

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **18.04.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Syndicate Bank
Vs
Akshaya ImaginG Systems Pvt Ltd

MAIN PETITION NUMBER : CP/431/IB/2018

(IA/MA) APPLICATION NUMBERS

IA/1320/IB/2020

ORDER

Present: Ld. Counsel Ms. Pavithra Dayalan for the Applicant.

Ld. Counsel Shri. James Victor Rajkumar for the Respondents No. 1 and 2.

Vide separate order announced in open court, the application is disposed of with directions.

-Sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

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-Sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

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

IA/1320/IB/2020 in CP/431/(IB)/CB/2018

(filed under Section 43 of the Insolvency and Bankruptcy Code, 2016)

In the matter of M/s. Akshaya Imaging Systems Private Limited

Mr. Varadachari Kumar,

Liquidator of M/s. Akshaya Imaging Systems Private Limited,

No. 7, Ramanujar Street,

Behind Indian Bank,

Chitlapakkam, Chennai – 600 064.

... Applicant

Vs

1. Mr. Sreenivasan Harikrishnan,

11, North Tank Square Street,

Opposite to REX School,

Triplicane, Chennai – 600 005.

2. Mr. Sreenivasan Janakiraman,

15/8, BandalaVenugopal Naidu Street,

Triplicane, Chennai – 600 005.

... Respondents

Order pronounced on 18th April, 2024

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SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *Mr. S.Sathiyarayanan, Counsel*

For Respondent : *Mr.P.James Victor Rajkumar, Counsel*

ORDER

(Heard through video conferencing mode)

IA/1325/IB/2020 is an Application filed by the Liquidator of the Corporate Debtor under Section 43 of IBC, 2016 seeking reliefs as follows;

a) Declare that the alleged transactions constitute Preferential transaction under Section 43 of the Code:

b) Direct the Respondents No. 1 & 2 to make contribution to the assets of the Corporate Debtor,

c) Direct the Respondents to pay the costs; and

d) To pass such other orders as the Hon'ble Tribunal may deem fit and expedient under the circumstances of the case and thus render Justice.

2. It is stated that from the books of accounts of the Corporate Debtor, the Liquidator has identified the entries of several cash transfers to the tune of **Rs.45,03,680/-** which have no clear narration for the financial year ending 31.03.2018. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal on 31.05.2018. To that effect, it is stated that the Liquidator wrote a letter on 16.01.2020 sought clarification from the Respondents. In response to the letter dated 16.01.2020, the Respondents replied vide letter dated 23.01.2020 stating that the Respondents borrowed funds from the third party and they

were repaid when the Corporate Debtor had enough funds. It is stated that no creditors were shown in the books of accounts and the borrowings are not transparent and not proved. It is stated that he was unable to conclude that there existed a mutual dealing between the Corporate Debtor and as such lenders are not eligible for set off. It is stated that the payments to such purported lenders have also not been done directly from the Corporate Debtor's account, but have been withdrawn by the Respondents and as such caused benefits to the Respondents in preference to other creditors in the event of a distribution of assets being made in accordance with Section 53 of the Code.

3. It is stated that the Liquidator sought further clarification vide e-mail dated 13.03.2020, however, there was no response from the Respondents. It is submitted that the alleged fund transfer of Rs.45,03,680/- has been done without any commercial nexus as against the interest of the creditors and other stakeholders of the Corporate Debtor and the same is in nature of preferential transaction done with an intent to defraud the creditors as envisaged in Section 43 of IBC.

4. The Respondents have filed the reply. It is stated that the present Application under Section 43 of IBC, 2016 is not maintainable since the entire transaction falls outside the scope of Section 43(2)(a) and (b) of IBC, 2016. It is stated that the withdrawal of cash from the account of the Corporate Debtor would not fall within the scope of Section 43 of IBC, 2016 since the term used there is 'property'.

5. It is stated that the net change in the funds for the alleged period constitutes 14.9% payable to the 1st Respondent for a sum of Rs.20,48,748/- and 3.3% payable to the 2nd Respondent for a sum of Rs.3,82,375/-. The fund of the Respondents lying with the Corporate Debtor as on 31.05.2018 to the 1st Respondent is Rs.1,17,40,863/- and to the 2nd Respondent is Rs.1,10,54,140/-. Thus, it is stated that the allegation made by the Liquidator is baseless and the facts stated above is aimed at misleading this Tribunal.

6. In rejoinder, it is stated that the Respondents have withdrawn Rs.1,40,29,613.75 from 01.07.2017 to 31.05.2018. The current assets of the Corporate Debtor decreased by Rs.1,21,92,320.43 and the current liabilities have increased by Rs.5,83,765.94 and resultant Net Working

Capital reduced by Rs.1,16,08,554.49 however, there was no decrease in the secured debts. It is stated that the intention of the suspended management was to divert the funds of the Corporate Debtor. It is stated that the asset/property of the Corporate Debtor were preferential transaction and should be brought back to the Corporate Debtor for distribution to the stakeholders in accordance with the Code and should not be lost.

7. Heard the submissions made by the Learned Counsel for the parties and perused the records.

8. The Liquidator has filed the present Application under Section 43 of IBC, 2016. The provisions of Section 43 of IBC, 2016 is extracted hereunder;

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 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.

9. Perusal of Section 43 of IBC, 2016 contemplates that where the liquidator or the resolution professional is of the opinion that the corporate debtor has at a relevant time given a preference in such transaction 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 transaction and for, one or more of the orders referred to in Section 44. Thus, the preliminary enquiry which this Adjudicating Authority is required to do is to first ascertain as to whether the Corporate Debtor has given any preference and whether the preference has happened during the relevant time.

10. It is seen that the Respondents vide letter dated 23.01.2020 has clarified to the Liquidator as follows;

“As per the Bank Approval Letter the Company should not borrow from any 3rd Party. So whenever the Company is in need of fund the Directors borrowed the money from the External Parties and transferred the same to the Company’s account. Once the Company had enough fund then the amount borrowed from the Directors had been returned to them.”

11. In this regard, it is seen that the Respondents in their counter have admitted that the said amount was borrowed from the 3rd party and it has been repaid to them by the 1st and 2nd Respondents whenever the money was available with the Corporate Debtor. Thus, in the present case, 1st and 2nd Respondents are to be treated as a creditors of the Corporate Debtor and hence the transactions would constitute a preference under Section 43 of IBC, 2016.

12. The CIRP in respect of the Corporate Debtor was ordered on 31.05.2018 and the impugned transactions happened during the Financial Year 2017 – 2018. Thus it falls well within the look back period of 1 year.

13. Further, it is also required to be noted that the Respondents have not stated that the said transaction falls during the ordinary course of business. The impugned transaction made by the Respondents to the

tune of Rs.45,03,680/- put such Creditor in a beneficial position then it would have been in the distribution of assets as per Section 53 of the Code.

14. In view of the reasons stated *supra* we are of the view that the transactions impugned in the present application squarely falls under Section 43 of IBC, 2016 and as such in terms of Section 44(1)(d) of IBC, 2016 we direct the Respondents to pay a sum of Rs.45,03,680/- to the Liquidator of the Corporate Debtor within a period of 14 days from the date of this order.

15. With the above said directions, this Application stands **disposed of.**

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

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SANJIV JAIN
MEMBER (JUDICIAL)

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