

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **20.02.2024** THROUGH PHYSICAL HEARING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : R L Logistics Pvt Ltd

MAIN PETITION NUMBER : CP/1226/IB/2018

(IA/MA) APPLICATION NUMBERS

MA/892/2019; IA/622(CHE)/2022

S.NO.	NAME (IN CAPITAL)	DESIGNATION REPRESENTATION BY WHOM	SIGNATURE
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Pavithra Sundararayan
for K. Moorthy

Advocate for
RP/Liquidator









2 CP/1226/IB/2018
MA/892/2019; IA/622(CHE)/2022

ORDER

MA/892/2019:

Present: Ms. Pavithra Sundarajan, Ld. Counsel for Applicant / Liquidator.
None for the Respondent.

Reply / Counter of Respondent No. 2 is already on record.

Rejoinder also filed by the Applicant.

Heard.

This application relates to giving directions to Respondent No. 2 not to adjust the payments made by the Applicant for the period during CIRP against the old dues which the Corporate Debtor is entitled to.

Ld. Counsel submits that Respondent No. 2 in the Reply has also admitted as to the payments made by the Applicant. She submits that the Respondent No. 2 has not filed any claim with the Applicant and the Applicant is willing to consider the claims based on the documents without raising any objection for the delay if any.

Arguments heard.

Orders **Reserved**.

IA/622(CHE)/2022:

Present: Ms. Pavithra Sundarajan, Ld. Counsel for Applicant / Liquidator.

R1 Mr. S.Rajagopal; R2 Mr. S.Vijayaraghavan; R3 M/s. Equitas Small Bank Ltd and R4 Mr. Thansingh Ganthi.

None for the Respondents.



The Applicant has filed an Affidavit of service qua service on the Respondents by way of a Memo dated 21.07.2022 wherein the delivery has been confirmed by way of speed post. It is seen that during the proceedings dated 25.07.2023, 10.10.2023, 16.11.2023, 05.01.2024 and 09.02.2024 none appeared for the Respondents. Vide order dated 10.10.2023, the right of the Respondents to file reply was closed.

Heard.

This Application under Section 43 and 60(2) of IBC, 2016 filed by the RP is for seeking relief that the sale transaction of 6 vehicles with registration numbers TN 69 BB 0812; TN 69 BB 0763; TN 88 B 8381; TN 88 B 8366; TN 88 B 8382 and TN 88 B 8389 be declared as preferential transactions with directions to restore the same.

The CIRP was initiated against RL Logistics Pvt. Ltd on the application filed by the Financial Creditor vide order dated 27.02.2019. The liquidation order was passed on 21.10.2019.

It is stated that the suspended director of the Corporate Debtor had informed by email dated 30.04.2020 that the vehicles belonging to the Corporate Debtor have been sold during March 2019 after the commencement of CIRP though according to R3, the vehicles were sold in September 2018 itself. It is stated that the fixed assets of the Corporate Debtor show that the vehicles were available in 2019. This raises a suspicion on the suspended director and R3. The Applicant requested the details from M/s. Equitas Small Bank Ltd. He received the information that the bank had to recover Rs.10,05,095/- along with interest as on 31.08.2018 and the process of registration of application with NCLT started in June 2018. It is stated that the bank or the Corporate Debtor had not registered the assets or the vehicles in



RoC / MCA and no charges were created in RoC in consonance with Section 77 of the Companies Act and hence the lender M/s. Equitas Small Bank Ltd was only an unsecured creditor and the sale of vehicles by the lender is null and void. It is stated that the above transactions did not happen as the normal business transactions, as the vehicles were the primary capital assets of the logistics company, no charge was created under Section 77 of the Companies Act, the vehicles were old ones and were not financed by the banker and the loans were the business loans. It is alleged that the banker did not follow the proper procedure while taking possession. It had only received one quotation and no valuation was done prior to sales. The vehicles were sold for Rs.53,00,000/- though the amount due to the bank as on 31.08.2018 was Rs.10,05,095/- thus there was net profit of Rs.42,94,905/-. No GST was paid on the sales. No TDS was deducted. The quotation, MoU and sales documents do not bear the bank seal, date and signature of any bank officials. The sale to Mr.Thanasingh Ganthi was in collusion with the suspended directors. Hence it is a case of preferential transaction.

Analysis & Findings:

It is seen from the record that the CIRP against the Corporate Debtor was initiated on 27.02.2019. The Corporate Debtor was having 6 vehicles as detailed above. As per the sale certificates, the vehicles were sold during September 2018 i.e., within the look back period of one year from the date of CIRP. Para7, page 8 of the application contains a table of list of loans given by M/s. Equitas Small Bank Ltd where the total dues (D + I) of Rs.10,05,595/- have been shown. The future principal has been shown as Rs.57,92,695/-. In para 12 of the application, it is alleged that the total sales price is Rs.53,00,000/- and a net profit on sales is Rs.42,94,905/-. This is not correct as the total amount due is Rs.67,98,290/- (Rs.57,92,695 + Rs.10,05,595/-) and hence loss



to the Bank is Rs.14,98,290/-. The sale was made based on the quote given by Mr. Thanasingh Ganthi vide dated 25.08.2018.

We observe that even though the business loans were given for purchase of the vehicles, M/s. Equitas Small Bank Ltd did not follow the required process as below:

1. Charge not registered with RoC;
2. Charge not registered with RTO;
3. Vehicles were not taken possession under the SARFAESI Act;
4. Vehicles were not sold in public auction but in private sale;
5. MoU dated 30.08.2018 signed only by the Corporate Debtor and not by the Bank.

All these point out that that this was not a transaction done during the ordinary course of business.

Section 43 is a deeming Section and hence the intention of the parties does not matter.

As per section 43(2) of the IBC, a corporate debtor is deemed to have given a preference if the following two conditions are satisfied namely:

(a) there has been a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53 of the IBC.

A mere perusal of clauses (a) and (b) *supra*, show that the following conditions are necessary for a transaction to be deemed as being preferential, namely:

- (i) There must be a transfer of a property or an interest thereof;



(ii) such property, or interest which is transferred, should belong to the corporate debtor;

(iii) such transfer should be for the benefit of a creditor or a surety or a guarantor;

(iv) such transfer should be on account of an antecedent financial debt or operational debt or other liability;

(v) such antecedent debt or liability should be owed by the corporate debtor;

(vi) such transfer made should have the effect of putting the beneficiary of such transaction in a better position than such beneficiary would have been in, if the assets of the corporate debtor were distributed in the manner set out in section 53 of the IBC.

In the present case as seen from the record the transaction was not made in the ordinary course of business. The Corporate Debtor was liable to pay the debts to the other secured Financial Creditors. The banker in the present case was the unsecured Financial Creditor as it had not registered the charge with RoC as provided under Section 77 of the Companies Act. As per Section 53 of IBC, 2016, the secured Financial Creditor has to be given priority while distributing the proceeds from the sale of the liquidation assets. In the present case, the Corporate Debtor within the look back period, in order to pay the debt gave preference to the bank / unsecured Financial Creditor as against the secured Financial Creditor. The case of the Respondent / Corporate Debtor does not come under the exception under Section 43(3) of IBC, 2016. Burden to prove the exception was on the Respondent / Corporate Debtor but in the instant case the Respondent / Corporate Debtor despite service did not appear nor filed any reply. In the present case, the above vehicles were the primary capital assets of the Corporate Debtor on the loans, no charge was created / registered.



We observe that M/s. Equitas Small Bank Ltd has sold the vehicles to a third party in private sale and received Rs.53,00,000/-. The repossession of the vehicles was by way of MoU. The sale of the same to a third party towards a private sale is not the transaction in the ordinary course of business. The sale proceedings dated 27.09.2018 by M/s. Equitas Small Bank Ltd to Mr. Thanasingh Ganthi in respect of the above six vehicles are accordingly set aside. Hence, as per Section 44(1)(d), we order M/s. Equitas Small Bank Ltd to reverse the benefits received from the preferential transaction to the tune of Rs.53,00,000/- to the Corporate Debtor.

IA/622(CHE)/2022 is accordingly disposed of.

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**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MG

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**[SANJIV JAIN]
MEMBER (JUDICIAL)**