(2021) 12 NCLT CK 0068

In the National Company Law Appellate Tribunal

Case No : ??IA(I.B.C) 2699 Of 2021

RP Sunil Kumar Agrawal APPELLANT

Vs

Sandeep Mehta RESPONDENT

Date of Decision : 24-12-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 43, 43(4)(a), 43(4)(b)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2021) 12 NCLT CK 0068

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J);Narender Kumar Bhola, Member (T)

Bench : Division Bench

Advocate : Manoj Kumar Garg, Mohit Nandwani

Final Decision : Dismissed

Judgement

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Narender Kumar Bhola, Member (Technical)

1. Under adjudication is IA-2699/2021 filed in IB- 1443(ND)/2019 under Section 43 of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of NCLT Rules, 2016 seeking following reliefs:

a. To direct both Respondents jointly or severally to refund the aggregating to Rs. 126.18 Lacs to the account of the corporate debtor in terms of section 43 of the IBC Code 2016 read with rule 11 of NCLT Rules, 2016;

b. To prosecute 8; penalize all Respondents as per the provisions of the IBC, 2016;

c. To withdraw the present application I.A. No. 2132/2021 as per Hon'ble Court Dated 13.05.2021 and 08.06.2021;

d. To take on record the transaction audit report dated 25.03.2021 reporting preferential transaction amounting not less than to Rs. 126.18 Lacs.

2. It is submitted that this Adjudicating Authority has admitted the CIR Process of Corporate Debtor vide order dated 17.12.2019. The Respondents are the board directors whose powers are suspended by virtue of order dated 17.12.2019 passed by this adjudicating authority. It is stated that the committee of creditors in its 4th COC meeting held on 23.10.2020 had ratified appointment of Transaction auditor for Transaction Audit of the Corporate Debtor. The Applicant via letter of appointment dated 12.06.2020 appointed M/s J. K Sarawgi 86 Company, Practicing Chartered Accountants ("Transaction Auditor") to conduct the Transaction audit and inter alia, analyze all transactions of the corporate debtor with related parties, fraudulent transactions etc. as per provision of IBC, 2016.

3. It is further submitted that after examining and analysing the data of Corporate Debtor, the Transaction Auditor, M/s. J. K. Sarawgi 86 Company, Chartered Accountants through Mr. Jyoti Ranjan, C.A. submitted a detailed final Transaction Audit Report dated 25/03/2021 of the corporate debtor to the applicant for the period 01.04.2015 to 31.03.2019 and up to the commencement of C1RP period of Corporate Debtor 24.12.2019 as per the information/data available and observations given by the Transaction Auditor is as under:

i.Preferential Amount paid to VAS DATA SERVICES PRIVATE LIMITED Rs. 17.18 Lacs.

It appears from the record that the Corporate Debtor has purchased goods amounting to INR 12,846.68 Lakhs (after adjusting discount of INR 2051.14 Lakhs) and made payment of INR 7,913.08 Lakhs to sole supplier M/ s Vas Data Services Pvt. Ltd. against the purchase of these goods during Financial Year 2015-16 to 2018-19. Year-wise breakup of such payment are given below-

Financial Year

Year-wise Amount Paid-INR

2015-16

52,07,80,251.00

2016-17

25,85,80,000.00

2017-18

1,10,16,781.00

2018-19

9,31,000.00

2019-20

-

Total

79,13,08,032.00

Net payment of Rs. 17.18 Lakhs was made within two years from the CIRP date qualified as preferential payment.

ii. Preferential repayment of loans to directors as related parties over operational creditor and financial creditors

It appears from the record that the corporate debtor has repaid loan of directors, Mr. Sandeep Mehta amounting to Rs. 59.00 Lacs and related party, Ambika Mehta wife of Sandeep Mehta, one of the suspended Director of CD amounting to Rs. 50.00 Lacs. The details of transaction are given at page no. 6 85 7 of Transaction Audit report.

It is submitted that in view of the above, Applicant submits that the all Respondents have carried out certain preferential transactions these transactions were not carried out in the ordinary course of its business and have been carried out with the intent to defraud the creditors of the corporate debtor, hence, prayed that the application may be allowed.

4. The Counsel on behalf of the Respondents raised the objection regarding maintainability and further stated that Vas Data Services Private Limited is not impleaded as respondent in the present application, therefore, the present application is not maintainable against the Vas Data Services Private Limited. It is further stated that the applicant has nowhere contended that Vas Data Services Private Limited is related party. Hence, as per section 43(4)(b) of IBC, 2016:

"(b) a preference shall be deemed to be given at a relevant time, if a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date."

The Last transaction with the Vas Data Services Private Limited was done on 16.10.2018 and the CIRP of Corporate Debtor commenced on 24.12.2019, therefore, the transaction does not come under the ambit of preferential transaction.

5. It is also argued by the counsel for Respondents that the transaction with director (Mr. Sandeep Mehta) and related party (Ms. Ambika Mehta) was done in the year 2015-16 as per the transaction auditor report. The respondent emphasized on the provisions of section 43(4)(a) of IBC, 2016, which is as follows:

"A preference shall be deemed to be given at the relevant time, if 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."

Summary of the Loan taken by the Corporate Debtor and repayment of Loan is as follows as per transaction auditor report:

Sr. No.

Related Party/ Directors' payment

During FY 2015-16

During FY 2016-17

During FY

2017-18

During FY 2018-19

Loan taken & repayment

1.

Sandeep Mehta

Op Balance-Loan

-29,00,000

-

-10,00,00

-13,80,500

Repayment of Loan

59,00,000

Loan taken

-30,00,000

- 10,00,000

-3,80,500

-21,28,445

Cl. Balance-Loan

-

-10,00,000

-13,80,500

35,08,945

2.

Ambika Mehta

Op balance-Loan

-10,00,000

-40,00,000

-90,00,000

-90,00,000

Repayment of Loan

50,00,000

Loan taken

-80,00,000

-50,00,000

Cl. Balance-Loan

-40,00,000

-90,00,000

-90,00,000

90,00,000

Note: H figures denote credit balance

From the above details it is clear that the amount was disbursed by the corporate debtor for repayment of loan to the directors/related party and it was paid in the year 2015-16, which does fall under the relevant time as provided u/s 43(4)(a) of IBC, 2016. Therefore, the transaction under consideration does not come under the ambit of preferential transaction.

6. We have perused the pleadings of the parties and heard the arguments advanced by the concerned parties. After going through the transaction audit report and Section 43 of the IBC, 2016, we are convinced by the arguments advanced by the respondent that the Vas Data Services Private Limited is not

impleaded as the respondent in present application. Hence , no direction can be passed against Vas Data Services Private Limited and the ingredients of the preferential transaction are not met out as the transaction with respect to both Vas Data Services Private Limited and related parties were much before the relevant time as provided under section 43(4) of IBC, 2016 so those transaction cannot be considered as Preferential Transaction, therefore, the present application i.e., IA-2699/2021 in IB-1443(ND)/2019 is Rejected.

7. The Order is pronounced by this Adjudicating Authority through Video Conferencing.