

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 03.04.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/1267/2023 in CP (IB) No.12/10/HDB/2019</b>
<b>NAME OF THE COMPANY</b>	<b>Parikh Fabrics Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	
<b>NAME OF THE RESPONDENT(S)</b>	
<b>UNDER SECTION</b>	<b>10 of IBC</b>

**ORDER**

**IA (IBC)/1267/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH - II**

**I.A. No. 1267 of 2023 in**  
**CP(IB). No. 12/10/HDB/2019**

**In the matter of**

**M/S. PARIKH FABRICS Pvt. Ltd.**

**In the matter of:**

Sivarama Prasad Bhamidi,  
Liquidator of Parikh Fabrics Pvt. Ltd.  
Regn. No. IBBI/IPA-003/IPN00084/2017-18/10822.

**...Applicant/Liquidator**

And

1. Mr. Nikhil B. Parikh,  
Managing Director (Suspended)
2. Mrs. Rita B. Parikh,  
Director (Suspended)  
4-3-338, R.K. Estate, Bank Street,  
Koti, Hyderabad- 500095

**...Respondents**

**Date of order: 03.04.2024**

**CORAM:-**

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)  
Hon'ble Sri Sanjay Puri, Member (Technical)

**Counsels present:**

*For the Applicant* : *Mr. Krishna Grandhi, Advocate*  
*For the Respondents* : *Mr. Sathish Kumar, Advocate*  
*Heard on* : *09.02.2024*

**PER: BENCH**

**ORDER**

1. The present application filed by the Liquidator of M/s. Parikh Fabrics Pvt. Ltd., being aggrieved by the order<sup>1</sup> passed by this Adjudicating Authority on 26.06.2023 in I.A. No. 879 of 2019. The purpose of this

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<sup>1</sup> Pg. No. 87-102, Copy of Order dated 26.06.2023- **Annexure E**

application is to recall the order passed in I.A. No. 879 of 2019 in the present Company Petition of the CD.

### **Submissions of the Applicant**

2. It is averred that the CD was admitted into **CIRP**<sup>2</sup> vide order dated 08.02.2019 under the Company Petition bearing CP(IB) No. 12/10/HDB/2019 filed under Section 10 of the I&B Code, 2016. In the first **CoC**<sup>3</sup> meeting held on 07.03.2019 Mr. G. Satyanarayana Murthy was appointed as the **RP**<sup>4</sup>
3. It is averred that Prior to CIRP, the Financial Creditor conducted Forensic Audit Report of the CD. During CIRP, the RP (Late Sri G. Satyanarayana Murthy), reviewed this report and initiated a Transaction Audit on 24-05-2019. The findings of both audits aligned, revealing preferential and fraudulent transactions. Consequently, the RP filed an application I.A. No. 879 of 2019 under Sections 43 and 66 of the IBC<sup>5</sup> before this Adjudicating Authority. Relevant extracts from the Forensic Audit Report were submitted in this application, shedding light on avoidable transactions. However, I.A. No. 879 of 2019 was dismissed on 26.06.2023.
4. It is averred that the Hon'ble Tribunal has erroneously interpreted the facts presented by the RP in I.A. No. 879 of 2019 regarding the dates and the look-back period for preferential transactions, and also with regard to establishing the intent for fraudulent transactions. Therefore, it is prayed to recall the order dated 26.06.2023 passed in I.A. No. 879 of 2019 the mistake made by this Hon'ble Tribunal has unfairly prejudiced the Applicant.
5. Reference has been made to the order dated 25.05.2023 of the Hon'ble NCLAT Delhi, **Union Bank of India (erstwhile Corporation Bank) v.**

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<sup>2</sup> Corporate Insolvency Resolution Process.

<sup>3</sup> Committee of Creditors.

<sup>4</sup> Resolution Professional.

<sup>5</sup> Insolvency & Bankruptcy Code, 2016.

**Dinkar T. Venkatasubramanian**, (Reference in I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins) No. 729 of 2020) **wherein it has been** categorically held the grounds under Recall of an Order of the Adjudicating Authority is permitted. The relevant extract from the Order is elucidated below.

*“8. In our opinion a tribunal or a court may recall an order earlier made by it if..., there has been a mistake of the court prejudicing a party....”*

6. It is stated that as per section 43(4)(a) of IBC, 2016, the lookback period is 2 years and all transactions pertaining to the financial years 2017-18 and 2018-19 fall within the ambit of preferential transactions insofar as the parties therein are concerned.
7. It is asserted that preferential transactions with "Related Parties" took place with Ankit & Co. (Chartered Accountant), while Mr. S. Brij Kumar, serving as the Chairman of the CD, concurrently held the position of Manager at Ankit & Co. This dual role is apparent from the ledger extracted in the CD's books of accounts, detailing the date-wise transactions. However, the Hon'ble Tribunal did not consider these transactions presented by the Applicant in the written submissions of I.A. No. 879 of 2019.
8. It is averred that regarding fraudulent transactions, the order dated 26.06.2023 of this Adjudicating Authority concluded that the RP failed to establish the intention of the Respondents therein. Further, it is stated that the CD was admitted into CIRP under section 10 of the IBC, 2016. In such cases, Section 66(2) of the IBC, 2016 would be applicable, not Section 66(1). Consequently, the RP is not under any statutory obligation to prove the intention behind such transactions. Section 66(2) of the IBC provides that:  
*“On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority*

*may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit if:*

*(a) "wherein the erstwhile management/ directors knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP of the Corporate Debtor" and*

*(b) the director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor".*

9. The Applicant has also referred to decision of the Hon'ble NCLAT Delhi, in the case of **GVR Consulting Pvt Lid v. Pooja Bahry**, 2023 SCC Online NCLAT 220, which held that

*"The intent of the Corporate Debtor is not relevant since the Section 43 envisages statutory fiction as has been noted above. Whether the Act is voluntary or not has no relevance while coming to the conclusion whether transaction is preferential or not. Learned Counsel for the Resolution Professional has rightly referred to Section 43, sub-section (3) proviso."*

In light of the above, the Applicant claimed that intent is irrelevant to establish the existence of preferential transactions under section 43 of the IBC, 2016.

### **Submissions of the Respondents**

10. The Respondent submits that any order passed by any Authority will be favorable to one party and prejudicial to the other party. The mere fact that an order passed is prejudicial to one party does not give right to the aggrieved party to approach this Hon'ble Tribunal to recall its own order, especially when the order was passed after following the due process of law.

11. It is also asserted that the order passed in I.A. No. 879 of 2019 is a well-reasoned order and does not warrant any intervention, as was passed after hearing both the parties and if the Applicant is aggrieved by the order, he has the option to challenge the same before the Hon'ble NCLAT. In fact, an appeal was filed by the Applicant under Diary no. 9805118016902023 was not pursued for the reasons best known to the Applicant.
12. The Respondent prays this Hon'ble Adjudicating Authority to dismiss the present application, as it is bad in the eyes of law.

**Decision**

13. We have heard both the Counsels and also gone through the records.
14. The liquidator has filed this present application to recall the impugned order passed by this Adjudicating Authority on 26.06.2023 in I.A No. 879 of 2019. This IA was filed under sections 43 & 66 of IBC alleging preferential transactions during the FY 2017-18 undertaken with related parties pertaining to transfer of property, being cash aggregating to Rs. 5,21,58,975/- to Ankith & Co. and other. This Adjudicating Authority dismissed the application stating that:

*“Unless the exact date is specified with regard to the transactions, it cannot be brought within the purview of the preferential transactions as mentioned under Section 43(4). Some of the transactions are in the years 2015-16 which are beyond two years. The basis was only transaction audit report. It is also stated that the auditors were not given access to the account books and that they gave the report based on the material. Which is the material, is not specified. There seems to be no proper enquiry made on the transactions. Hence, no relief under Section 43 can be given to the Applicant.”*

15. It is apparent from the above that this Adjudicating Authority had categorically gave a finding about the transactions in question, that these were not properly enquired and only bald statements were made in that regard.

16. It is mainly for that reason this Adjudicating Authority had dismissed IA No. 879/2023. The decision to dismiss the application was made correctly, with specific reasons provided in the order. Recall of order dated 26.06.2023 is unwarranted.

The application I.A. No. 1267 of 2023 is therefore dismissed.

Sd/-

**SANJAY PURI**  
**MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**

*Rohit*