loan by the Corporate Debtor to R1, to the tune of Rs.20 Lakhs also falls within the ambit of 'Preferential Transaction'.

25. In the present case, the 2nd Respondent is an Unsecured Creditor. As per provisions of Section 53 of Insolvency and Bankruptcy Code, 2016, the 2nd Respondent is placed below the Secured Financial Creditors. Further, no documents have been placed by the 1st and 2nd Respondent to

show that the said transfers were made during the ordinary course of business.

26. Snapshot of the findings given *Supra*

| S.No | TRANSACTIONS | AMOUNT (Rs.) | REMARKS |
|------|---|---------------|---|
| 1. | Remuneration paid to R1 along with TDS. | 1,20,00,000 | Not hit by section 43. Transaction was made during the ordinary course of business. |
| 2. | Payments made by R1 to creditors of the Company. | 1,48,42,106/- | Hit by section 43 since the transaction was pertaining to the dues of the Operational Creditor and not made during the ordinary course of business. |
| 3. | Payment made to R1 towards the Unsecured hand loan given by R2. | 20,00,000/- | Hit by Section 43 as the money was paid towards unsecured interest free loan given by R2 to the company. |
| 4. | Payment made to R2 towards the unsecured hand loan given by her to the Company. | 35,00,000/- | Hit by Section 43 as the money was paid towards unsecured interest free loan. |

27. In the said circumstances, the transaction relating to the 1st Respondent to the tune of Rs.1,48,42,106/- and for a sum of Rs.20 Lakhs and the transaction pertaining to the 2nd Respondent for a sum of Rs.35 Lakhs squarely fall within the ambit of Section 43 of Insolvency and Bankruptcy Code, 2016. Hence, in terms of Section 44 of Insolvency and Bankruptcy Code, 2016, we therefore direct the 1st Respondent to pay a sum of Rs.1,68,42,106/- (Rs.1.48 Crores + 20 Lakhs) and the 2nd Respondent

to pay a sum of Rs.35 Lakhs to the Applicant within a period of 30 days from the date of this order.

28. Accordingly, MA/653/2018 stands **disposed of**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini.K