

**(2024) 04 NCLT CK 0036**

**In the National Company Law Tribunal**

**Case No :** MA No. 2297/MB/C-I/2019 In C.P (IB) No.527/MB/C-I/2018

Andhra bank

APPELLANT

Vs

Project Master Electricals Pvt Ltd

RESPONDENT

**Date of Decision :** 10-04-2024

**Acts Referred:**

Insolvency and Bankruptcy Code, 2016 — Section 66

**Citation :** (2024) 04 NCLT CK 0036

**Hon'ble Judges :** V.G. Bisht, Member (J); Prabhat Kumar, Member (T)

**Bench :** Division Bench

**Advocate :** Prakash Shinde, Ruchita Jain

**Final Decision :** Disposed Of

## Judgement

Prabhat Kumar, Member (Technical)

1. The Applicant has filed the present Application impugning certain transactions under Section 66 of the Insolvency and Bankruptcy Code, 2016 ('Code'). The reliefs sought by the Applicant as are follows:

a. Pass an order and declare that sale of inventory to Respondent No. 5 be declared a transaction that was entered with an intent to defraud the creditors of the Corporate Debtor or for a fraudulent purpose, envisaged in Section 66 of the Code and the Adjudicating Authority by an order direct the Respondent No. 1 and 2 (Promoters/Directors) and Respondent No. 5 to jointly and severally make contribution to the assets of the Corporate Debtor and the inventory worth Rs. 12.53 crores be returned to the Corporate Debtor;

b. Pass an order directing Respondent No. 1, Respondent No. 2 Respondent No. 3 and Respondent No. 6 to Respondent No. 15 to reverse the money taken out from the Corporate Debtor's account as the same were carried out with related or suspected related parties

c. Pass an order directing the promoter/director to return the Mercedes Car

shown in the books of accounts of the Corporate Debtor;

d. Pass an order directing the Accountant Amrita Jagaani (M. No. 168037) to Co-operate with the Liquidator in conducting the Liquidation Process of the Corporate Debtor

e. Pass an order directing Respondents No. 1, 2, 3 and 16 to allow the Applicant to get access to the office of the Corporate Debtor;

f. Pass an order directing Respondent No. 1 to 3 to give address of M.A enterprises to the Applicant in order to enable the Applicant to recover the machineries sent for repairs;

g. Pass an order directing Respondents Nos 1 to 3 to provide details on the claims to be filed before the insurance company Bajaj Allianz General Insurance Co. Ltd. in order to enable the Applicant to file a claim before the insurance company.

h. Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to restrain the Respondents from disposing off their personal assets till discharge of their liabilities as ordered by this Tribunal;

i. For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts, nature and circumstances of the present case.

2. CIRP commenced against the Corporate Debtor vide order dated 10.09.2018. Subsequently, the Corporate Debtor was Liquidated vide order dated 09.05.2019 and this Tribunal appointed Jitendra Kumar Yadav as the Liquidator of the Corporate Debtor.

3. The Applicant appointed H.M. Shah and Co as the forensic auditor to conduct forensic audit of the Corporate Debtor. The Auditor in the Forensic Audit Report dated 23.04.2019 reported that the Corporate Debtor has entered into several transactions under Section 66 of the Code.

4. The Applicant submits that inventory worth Rs. 12.53 Crores was sold to the Respondent No. 5 on credit basis and no realization was made against the said sale till date. Further, it is submitted that the goods were sold despite the Corporate Debtor's account turning NPA. The Applicant submits that the goods sold were hypothecated in favor of the Financial Creditor and were sold to keep the assets of the Corporate Debtor beyond the reach of the Financial Creditors.

5. It is submitted that the Corporate Debtor has entered into sales and purchase transactions with Respondents No. 6 to 15 alleging them to be related parties or suspected related parties of the Corporate Debtor. The Applicant submits that the funds were rotated through transactions entered amongst the parties and were taken out from the company. Further, the transactions were not disclosed in the audited financial statements as related party transactions.

6. The Applicant further states that, the Corporate Debtor sent Machinery from

its plant for repairs/maintenance in October 2017 to one MA Enterprises, Nallasopara and the same has not yet come back to the Daman plant site.

7. The Applicant further states that Corporate Debtor has lodged an Insurance claim of Rs. 2.37 Crores for repairs of machineries that could not be processed as the estimate and inspection report could not be submitted. The insurance policy was in force w.e.f. 11th August, 2016 till 10th August, 2017. The Applicant states that the requirements of the Insurance surveyor is to ascertain the fact of carrying out the actual repairs for inundation which had happened on 1 August, 2016 else it will be deemed that the same is being claimed on the pretext of the inundation for an earlier claim dated 24 June 2017 under consideration. The surveyor further states that the member of the suspended board has not been able to submit the estimated cost of repairs nor could they organize for inspection of the said machineries which were damaged due to inundation for the claim under consideration. The member of the suspended board stated during the 3rd COC meeting held on 15th January, 2019 that the said estimates are at Daman plant and shall be submitted to the RP and the insurance company in the next 2 days. The Applicant states that despite regular follow ups the same has not been submitted / provided to the Applicant by the members of the suspended board of directors.

8. The Applicant submits that the Books of Accounts of the Corporate Debtor reflect Mercedes car but the same is not traceable and the promoters/directors are also not aware of the whereabouts of the same. The Applicant submits that the Office of the Corporate Debtor has been locked by promoter/directors without any intimation to the Applicant, promoter and key managerial personnel are also not available.

9. The Applicant submits that a single invoice of Rs. 12.36 Crore entered in sales book in the name of Respondent No. 9 dated 29 September 2016 and same amount was entered in the purchase book in the name of ABC & Co. Hence these transactions were performed to defraud the creditors and show sale of materials.

Submissions advanced by Respondent No. 5 vide Affidavit in Reply

10. It is submitted that Respondent No. 5 was in the business of exports since last 20 years. The Corporate Debtor approached the Respondent No. 5 for assisting in exporting the machinery lying at Daman Plant belonging the Corporate Debtor to Nigeria. The Respondent No. 5 submits its scope was limited to facilitating the export of machinery from India to Nigeria. The Respondent No. 5 submits that the margin was 5% of the freight charges and the same was agreed between the Corporate Debtor and Respondent No. 5.

11. It is submitted that the consignment was exported, however, on arrival of consignment at Nigeria, it was held back at Tincan port at Nigeria. Further, in respect of the same the Respondent No. 5 has incurred detention charges of Rs. 20,00,000/-. The Respondent No. 5 paid the detention charges for about a year. The Respondent No. 5 repeatedly requested the Corporate Debtor to assist in

clearing the consignment, however, the Corporate Debtor failed to respond. Accordingly, the Respondent No. 5 has incurred a huge costs in this relation.

12. In November 2017, the Corporate Debtor sent further consignments to Respondent No. 5, however, the same were kept on hold at Navasheva Port, after which, the Respondent No. 5 attended the customs office and inspected the machinery which was in old and worn off condition. Further, it is submitted that the costs of the machinery was inflated by the Corporate Debtor.

13. The Respondent No. 5 has received notices/summons from Special Investigation Bureau and the Customs Department. Notice in this regard was also sent to the Corporate Debtor by the customs department. However, the Corporate Debtor has failed to appear before the authorities.

14. Moreover, it is submitted that the Respondent No. 5 addressed several emails to the Corporate Debtor requesting it to take the goods back. Further, the Respondent No. 5 submits the invoices issued by the Corporate Debtor in respect of transactions contained GST number '25AAFCP2849E1ZH'. However, the Respondent No. 5 has learnt that the GST number was invalid. Therefore, the invoices itself are fraudulent and untenable.

15. The Respondent No. 5 submits that the aforesaid facts were presented before the CoC in the meeting held on 15.01.2019 and it was informed that the Respondent No. 5 is ready and willing to return 100% of the material and will cooperate wherever his presence is required. It is submitted that Respondent No. 5 has acted in a bonafide manner and no consideration from the bank account of the Respondent no. 5 was transferred into the account of Corporate Debtor.

#### Findings:

16. At the outset, it observed that Respondent No. 5 has filed its reply and the same has been considered. However, the other party Respondents have failed to placed their reply on record nor have they appeared before us at the time of hearing. Accordingly, we proceed to decide the matter on the basis of material available on record.

17. The Applicant has broadly impugned three transactions as fraudulent transactions which require consideration. The said transactions are summarized hereinbelow for reference:

i. Inventory worth Rs.12.53 Crores hypothecated in favor of the creditor was sold to the Respondent No. 5 on credit basis, however, no realization was made against this sale till date.

ii. Respondent No. 1 and 2 have entered into sale and purchase transactions with related party i.e. Respondent No. 6 to 15. It is urged that the said transactions cumulating to Rs.489.45 Crores were fictitious transactions.

iii. Respondent No. 1 to 3 have sold one Mercedes Benz car owned by the Corporate Debtor, however, no entry reflecting receipt of the sale consideration in

the books of accounts of the Corporate Debtor.

18. As far as transaction number (i) is concerned, it is observed that the Respondent No. 5 has exported the goods on behalf of the Corporate Debtor. The said goods were confiscated by the customs department as the goods were old and used. The Office of the commissioner of customs ordered confiscation of the goods and imposed a penalty of Rs.1,00,000/- on Respondent No. 5. It was held that Respondent No. 5 availed undue duty drawback benefit. Further, the Respondent No. 5 has placed on record email addressed to the Corporate Debtor informing them about confiscation of goods and asked them to collect the goods from the customs warehouse. It is clear from perusal of minutes of CoC meeting dated 15.01.2019 that Respondent No. 5 made a statement of his readiness and willingness to co-operate and return the material available with him.

19. Considering the above facts and correspondent placed on record, we hold that Respondent No. 5 cannot be held liable under Section 66 of the Code as the said transaction was not carried on with the intent to defraud the creditors and was a transaction in Ordinary Course of business whereby the Respondent No. 5 was to export the goods purchased from the Corporate Debtor, however, the said goods came to be confiscated by Customs Department.

20. It is not in dispute that these goods are in possession of Customs Departments and can be taken back after payment of redemption fine, as may be ordered by the adjudicating officer. The Respondent No. 5 has offered to co-operate to have these goods back from the customs department. The conduct of the Respondent No. 5 clearly demonstrates lack of intent to keep the goods away from the Creditors. Nonetheless, the Respondent No. 5 has purchased these goods on principal to principal basis as there is no evidence on record to prove that the export of goods was contemplated by Respondent No. 5 for the benefit of the Corporate Debtor. Accordingly, Respondent No. 5 is liable to pay the sale consideration to the Corporate Debtor in normal course of business, for which the Applicant shall be at liberty to take necessary action to recover the money due from it.

21. As regards liability of the Respondent No. 1 and 2 promoter/director qua the aforesaid transaction, it is apparent from the record that the material exported was defective, old and used and value of those goods was found inflated by the customs department, it can be deduced therefrom that the suspended board had inflated the value of its inventory by including therein old & used goods which is clearly an act fraudulent conduct and such overvaluation of inventory was done so as to avail more credit. These acts clearly demonstrate the intent to defraud the creditors. Accordingly, the Respondent No. 1 and 2 shall be liable to contribute to the assets of the Corporate Debtor the value of goods so sold to Respondent No. 5 within 15 days from the date of the order.

22. Coming to the second transaction, it is argued that Respondent No. 1 and 2 have entered into sale and purchase transactions with related party i.e.

Respondent No. 6 to 15. It is urged that the said transactions cumulating to Rs.489.45 Crores were fictitious transactions. Further, it is stated that the Respondents No. 6 to 15 and the Corporate Debtor have common directors and common address. In order to ascertain the transactions better and their net impact on the Corporate Debtor, we have tabulated sales purchase and receipts and payments with the aforesaid party Respondents hereinbelow, the figures are taken from the forensic audit report:

Sr.

No.

Company Name

Sales (Debit)

Purchases (Credit)

Receipts (Credit)

Payments (Debit)

Total

1.

Nakeesha Petrochem Private  
Limited

18.9

14.43

13.52

5.78

(3.27)

2.

Kabel Metal  
Power Cables Ltd

20.36

19.7

4

4.82

1.48

3.

Rosendal Cabtech Private  
Limited

12.36

20.95

8.21

18.43

1.63

4.

Lekisha Builders Private  
Limited

17.23

3.96

0.5

0.1

12.87

5.

Gaurika Steels Private  
Limited

7.73

15.92

6.89

13.5

(1.58)

6.

Nobita

Computers Pvt. Ltd.

14.79

8.51

14.73

7.65

(0.8)

7.

Deven Multitrade

Private Limited

32.81

31.25

4.91

5.13

1.78

8.

Utasavi Steels Private

Limited

7.23

4.85

1.33

4.22

5.27

9.

Nayasa Electricals and Engineers Private

Limited

13.34

20.42

3.22

7.13

(3.17)

10.

Rishabdev Technocable

Ltd

27.1

23.15

3.36

1.78

2.37

23. From aforesaid transactions it can be deduced that the Corporate Debtor has benefited from certain transactions. The net impact of credits on account of purchases and receipts and debits on account of sale and payment comes to net debit of 16.58 crores aggregating all the parties together. The total receipts from these parties aggregate to Rs. 60.67 crores, while payments to these parties aggregate to Rs. 68.54 crores. The Applicant has contended the transactions with these parties to be fictitious, accordingly, it can only be said that these parties were benefited to the extent of Rs. 16.58 crores in aggregate by these transactions. These parties are alleged to be fictitious. Nonetheless, the amounts to the tune of Rs. 16,58 crores aggregating together is recoverable from these parties. Since, these parties have been pleaded to be fictitious by the Resolution Professional, it can be concluded that a sum of Rs. 16,58 crores was fraudulently taken away from the Corporate Debtor by placing these parties as one part of the transactions. Accordingly, we direct the Respondent No. 1, 2 & 3 to contribute a sum of Rs. 16,58 crores jointly or severally to the Corporate Debtor.

24. As far as third transaction in respect of return of the Mercedes Car is concerned, the Applicant has not placed on record any material to support its claim and the forensic auditor has not impugned this transaction in the report. However, we note that the promoters and directors of the Corporate Debtor have failed to hand over the custody of the vehicle appearing in the books of Corporate Debtor as its assets and also no consideration is stated to have been accounted for on account of sale of such vehicle. We direct the Respondent No. 1 & 2 to contribute a sum equivalent to written down value of vehicle as appearing in the books of Corporate Debtor as on Insolvency Commencement date.

25. The supporting reliefs sought by the Applicant herein seeking access and co-operation in terms of prayer clause (d), (e), (f), (g) are granted. The Respondents shall not dispose of their personal assets in any manner till the amounts ordered to be contributed in present order is paid. It is clarified that these amounts shall be paid within 30 days from the date of this Order along with interest @ 12% p.a. from the Insolvency Commencement date till these payments are actually made.

26. In view of the foregoing, MA 2297 of 2019 is partly allowed and disposed of accordingly.