

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins.) No. 936 of 2022

IN THE MATTER OF:

Ram Bhaj Jain & Anr.

...Appellants

Versus

Tarun Batra & Anr.

...Respondents

Present:

For Appellants : Mr. Anand Chhibbar, Sr. Advocate along with Mr. SP Singh Chawla & Mr. Kunal Surhatia, Advocates.

For Respondents : Mr. Sumesh Dhawan, Mr. Vatsala Kak & Mr. Raghav Dembla, Advocates.

O R D E R

Per: Justice Rakesh Kumar Jain:

This appeal is filed by Ram Bhaj Jain & Ram Niwas (Suspended Directors of M/s Shri Vardhman Rice Mills Pvt. Ltd./Corporate Debtor) to assail the validity of the impugned order dated 20.06.2022, passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench IV) by which I.A. No. 2445/(ND)/2020 filed by Respondent No. 1 (Tarun Batra/Resolution Professional of the Corporate Debtor) under Sections 25(2)(j), 43, 45, 66 and 235A of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been allowed with a direction that "(a) the Respondents except Respondent No. 6 are hereby directed to pay the aforementioned amounts as explained in para 5, 6 and 7 to the Corporate Debtor within 30 days from the date of pronouncement of this order (b) the Applicant is hereby directed to initiate penal proceedings as per law against the suspended directors and other parties".

2. In brief, CP (IB) No. 241/ND/2019 was filed under Section 9 of the Code by M/s Bhupindra Agro Pvt. Ltd. (Operational Creditor) against M/s Shri Vardhman Rice Mills Pvt. Ltd. (Corporate Debtor). It was admitted on 04.12.2019 and Vikas Garg was appointed as the Interim Resolution Professional (in short 'IRP'), however, in the first meeting of the Committee of Creditors (CoC) held on 15.01.2020 Tarun Batra (Respondent No. 1) was appointed as Resolution Professional (RP) and his appointment was approved by the Adjudicating Authority on 24.01.2020. During the insolvency process, the total admitted claim was Rs. 2351.97 Lakhs including claim of the financial creditors of Rs. 2277.80 Lakh and claim of the Operational Creditor of Rs. 74.17 Lakhs.

3. The CoC in its second meeting held on 14.02.2020 appointed A.K.G & Associates for carrying out the transaction audit for the period from 01.04.2017 to 04.12.2019 (CIRP Commencement date). The transaction auditor presented the final transaction audit report to the CoC in its 3rd meeting held on 15.05.2020 which was shared with the present applicants for their comments. Since, final transaction audit report dated 20.05.2020 reported a large number of irregularities in the conduct and management of the business/ affairs of the Corporate Debtor including transactions which qualify as preferential transactions, undervalued transactions and fraudulent transactions, therefore, the RP filed an application bearing 2445 of 2020 under Sections 25(2)(j), 43, 45, 66 and 235A of the Code. In the said application, the RP gave the details of the preferential transactions, undervalued transactions and fraudulent transactions in separate heads in which Para 20 which deals with the preferential transactions, Para 27 deals

with undervalued transactions and Para 34 deals with the fraudulent transactions which are reproduced as under:-

“20. That the party wise detail of Preferential Transactions under Section 43 is as per detail given in table hereunder:-

Name of Party	Observation of Transaction Auditor with comments of the Applicant /Resolution Professional
Shree Ji International (related or unrelated is not known to applicant due to lack of information from suspended directors.	<p>It was observed by the transaction auditor that Rs. 75.00 lakh was opening payable balance as on 01.04.2017 with the party. During the month of April 2017 Rs. 70.00 has been paid and Rs. 5.00 lakh has been paid during the CIRP period, on 17.12.2019. The said transactions with the parties are not done in ordinary course of business and considered as preferential transactions Total Amount considered under Preferential Transaction = Rs. 75.00 Lakh</p> <p>Copy of Ledger Account of the party is attached at Annexure A-7</p>
Ram Bhaj Jain (suspended director)	<p>It was observed by the transaction auditor that Rs. 97000/- was opening payable balance as on 01.04.2017 with the party. During the period under audit the CD has received a total of Rs. 10.25 out of which Rs. 1.05 lakh has been received by cash and the CD has paid back Rs. 12.80 lakh against the opening balance and amount received.</p> <p>However due to time limit under section 43, out of total amount paid, payment of Rs. 10.29 lakh has been made under the period 04.12.2017 to 04.12.2019 which will be covered under section-43 as Preferential Transaction. The said transaction with the suspended director is not done in ordinary</p>

	<p>course of business and considered as preferential transactions</p> <p>Copy of Ledger Account of the party is attached at Annexure A-8</p> <p>Total Amount considered under Preferential Transaction = Rs. 10.29 Lakh</p>
Radico Trading Limited (Related party and Corporate guarantor of the CD)	<p>It was observed by the Transaction auditor that Rs. 5.25 Cr. were payable to the party as on 01.04.2017. During the period under audit the CD has received Rs. 20.85 Lakh from the party and Rs. 4.08 Cr. has been paid against the opening payable balance. However due to time limit under section 43, out of total amount paid, payments of Rs. 2.86 crore will be covered under section 43 (for the period 04.12.2018-04.12.2019) and payment of Rs. 4.07 crore for the period 04.12.2017 to 04.12.2019. The said transactions with the are not done in ordinary course of business and considered transactions. as preferential</p> <p>Copy of Ledger Account of the party is attached at Annexure A-9</p> <p>Total Amount considered under Preferential Transaction = Rs. 408.40 Lakh</p>
G.G Enterprises	<p>It was observed by the Transaction Auditor that the Corporate Debtor has taken an unsecured loan of Rs. 3.00 lakh from the party on 04.10.2017. Later on 18.05.2018 the same has been repaid but on verification with Tax Audit report of FY 2018-19 the same was not shown under repayments of loans/ deposits. The said transactions with the are not done in ordinary course of business and considered as preferential transactions.</p>

	<p>Copy of Ledger Account of the party is attached at Annexure A-10</p> <p>Total Amount considered under Preferential Transaction = Rs. 3.00 Lakh</p>
Hinglaj Enterprises	<p>It was observed that the CD has adjusted receivable balance of Rs. 14.40 lakh receivable from various parties, against the opening payable balance of Hinglaj Enterprises during the period under audit. However, the repayment of Rs. 5.77 lakh is done/adjusted during the 2 years preceding CIRP date i.e. 04.12.2019.</p> <p>It was also observed that the said opening payable balance as on 01.04.2017 was consist of Unsecured loan which was taken from the party during the FY 2014-15 and the CD has shown this unsecured loan under the head "Sundry Debtors" in the books of accounts. Further the above said adjustments/repayment of loan made during the period under audit was not shown in the Tax Audit Report. It was also observed that the information such as address, contact details and the name of proprietor are not available on record, therefore we are unable to verify, whether, the party is a related party or not. The said transactions with the parties are not done in ordinary course of business and considered as preferential transactions.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-11</p> <p>Total Amount considered under Preferential Transaction = Rs. 5.77 Lakh</p>
Total of preferential transactions	<p>Rs. 502.46 lakh, which need to be reversed as avoidance transactions under Section 43 o the Code.</p>

covered under Section 43 of the Code	
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27. That the party wise detail of Undervalue Transactions under section 45 is as per detail given in table hereunder:-

Name of Party	Observation of Transaction Auditor with comments of the Applicant /Resolution Professional
Kundan Trading Co	<p>The Corporate Debtor during the review period has made sales of 21192.35 quintal of Rice at average sales rate of Rs. 775.78 per quintal amounting to Rs. 164.41 Lakh. The Corporate Debtor has booked loss of Rs. 781.78 Lakh by selling 21192.35 quintal of Rice. The cost value of stock was Rs. 4464. 76 per quintal. The amount of undervalue transactions is Rs. 781.78 Lakh, without considering the profit element.</p> <p>The bank transactions with this party are also made in a single month to adjust the balance.</p> <p>The enquiry letter issued by the Applicant /Resolution Professional are also returned undelivered due to non-existence of the party at address</p> <p>The suspended director has purposely done these undervalue transactions to transfer the assets of the corporate debtor to beneficiary and to keep the assets out of the reach of the creditors.</p> <p>The said transactions with the party is not done in ordinary course of business and considered as undervalue transactions under section 45.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-12</p>

	Total Amount considered under undervalue Transaction = Rs. 781.78 Lakh
R.K. International	<p>The Corporate Debtor during the review period has made sales of 20234. 90 quintal of Rice at average sales rate of Rs. 787.37 per quintal amounting to Rs. 159.32 Lakh. The Corporate Debtor has booked loss of Rs. 744.12 Lakh by selling 20234.90.quintal of Rice. The cost value of stock was Rs. 4464.76 per quintal. The amount of undervalue transactions is Rs. 744.12 Lakh, without considering the profit element. The suspended director has purposely done these undervalue transactions to transfer the assets of the corporate debtor to beneficiary and to keep the assets out of the reach of the creditors.</p> <p>The bank transactions with this party are also made in a single month to adjust the balance.</p> <p>The enquiry letter issued by the Applicant /Resolution Professional are also returned undelivered due to non-existence of the party at address</p> <p>The said transactions with the party is not done in ordinary course of business and considered as undervalue transactions under section 45.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-13</p> <p>Total Amount considered under undervalue Transaction = Rs. 744.12 Lakh</p>
Panchdev Foods & Chemicals Pvt. Ltd. (related party – common address and directors are relatives)	<p>The Corporate Debtor during the review period has made sales of 889 quintal of Rice at average sales rate of Rs. 3670.52 per quintal amounting to Rs. 32.63 Lakh. The Corporate Debtor has booked loss of Rs. 7.06 Lakh by selling 889 quintal of Rice The cost value of stock was Rs. 4464.76 per quintal. The</p>

	<p>amount of undervalue transactions IS Rs. 7.06 Lakh, without considering the profit element. The suspended director has purposely done these undervalue transactions to transfer the assets of the corporate debtor to beneficiary and to keep the assets out of the reach of the creditors.</p> <p>The said transactions with the party is not done in ordinary course of business and considered as undervalue transactions under section 45.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-14</p> <p>Total Amount considered under undervalue Transaction = Rs. 7.06 Lakh</p>
Kanha Rice and Paddy Traders	<p>The Corporate Debtor during the review period has made sales of 612.26 quintal of Rice at average sales rate of Rs. 2618.84 per quintal amounting to Rs. 16.03 Lakh. The Corporate Debtor has booked loss of Rs. 11.30 Lakh by selling 612.26 quintal of Rice. The cost value of stock was Rs. 4464.76 per quintal. The amount of undervalue transactions is Rs. 11.30 Lakh, without considering the profit element. The suspended director has purposely done these undervalue transactions to transfer the assets of the corporate debtor to beneficiary and to keep the assets out of the reach of the creditors.</p> <p>The said transactions with the party is not done in ordinary course of business and considered as undervalue transactions under section 45.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-15</p> <p>Total Amount considered under undervalue Transaction = Rs. 11.30 Lakh</p>

Saraswati Foods	<p>The Corporate Debtor during the review period has made sales of 502.23 quintal of Rice at average sales rate of Rs. 1534.25 per quintal amounting to Rs. 7.71 Lakh. The Corporate Debtor has booked loss of Rs. 14.72 Lakh by selling 502.23 quintal of Rice. The cost value of stock was Rs. 4464.76 per quintal. The amount of undervalue transactions is Rs. 14.72 Lakh, without considering the profit element.</p> <p>The suspended director has purposely done these undervalue transactions to transfer the assets of the corporate debtor to beneficiary and to keep the assets out of the reach of the creditors.</p> <p>The said transactions with the party is not done in ordinary course of business and considered as undervalue transactions under section 45.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-16</p> <p>Total Amount considered under undervalue Transaction = Rs. 14.72 Lakh</p>									
Panchdev Foods and Chemical Limited (related party)	<p>It was observed by the Transaction Auditor, that during the month of November 2019 the suspended directors has sold its 4 vehicles / trucks to the related party. The said sales has been made below the fair market value as per the valuation available on public domain. The detail of vehicle sold is given below:-</p> <table><tr><td>Truck – HR67B4972</td><td>170,000.00</td><td>1,412,138.00</td></tr><tr><td>Truck- HR67A2252</td><td>100,000.00</td><td>428,505.00</td></tr><tr><td>Truck- HR67B4897</td><td>140,000.00</td><td>941,425.00</td></tr></table>	Truck – HR67B4972	170,000.00	1,412,138.00	Truck- HR67A2252	100,000.00	428,505.00	Truck- HR67B4897	140,000.00	941,425.00
Truck – HR67B4972	170,000.00	1,412,138.00								
Truck- HR67A2252	100,000.00	428,505.00								
Truck- HR67B4897	140,000.00	941,425.00								

	Truck- HR67A2251	100,000.00	428,505.00
	Total	510,000.00	3,210,573.00
	Loss Booked		2700573.00
<p>Its seems that its mere a books entry to exclude such assets from the reach of secured creditors.</p> <p>The suspended director has purposely done these undervalue transactions to transfer the assets of the corporate debtor to beneficiary and to keep the assets out of the reach of the creditors.</p> <p>The said transactions with the related party is not done in ordinary course of business and considered as undervalue transactions under section 45.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-14</p> <p>Total Amount considered under undervalue Transaction = Rs. 27.01 Lakh</p>			
Total of undervalued transactions	Rs. 1721.19 Lakh, which need to be reversed as avoidance transactions under Section 45 of the Code.		

34. That the party wise detail of Fraudulent Transactions under section 66 is as per detail given in table hereunder:-

Name of Party	Observation of Transaction Auditor with comments of the Applicant /Resolution Professional
Sansar International	The Suspended directors during the review period has made sales of Rs. 758.90 Lakh and Purchase of Rs. 359.65 Lakh during the review period. The amount adjusted in the sale / purchase is Rs. 359.65 Lakh without any bank transactions. The sales and purchase transactions are entered by the

	<p>suspended directors without any movement of goods and only for purpose of inflating the sales / purchase and also write off the non-existence stock from the books of corporate debtor.</p> <p>The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-17</p> <p>Total Amount considered under fraudulent Transaction = Rs. 1118.55 Lakh (total of sales and purchase transactions)</p>
Cap Commodities House	<p>The Suspended directors during the review period has made sales of Rs. 156.75 Lakh and Purchase of Rs. 96.31 -Lakh during the review period. The amount adjusted in the sale / purchase is Rs. 21.75 Lakh without any bank transactions. The sales and purchase transactions are entered by the suspended directors. without any movement of goods and only for purpose of inflating the sales /purchase and also write off the non-existence stock from the books of corporate debtor.</p> <p>The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-18</p> <p>Total Amount considered under fraudulent Transaction = Rs. 253.06 Lakh(total of sales and purchase transactions)</p>
Bharat Agro Foods	<p>The Suspended directors during the review period has made sales of Rs. 205.50 Lakh during the review period. The sales transactions are entered by the</p>

	<p>suspended directors without any movement of goods and only for purpose of inflating the sales also write off the non-existence stock from the books of corporate debtor. The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-19</p> <p>Total Amount considered under fraudulent Transaction = Rs. 205.50 Lakh (total of sales transactions)</p>
East India Overseas	<p>The Suspended directors during the review period has made purchase of Rs. 106.61 Lakh during the review period. The amount adjusted in account is Rs. 106.61 Lakh without any bank transactions. The purchase transactions are entered by the suspended directors without any movement of goods and only for purpose of inflating the purchase and stock values in the books of corporate debtor. The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-20</p> <p>Total Amount considered under fraudulent Transaction = Rs. 106.61 Lakh(total of purchase transactions)</p>
Life Time Enterprises	<p>The Suspended directors during the review period has made purchase of Rs. 319.62 Lakh during the review period. The amount adjusted in account is Rs. 4.50 Lakh without any bank transactions. The purchase transactions are entered by the suspended directors without any movement of goods and only</p>

	<p>for purpose of inflating the purchase and stock values in the books of corporate debtor.</p> <p>The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-21</p> <p>Total Amount considered under fraudulent Transaction = Rs. 319.62 Lakh (total of purchase transactions)</p>
Panchdev Foods and Chemicals Pvt. Ltd. (related party)	<p>It was observed by the Transaction Auditor that the suspended directors has made sales of Rs. 32.63 lakh during the month of Jan-2019 and Feb-2019. The Corporate Debtor has received Rs. 86.00 lakh against the sales made. It was also observed that the Corporate Debtor has adjusted Rs. 21.50 Lakh with Kamal Enterprises and Rs. 3.27 has been adjusted against the Electric Bill. On verification of invoices by Transaction auditor for the FY 2018-19 it was observed that out of total sales, sales of Rs. 26.09 lakh has been carried out with self-owned vehicles of the CD at the time of execution of sale. The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-14</p> <p>Total Amount considered under fraudulent Transaction = Rs. 32.63 Lakh (total of purchase transactions)</p>
Shivoham Enterprises	<p>It was observed that the CD has made purchases of Rs. 5.80 lakh during the month of April-2017, and Rs. 2.72 lakh has been paid against the purchases</p>

	<p>made. It was also observed that the CD has made sales of Rs. 3.08 lakh and no amount has been received against the sales made. Further it was observed that the CD has adjusted the total sales against the purchases made during the period. No GST number has been mentioned as per the books of accounts</p> <p>The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-22</p> <p>Total Amount considered under fraudulent Transaction = Rs. 8.88 Lakh (total transactions)</p>
Kundan Trading Co	<p>It was observed by the Transaction · Co Auditor that the suspended directors has made sales of Rs. 164.40 Lakh, but no transportation details were given on the invoices. The enquiry letter were issued by the applicant / resolution professional, but no such party was found on the registered or available address. It was also observed that the GSTN number of the said party was found cancelled and the date of cancellation was 01.06.2019. On verification of invoices it was observed that out of total sales, sales of Rs. 101.12 Lakh has been made with vehicle owned by Corporate Debtor as the time of sales executed. The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the par ty is attached at Annexure A-12</p>

	Total Amount considered under fraudulent Transaction = Rs. 164.40 Lakh(total of sales transactions)
R.K. International	<p>It was observed by the Transaction Auditor that the suspended directors has made sales of Rs. 159.32 Lakh, but no transportation details were given on the invoices. The enquiry letter were issued by the applicant / resolution professional, but no such party was found on the registered or available address. It was also observed that the GSTN number of the said party was found cancelled. On verification of invoices it was observed that out of total sales, sales of Rs. 82.07 Lakh has been made with vehicle owned by Corporate Debtor as the time of sales executed. That during the month of Dec2018, the CD has made purchases of Rs. 15.75 lakh. No amount has been paid against the purchases made. Further it was observed that the total purchases were adjusted against the sales.</p> <p>The suspended director has purposely done these fraudulent transactions with the intent to defraud the creditors.</p> <p>Copy of Ledger Account of the party is attached at Annexure A-13</p> <p>Total Amount considered under fraudulent Transaction = Rs. 175.07 Lakh of sales/purchase transactions</p>
Total of fraudulent transactions	Rs. 2384.32 Lakh as fraudulent transactions under section 66 of the Code.

4. The summary of avoidance transactions is mentioned in para 42 which is reproduced as under:-

“42. The summary of avoidance transactions under this application is as per detail given below:-

Nature of Transaction	Amount
Preferential Transactions under section 43 of the Insolvency and Bankruptcy Code, 2016	Rs. 502.46 Lakh
Undervalue Transactions under section 45 of the Code	Rs. 1721.19 Lakh
Fraudulent Transactions under section 66 of the Insolvency and Bankruptcy Code, 2016	Rs. 2384.32 Lakh

5. Notice in the application was issued on 24.07.2020 and the said order read as under:-

“CA No. 2445 of 2020 application filed under Section 25(j) and their provisions of the Code with respect to the preferential transactions by the Corporate Debtor. Issue notice to Respondent No. 1 to 11. Let the service be completed through all possible modes and service affidavit be filed. List on 01.09.2020”

6. On 01.09.2020 the following order was passed:-

“I.A. No. 2445/2020: Application filed by RP. Learned Counsel for Respondent No. 6 states that reply has been filed and copy received by applicant. As per service affidavit filed on 20.08.2020 and 25.09.2020 alongwith the proof of service, service of Respondents No. 1 to 5 and 9 to 11 is complete in person or through counsel. Learned Counsel for the Applicant states that with respect to Respondent No. 7 and 8 seeks one more opportunity to endeavour to serve them. Rejoinder, if any, to the reply to respondent no. 6 within ten days. None appears for R1 to R5 and 9 to 11. Hence, these respondents are proceeded ex-parte. List on 27.10.2020.”

7. In view of the aforesaid order, the present applicants, who are arrayed as Respondent No. 1 and 2, were proceeded against ex-parte.

8. On 23.11.2020 the following order was passed:-

“Mr. Rajeev Gupta, Learned Counsel states that he has been instructed to appear for the Respondent No. 1 and 2. Respondent No. 1 and 2 is already proceeded ex-parte and makes oral request that the said order be set aside and respondents no. 1 and 2 be allowed to file their defence. The ex-parte order against the Respondent No. 1 and 2 is set aside. Let the copy of application be served through email during the course of the day. Reply be filed within one week thereafter, with copy in advance to other side. List on 24.12.2020”

9. In terms of the aforesaid order, the ex-parte against the present applicants (R1 and R2) was set aside and time was granted them to file reply.

10. On 24.12.2020 the following order was passed:-

“Learned Counsel for the Respondents No. 1 and 2 states that reply could not be filed in compliance of last order since one of the family members of the respondent had expired due to Covid-19 infection. Let reply be filed within two weeks, with copy in advance to the other side. List on 19.02.2021”

11. As per the above order, the present applicants (R1 and 2) did not file their reply because of some reason, therefore, again time was granted to file the same.

12. On 19.02.2021 the following order was passed:-

“I.A No. 2445 of 2020: Application filed by the RP under Section 44 with respect to respondents no. 1 and 2. Vide order dated 23.11.2020, Respondents No. 1 and 2 were given chance to file reply but the same is not filed and today, learned counsel seeks further time on the ground that OTS proposal is sent to applicant. Be that as it may. Right to file reply by Respondent No. 1 and 2 is closed. The only reply which is on record is of respondent no. 6. RP states that they have filed rejoinder. Pleadings are complete. List for hearing on 16.03.2021. no adjournment will be granted.”

13. Since, the time granted for filing the reply was not availed, therefore, right to file reply was closed.

14. On 16.03.2021 the following order was passed:-

“This is an application filed by RP under Section 43 and 66. Though the Respondent No. 1 and 2 have not filed reply and they have been proceeded ex-parte. Today Mr. Rajeev Gupta, Learned Counsel for the Respondent No. 1 and 2, the ex-directors makes a statement that in the 8th CoC meeting they have forwarded an OTS proposal in pursuance of the Resolution plan submitted by the R1 And R2/Ex-management to the sole CoC member PNB and the same is being considered. Copy of minutes of said meeting is annexed. List on 14.04.2021.”

15. On 10.09.2021 the following order was passed:-

“Application filed by the RP under Sections 43, 44 and other provisions of the Code. Learned Counsel for the Respondents sates that except Respondent No. 6, no other respondents have filed reply. There are total 11 respondents, out of which 2 respondents have been dropped, so 9 respondents are there as on date. Mr. Gupta, Learned Counsel for the Respondent No. 1 and 2 seeks time to file reply. Learned Counsel for the RP vehemently objects stating that they have already been proceeded ex-parte. We reject the request of filing reply. Pleadings are complete. Learned counsel for the respondent no. 6 is present. List for hearing on 22.10.2021.”

16. On 18.04.2022 the following order was passed:-

“I.A. No. 2445 of 2020: Arguments heard. Order reserved.”

17. And on 20.06.2022, the application was allowed and directions were issued which we have been captured in the first para of this order.

18. It is pertinent to mention that at the time of preliminary hearing on 08.08.2022, the direction issued in para 17(b) of the impugned order to initiate penal proceedings against the suspended directors and other parties was stayed. It is also pertinent to mention that the Appellant filed I.A. No. 474 of 2023 for bringing on record some additional records procured during the pendency of the matter. This application was contested by the Respondent by way of reply, however, on 11.07.2023 the following order was passed:-

“After arguing sometime, counsel for the Appellant has submitted that he does not want to press this application. Accordingly, this application is hereby dismissed as not pressed.”

19. Counsel for the Appellant has argued that the impugned order is non-speaking and arbitrary as the Appellants have not been given fair opportunity to present their case. It is also submitted that the transaction audit report was not made available to the Appellant and finally that the combined application under Sections 43, 45, 66 of the Code is not maintainable in view of the order passed by the Hon’ble Supreme Court in the case of Anuj Jain Vs. Axis Bank Ltd. & Ors. (2020) 8 SCC 401.

20. On the other hand, Counsel appearing on behalf of the Respondent has submitted that none of the arguments of the Appellant is tenable because the Appellants have been given due opportunity to contest the application in as much as the order passed by the Adjudicating Authority proceeding against them ex-parte for their non-appearance was set aside and time was granted to file the reply but despite taking various opportunities the reply was not filed for the reasons best known to them and ultimately the right to file reply was closed and that order was not challenged by them before the higher court and had attained finality. It is further submitted that final transaction audit report was shared with the Appellant as has been mentioned in Para 13 of the application bearing 2445 of 2020.

21. As regards, the combined application filed under Sections 43, 45 & 66 is concerned, though the Appellant has referred to the decision of the Hon’ble Supreme Court rendered in the case of Anuj Jain (Supra) in which it has been held that “in the present case, it is noticed that NCLT in its detailed and

considered order essentially dealt with the features of the transaction in question being preferential at a relevant time but recorded combined findings on all these three aspects that the impugned transactions were preferential, undervalued and fraudulent. Appropriate it would have been to deal with all these aspects separately and distinctively.” It is contended that though there was one application but ingredients under Section 43, 45 & 66 were differently put by the RP under different heads and in this regard, the Respondent has relied upon a two members decision of this Court rendered in the case of GVR Consulting Services Pvt. Ltd. Vs. Pooja Bahry, CA (AT) (Ins) No. 405 of 2022 decided on 24.04.2023 in which this Tribunal has referred to the decision of the Anuj Jain (Supra) and then held that “what has been emphasized by the Hon’ble Supreme Court is that ingredients of Section 43, 45 and 66 are different and Resolution Professional is expected to keep such requirement in view while making motion to the Adjudicating Authority. When we look into the Application which has been filed in the present case the Resolution Professional has in the avoidance application in his application has dealt with preferential transaction undertaken by the Corporate Debtor and undervalued transaction undertaken by the Corporate Debtor as well as fraudulent transaction in different heads i.e. ‘i’, ‘ii’ and ‘iii’ thus allegations and averments were separately made and filing of composite application does not lead to any infirmity in the Application. We are not persuaded to accept the submission of the Appellant that since the composite Application was filed it ought to have been rejected”.

22. We have heard Counsel for the parties and perused the record with their able assistance.

23. The facts are not in dispute. It is not in dispute that total claim admitted in the resolution plan was Rs. 2351.97 Lakhs including claim of the financial creditors of Rs. 2277.80 Lakh and claim of the Operational Creditor of Rs. 74.17 Lakhs. It is also not in dispute that the CoC in its second meeting held on 14.02.2020 appointed AKG & Associates for carrying out the transaction audit for the period from 01.04.2017 to 04.12.2019 (CIRP Commencement date) and it is not in dispute either that the transaction auditor presented their final report in the 3rd CoC meeting held on 15.05.2020 and report was shared with the present Appellants. There is no objection raised to the final report by the Appellants submitted to the CoC. Indubitably, the auditor in its transaction audit report made the following observations which read as under:-

“a) The Corporate Debtor has not been able justify the sale of goods/ stock at lower prices by stating that the stock was old/ obsolete and simultaneously knowingly using the same for drawing power calculation year by year.

b) The Corporate Debtor has failed to provide substantial evidence to prove the genuineness of sale and purchases transactions including movement to stocks during the period under audit. Findings such as sale purchase with various parties having common registered address, cancelled GST registration and non-existence of parties proves malicious intentions of corporate debtor.

c) The Corporate Debtor has intentionally sold/transferred its fixed assets at loss through book entries to keep them out of the reach of secured creditors. Further, no substantial documentary evidence to justify the same is available on record.

d) In our opinion it is evident that the corporate debtor has deliberately made the above said transactions to defraud the creditors. The Corporate Debtor has not been able justify the sale of goods/ stock at lower prices by stating that the sock was old/

obsolete and simultaneously knowingly using the same for drawing power calculation year by year.”

24. The RP then filed the application under Sections 25(2)(j), 43, 45, 66 and 235A of the Code in which the details of the preferential, undervalued and fraudulent transactions were given under separate heads. The application had to be filed because of the aforesaid transactions the total admitted claim of Rs. 2351.97 Lakh of the creditors became unrecoverable. The RP also gave the summary of avoidance transactions in which preferential was of Rs. 502.46 Lakh, undervalued was of Rs. 1721.19 Lakh and Fraudulent was of Rs. 2384.32 Lakh. The present Appellants, who are arrayed as Respondent No.1 and 2 in the application bearing 2445 of 2020, did not choose to appear at the first instance despite service but later on they were allowed to appear by the Court and also allowed to file their reply to the application but they did not choose to file the reply either and as a result thereof, their right to file reply after giving appropriate opportunities was closed and the said order remained unchallenged at the instance of the Respondents (Appellants herein).

25. In such circumstances at this stage, it does not lie in the mouth of the Appellants to make a complaint that they have not been heard or take the shelter of the principle of natural justice when they themselves are to be blamed for the lapse and negligence on their part in not even filing the reply.

26. In so far as, the combined application is concerned, the decision in the case of GVR Consulting Services Pvt. Ltd. (Supra) is very much applicable to the present facts and circumstances of the case because the application has

been filed giving details under separate heads of the preferential, undervalued and fraudulent transactions determined by the Appellants.

27. No other point has been argued.

28. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is hereby dismissed though without any order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi

04th April, 2024

Sheetal