

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

I.A. 1768 OF 2023

Under Section 43 r/w 44, 45, 50 and 66 of
the Insolvency & Bankruptcy Code, 2016

Mr. Ajay Marathe

The Resolution Professional

...Applicant

Vs.

Mr. Hrushikesh Paranjape & Another

...Respondents

In the matter of

C.P.(IB) No. 3755/MB/2019

Canara Bank

Financial Creditor

Vs.

Paranjpe Agro Products India Private
Limited

Corporate Debtor

Order delivered on: 20.08.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

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Appearances

For the Liquidator : Mr. Prakash Shinde, Advocate
For the Respondent : Ms. Khushbu Bhanushali, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 1768/2023 is filed under Section 43 r/w 44, 45, 50 and 66 of the Insolvency & Bankruptcy Code, 2016 (“Code”) by Mr. Ajay Marathe, the Resolution Professional (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of Paranjpe Agro Products India Private Limited (“Corporate Debtor”), seeking direction against the Respondents i.e.

- a. That this Tribunal be pleased to take cognizance of the facts of the present application and the transaction audit report dated 12th November, 2022 and take necessary actions against the Respondent under the Code:*
- b. This Tribunal be pleased to declare the transaction with Respondent as undervalued transaction as under Section 45 of the Code and take necessary action under Section 47 of the Code.*
- c. That this Tribunal be pleased to pass orders to declare that the amount of Rs.2.04 crores and Rs.0.38 crores is a transaction under Section 45 of the Code and direct the Respondent to return the stock and/or pay the amount of Rs.2.04 crores and Rs.0.38 crores to the Corporate Debtor,*
- d. That this Tribunal be pleased to pass orders to declare that the amount of Rs.6.56,25,806/- is a transaction under Section 66 of the Code and direct the Respondent to repay the amount to the Corporate Debtor:*

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e. *That this Tribunal be pleased to pass such further and other directions as it may deem fit under the provisions of Sections 44, 45, 66, 67 and 69 of Code:*

2. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") vide Order 10th June, 2022 ("Admission Order") passed by this Tribunal under Section 7 of the Code and the Applicant was appointed as the Interim Resolution Professional and later appointed as the Resolution Professional ("RP") in the First Committee of Creditors Meeting ("COC") held on 13th July 2022.

2.1. The Applicant states that pursuant to the Admission Order, moratorium was declared in terms of Section 14 of the Code and on 16th June, 2022, the Applicant made Public Announcement under FORM-A in three newspaper having circulation at registered office of the Corporate Debtor one in English language and one in vernacular language having circulation at Ratnagiri, where factory of the corporate debtor is situated. Subsequently, on 5th July 2022, the CoC was constituted.

2.2. Pursuant to the provisions of the code, in the first meeting of CoC conducted on 13th July 2022, it was decided to appoint Dharkar & Kothari, chartered accountant to conduct transaction audit and prepare the transaction audit report of the corporate debtor, for the period 1 April 2017 to 10th June 2022 in order to identify transactions which are

- (i) Preferential transactions under Section 43 of the Code,
- (ii) Undervalued transactions under Section 45 of the Code,
- (iii) Transactions defrauding creditors under Section 49 of the Code
- (iv) Extortionate Transactions under Section 50 of the Code
- (v) Fraudulent transactions under Section 66 of the Code.

2.3. The Applicant states that upon carrying out the audit of the Corporate Debtor for the period of 1 April 2017 to 10th June 2022 and conducting examination and detailed analysis of the transactions, it is evident that the Corporate Debtor has entered into transactions which are in violation of Sections 43, 44, 50, 45, 49 and 66 of the Code.

TRANSACTION SECTION 45 OF THE CODE

- a. Pursuant to the transaction audit report, the Corporate Debtor has written off amount receivables from the Respondent amounting to Rs.2.04 crores for Financial Year 2018-19 and Rs.0.38 For Financial Year 2019-20 crores which is to be considered as undervalued transaction. This transaction is also reported in annual financial statement of Corporate Debtor.
- b. Stocks which were sold by the corporate debtor to M/s Shri Cashew products were at a rate less than cost of the products as per the records maintained in the tally

TRANSACTIONS VIOLATING TO SECTION 66 OF THE CODE

- a. Pursuant to the transaction audit report, it is evident that stock in trade amounting to Rs.6,56,25,806 / was written off in the books of accounts. The write off in inventory is to be considered as extraordinary item and to be disclosed separately in financial statement as per the requirement of schedule III of The Companies Act 2013, as the write off amount is significant & constitute 232% of total income earned during FY 2019-20. But no separate note in financial statement describing the reason leading to write off of stock was available. Further, the value of the physical stock was not appropriate and thus, the possibility

that the value of closing stock was inflated/misreported in the financial statements.

- 2.4. It is thus clear from the facts hereinabove and the transaction audit report that the Respondent there are certain transaction entered into by the management of the Corporate Debtor which are undervalued and fraudulent in nature as envisaged under Section 45 and 66 of the Code.
- 2.5. The Applicant states that the Respondent being the Director of the Corporate Debtor during the relevant time have indulged in the aforementioned transactions which are not in the ordinary course of the business and are not in the interest of the Corporate Debtor. The said transactions have benefitted the related parties and put the management in a beneficial position. Does it is respectfully submitted that the respondent is liable to bring back and amount of Rs.6,56,25,806/-.
3. The Respondent have filed affidavit in reply dated 14.10.2023 thereby denies each and every averment, statement, submission and contention made by the Applicant in the Application, except what is expressly admitted herein-under.
- 3.1. The R1 and R2 have been arrayed as Respondents to the captioned Interlocutory Application filed by Shri Ajay Marathe, Resolution Professional for M/s. Paranjape Agro Products Private Limited (hereinafter referred as the Applicant) under the provisions of Section. 43 r/w 44, 45, 49, 50, 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the Code) essentially seeking retraction of alleged transactions.
- 3.2. The present Application good to be qualified under the provisions of S. 49 of the Code the Applicant ought to have satisfied this Tribunal about deliberate actions on the part of the Respondents however

nowhere in the Application these efforts have been made. Moreover, both the enabling provisions i.e. S. 49 and S. 66 provides provisions against the Corporate Debtor.

3.3. Now, admittedly, the Corporate Debtor is managed by its Directors and admittedly the other Director of the Corporate Debtor is intentionally kept out from the proceedings. Moreover, no specific case is made out against the R1 stating the R1 was only responsible for the alleged transactions.

3.4. The allegation made under S. 66 of the Code through the Application is concerned it is stated and submitted that the write - off Stock was made pursuant to the Accounting Standards and through passing Board Resolution to that effect.

3.5. Further, it is to be noted that the Corporate Debtor is into business of processing, manufacturing, export of Cashews. In this regard the Corporate Debtor, during the period of Jul / Aug. 2019 was awarded with huge export order of Cashew and therefore in huge amount of Cashew Seeds was procured by the Corporate Debtor. Further, the Corporate Debtor sought arrangement of further Funds for execution of the said contract. However, the Corporate Debtor was not provided with adequate funds and therefore, the Corporate Debtor could not execute that order.

3.6. Further, during Mar. 2020 the World was faced with wake of Pandemic COVID - 19 and thereafter the Union of India imposed Nationwide Lockdown w.e.f. 24.03.2020. Thereby there were restrictions for movement of public and all factories / works were ordered to be shut. These restricts were prevailing till Sep. 2020 by virtue of time to time issued notifications of Government.

3.7. Since, from Mar. 2020 till Sep / Oct. 2020 said stock of Cashew Seeds was lying idle and at one place only. Result to that the whole stock got perished. And consequently, the Corporate Debtor was forced to write-off said Stock.

- 3.8. Therefore, in no way the business decision of the Corporate Debtor and that too for which the Corporate Debtor was forced to can never be stated to be fraudulent transaction,
- 3.9. The Respondents also reiterates that the Applicant has also not shown anything to the effect that the present transactions in question were not a decision of the Corporate Debtor during its Regular course of Business. It is pertinent to note that the Board Resolutions of the Corporate Debtor clearly records that the said transactions are being carried out during usual course of business of the Corporate Debtor. And therefore, the Application also fails on this ground and be dismissed.
- 3.10. The Respondents reiterates that the Applicant cannot seek repayment U/s. 66 of the Code since this Bench is empowered only to direct the contribution of the fraudulent transactions to the Corporate Debtor's account and not empowered to reverse effect of the fraudulent transaction. Therefore, the prayers in the present Application does not survive qua the provisions of S. 66 of the Code and liable to be rejected.
4. Heard the learned Counsel for both sides and perused the materials available on records.
- 4.1. The Applicant has sought the order in relation to the amount of Rs.2.04 crores and Rs.0.38 crores, being the amount of receivables written off, in terms Section 45 of the Code, and declaration in relation to the amount of Rs.6.56,25,806/-, being written off of the inventory, in terms of Section 66 of the Code.
- 4.2. As regards write off of receivable amounting to Rs. Rs.2.04 crores and Rs.0.38 crores, the Transaction auditor has reported that “*out of the total receivables as on 31.03.2022 amounting to Rs. 40.29 lacs outstanding amount of Shree Cashew Products was 22.09 lacs. Also, as per the accounting records, debts amounting to Rs. 18,00,000.00 were recovered by Mr. Hrushikesh Paranjape and debited the same in Unsecured Loan*”

Account. Debtors amounted to Rs. 38,34,604.84 were written off as Band debts during 01.04.2020". It is further reported in the report that "According to the audited financial statements for financial year 2018-19 and 2019-20 debtors amounting to Rs. 2,04,57,443.21 and Rs. 37,50,000.00 were written off through the account of Mr. Hrushikesh Paranjape the same is disclosed under related party transactions. The same can be interpreted as the amount received from these debtors was not deposited in the accounts of the company." The applicant has sought the order under Section 45 of the Code which provides under Section 46(1)(ii) a lookback period of two years in case of related party. The transaction audit report has clearly identified these transaction having been written off in the financial year 2018-19 and 2019-20. In other words, the write off took place on or prior to 31.03.2020. The CIRP commenced on 10.06.2022 in the present case, accordingly, no order can be passed in relation to any transaction having taken place prior to 09.06.2020 in terms of section 45 r/w 46(1)(ii). Accordingly, this prayer is beyond the scope of Section 45 and cannot be allowed. Nonetheless, mere write off of receivable in the books of account of the Corporate Debtor does not discharge the debtor from its liability to pay the debt so written off. Accordingly, the Resolution Professional shall be at liberty to take appropriate legal action for recovery of these written off amounts.

- 4.3. The Applicant has also mentioned one transaction pertaining to sale of stock to M/s Shree Cashew Products (Proprietorship concerned of Respondent No. 1) at a rate less than the cost of products as recorded in the tally. It is the case of the Applicant that Cashew Seed and NW Grade Cashew Carnels were sold in Financial Year 2020-21 at a price of Rs. 100 per kg. and Rs. 500 per kg. respectively while its cost as per tally is Rs. 113 per kg. and Rs. 528.31 per kg. According to section 45 of the Insolvency and Bankruptcy code 2016, if any asset was sold by a corporate debtor for consideration the value of which is

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significantly less than the value of the consideration provided by the corporate debtor. The management response as recorded the transaction audit report states that *“During your visit we have told you that we are not maintaining Inventory in Tally. Cost as per tally is not reflecting correctly. We have given you closing stock as on 31st March, 2020. Out of that Stock cashew seeds and NW Grade cashews are sold (Please refer cost price as per that report). So, there is no loss incurred detrimental to the interest of the company”*. Nonetheless, we note that Section 45 provides for avoidance of transaction which involves the transfer of the assets by the Corporate Debtor for a consideration significantly less than the value of the consideration provided by the Corporate Debtor. The RP has made out a case merely on the basis of the transaction audit report and has not even taken any step to determine the actual consideration provided by the Corporate Debtor in relation to the goods so sold. We are of the view that, the RP could have ascertained the cost of goods in the light of management response or even confronted the management to arrive at the correct value on the basis of records made available by them. We find that transaction audit report has alleged that *“There was loan from Mr. Hrushikesh Paranjape as unsecured loans to the company which was adjusted in the financial year 2020-21 and 2021-22 from the receivables form Shree Cashew Products which is a proprietorship concern of Mr. Hrushikesh Paranjape”*. The appropriation of receivable (arising from such sale) from Respondent No. 2 against the liability due to Respondent No. 1 certainly indicates to the manner in which affairs of the Corporate Debtor have been carried out and this appropriation may have fallen within the ambit of Section 43 of the Code. However, the Applicant has sought the order of under Section 45 in relation to this transaction, and in the absence of cogent material placed before us, it is difficult to pass an order of under Section 45 of the Code.

4.4. As regards write off of inventory, the Transaction auditor has reported that *“As per the Audited Financial Statements for Financial Year 2019-20, there was a reduction in stock in trade amounting to Rs. 6,56,25,806.00 there is no separate note regarding the reason for reduction of such stock in the financial statements also the same was not matching with the stock records maintained in tally. Further as per the unit visit reports and stock audit reports it is evident that value of physical stock was not appropriate hence there may be a possibility that the value of closing stock was inflated/misreported in the Financial statements. The write off the stock in trade merely in the books without having its physical existence amount to Rs. 6.56 crore is considered activity carried on with fraudulent purpose & it squarely covered under scope of Section 66 of the IB Code, 2016.”* It is also stated in the said report under ‘Conclusion’ that *“It is apparent from the records provided by the bank that there was no physical stock present at the plant at any time after the loan was sanctioned and only value of stock was inflated in the books and records which leads writing off the excess book stock in the Financial Statement as on 31.03.2020. Mentioning false amount of stock in the Financial statements to maintain the limits sanctioned by the bank that should be considered as fraudulent transactions under Section 66 of IB Code, 2016.”* The management response as recorded in the transaction audit report states that *"Stock write off: As explained during your audit visit, company got an order for export for which huge procurement of seeds was done. Providing a copy of this export order, funds were sought from our bankers for completing the order. However, our bankers did not provide the required funds due to which we were unable to ship the consignment in time and the export order was cancelled. The entire partially processed stock of Cashew and major part of the unprocessed seeds were therefore lying-in stock with the company. Needless to add that the Cashew seed has a shelf life of about a year if stored properly and is reshuffled at regular intervals. With start of lockdown from 22.03.2020 it became Impossible to manage and*

maintain the seeds and thus it resulted in worsening of quality of the material and has become useless. Since it was a condition existing on the balance sheet date having a material impact, our auditor has chosen to write it off in the financial year 2019-20 itself. Board resolutions and letter to auditor are enclosed herewith”.

- 4.5. The management has explained that the write off arose from failure of the Corporate Debtor in execution of export order due to non-availability of credit facility for the purpose and thereafter onset of Covid-19 pandemic. We find from the order dated 10.06.2022 passed by this Tribunal admitting the Corporate Debtor in to CIRP process that the account of the Corporate Debtor was classified as NPA on 03.04.2018 after occurrence of default on 03.01.2018. On perusal of audited financial statement for year ended 31.03.2020 we find that the Corporate Debtor was carrying an inventory of Rs. 7,41,99,136.00 as on 31.03.2019 and Rs. 7,96,65,854.00 as on 31.03.2018. If we look at the explanation in the backdrop of these financial data we find it difficult to accept the contention because the Corporate Debtor was already carrying an inventory of Rs. 7,96,65,854.00 as on 31.03.2018, when its account was classified as NPA immediately thereafter; and the shelf life of the Cashew is stated to be one year while the Corporate Debtor continued to hold inventory of Rs. 7,41,99,136.00 as on 31.03.2019 also even though the total purchases during the Financial Year 2018-19 are stated to be of Rs. 36,68,982.33. An application under Section 7 was filed by the lender Canara Bank on 11.10.2019, accordingly, the stock write off was in order to wash away non-existent of inventory, which was also observed in the unit visit reports ad stock audit reports as alleged by the Transaction Auditor. In view of these facts, we have no hesitation to hold that the inventory write off was an act of cleaning the books to wipe of non-existent inventory in view of CIRP petition having been filed on 11.10.2019 and there being no reasonable

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prospect of avoiding of commencement of CIRP. The Hon'ble NCLAT, Chennai Bench in the case of *Mr. Shibu Job Cheeran, & Ors. Vs Mr. Ashok Velamur Seshadri, Liquidator of (M/s Archana Motors Limited)* has held “43. It is therefore clear that for establishing the fraudulent purpose, it must be shown that the Ex-Directors of the Corporate Debtor knew that the Company was insolvency bust continued to run business with dishonest intentions. On a broader sense, concealment of true financial position of the Corporate Debtor can be also covered under such provisions.”

- 4.6. Accordingly, we consider it appropriate to hold that the business of the Corporate Debtor has been carried on with an intent to defraud creditor and it is a fit case to pass an order under Section 66 of the Code, directing Respondent No. 1 to make contribution of Rs.6,56,25,806/-. The other Director is the family member of the Respondent No. 1 accordingly, we don't find any force in the argument of non-joinder canvassed by the Respondent. The Respondent shall pay this money to Corporate Debtor within 30 days from the communication of the said order.
5. In view of the above, IA 1768 of 2023 is partly allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)