

**NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**I.A. No. 3135/2020**

**IN**

**(IB)-1731/(ND)/2019**

**UNDER SECTION SECTION 66 & 68(i)(b) OF INSOLVENCY AND  
BANKRUPTCY CODE**

**IN THE MATTER OF**

**SURESH KUMAR JAIN**

**(Resolution Professional of**

**MK Overseas Pvt Ltd)**

**...APPLICANT**

**VERSUS**

**SHAKEEL AHMAD & ORS**

**....RESPONDENTS**

**AND IN THE MATTER OF:**

**MANYOGA INVESTMENT LTD.**

**....PETITIONER**

**VERSUS**

**MK OVERSEAS PVT. LTD.**

**(Undergoing CIRP)**

**... CORPORATE DEBTOR**

**MEMO OF PARTIES**

**IN THE MATTER OF**

SURESH KUMAR JAIN  
(Resolution Professional of  
MK Overseas Pvt Ltd)

...APPLICANT

VERSUS

1. SHAKEEL AHMAD  
Suspended director ...RESPONDENT No.1
  
2. KAMAL  
Suspended director ...RESPONDENT No.2
  
3. M/S NAVISH NAGPAL & COMPANY ...RESPONDENT No.3
  
4. THE JANTA CO-OPERATIVE BANK ...RESPONDENT No.4

**Order Pronounced on: 04.10.2021**

**CORAM:**

**DR. DEEPTI MUKESH**  
**HON'BLE MEMBER (Judicial)**  
**SMT. SUMITA PURKAYASTHA**  
**HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Chandrashekhar A. Chakalabbi, Adv

For the Respondent : Adv Mr. Rishi Singhal R-3, Mr. Karan Mehta R-1

## ORDER

### As Per Smt. Sumita Purkayastha, Member (Technical)

1. This is an order being passed in IA.3135/ND/2020. The application has been filed by the Resolution Professional under Section 66 of the Code, seeking following prayers:
  - a. Issue notice to the respondents and take appropriate action against the respondents/Ex-management of the corporate Debtor;
  - b. Direct the Respondent Ex-management to disclose the background of the inventories/exports written off and sold at losses and make good the amount so misappropriated;
  - c. Direct the Respondents/Ex-management to disclose the whereabouts of the vehicles and to restore them to the custody of the applicant/RP or deposit its corresponding value with applicant/RP and In alternative appropriate direction may be issued to the concerned transport departments for locating and restring vehicles to the custody of the applicant;
  - d. Direct the Respondents/Ex-management to make good the losses caused to the corporate Debtor by their fraudulent and wrongful trading;
  - e. Direct the chartered Accountant of the corporate Debtor to come and explain the circumstances under which he audited the balance sheet of the corporate Debtor and not kept even a note for such huge amounts as written off and inventories sold at losses;

- f. Summon the Janta co-operative Bank Ltd. Darya Ganj, through its Manager of branch before this Hon`ble tribunal with the withdrawal forms/debit vouchers/cheques as to ascertain by whom and by whose endorsement and in whose favour the cash withdrawals are made and take appropriate action against them for helping the corporate debtor in withdrawing the funds of the Corporate Debtor in the account no. 0020231009016.
2. The brief facts of the case are that an application by MANYOGA INVESTMENT LTD. (herein the Operational Creditor) under Section 9 of IBC, 2016 against M/S M.K. Overseas Pvt Ltd i.e. the Corporate Debtor and vide order dated 19.09.2019, the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor wherein Mr Suresh Kumar Jain, who was confirmed as an Interim Resolution Professional and later he was appointed as the Resolution Professional by the CoC 30.10.2019. Thereafter A.K.G. Associates was appointed for carrying out transaction audit for the period of two preceding years from the commencement of the CR process.
3. The Final report dated 02.07.2020 of the transaction audit has reported a large number of irregularities in conduct and management of business affairs of the Corporate Debtor, including transactions which qualify as fraudulent and wrongful trading under Section 66 of the code.

4. The observations made by A.K.G & Associates (Transaction Auditor) on behalf of the Resolution Professional, in the final report dated 02.07.2020 with respect to the present application made under Section 66 of the code are reproduced as:

- i. It is submitted that the Corporate Debtor has written off its inventories of "Frozen Buffalo Meat" to the extent of Rs. 265.53 Crore by writing off of Rs. 223.53 Crore during the Financial Year 2018-2019 and inventories of Animal Fat and Poultry feed of Rs 42 Crore during Financial Year 2019-2020 (till 19<sup>th</sup> September 2019). The documentary evidences such as lab report, approval from regulatory authorities, permission of lenders and other stakeholders, place of disposal, method of disposal etc. are not available on record which proves that the Corporate Debtor with malafide intentions has written off the stock and made substantial losses.
- ii. It is submitted that during the review of the books of accounts of the Corporate Debtor by the Transaction Auditor, it was observed that Corporate Debtor had written off export debtor's balances amounting to Rs. 119.36 crore for a total of 85 parties during FY 2018-19 and no documentary evidences such as copy of sale order, sale bills, shipping bill, bill of entry agreements, party's account statement, balance confirmation etc, were available on record to verify the genuineness of these balances Further there have been no copy of board resolutions nor

minutes of meeting were available on record wherein such decisions were taken by the management of CD. The Transaction Auditors have also not found any qualifying remarks of the auditors in "Notes to Accounts" annexed to the audited financial statements. Further no documents were available on record to indicate that reasonable efforts were made to recover balances from such export debtors and whether export benefits, if any, availed off by Corporate Debtor were surrendered after such write off of export debtors. That in view of the above, conclusion of Transaction Auditors has been that the Corporate Debtor had diverted the funds amounting to Rs. 119.36 Crore by way of writing off the balance receivable from export debtors.

- iii. It is submitted that the Corporate Debtor has reported sale of inventories at a net loss of Rs. 47.21 Crore during Financial Year 2018-2019. It is submitted that in the Transaction Audit it is revealed that inventory records of Corporate Debtor are not fully integrated with the books of accounts and the Corporate Debtor did not provide stock registers for verification; therefore, the quantitative analysis of such inventory, sales and purchases could not be performed by the Transaction Auditors. The transaction auditors have concluded that such transactions were deliberately done by the Corporate Debtor to distort the financial health of the company.

- iv. It is submitted by the Applicant that as per the sanction letter of Bank of Baroda, all the fixed assets of the Corporate Debtor were under charge of Bank of Baroda which implies that any major changes in the possession/ownership of above assets would require prior permission of Bank of Baroda. It is further submitted that the entry 22 vehicles is mentioned in the provisional balance sheet as on 19.09.2019 are not available with the custody of the Applicant. Upon inquiry from the Corporate Debtor, no satisfactory answer was furnished. It is further submitted that no documentary evidence of such assets are available and the ex-management does not have a clue about these vehicles which proves that the Corporate Debtor has misappropriated these assets in order to defraud the creditors of the Company.
- v. It is submitted that the Daryaganj Property having book value of Rs. 14.18 Crore was mortgaged with YES Bank for working capital facility. As per the Transaction Audit Report the said property was sold vide 26 Conveyance/sale deeds for a total consideration of Rs. 11.86 Crore i.e at book loss of Rs. 2.32 Crore. The said sale proceeds were diverted to varied Bank Accounts of the Corporate Debtor and only an amount of Rs. 2.23 Crore was received in the bank account maintained with YES Bank out of total sale proceeds of Rs. 11.86 Crore in violation of sanction letter issued by YES Bank. It was observed

that a portion of the sale proceeds i.e Rs. 3.17 Crore were received in the Janta Cooperative Bank Ltd. on varied dates which were subsequently withdrawn in cash. The aforesaid transaction took place during the period March 2019 to July 2019 i.e. just before initiation of the CIRP i.e. 19.09.2019 and as per records submitted by the management i.e. Audited Financial Statement as on 31.03.2019 and Provisional Financial Statement as on 19.09.2019 the management of the Corporate Debtor were well versed with the information that there was no reasonable prospect of avoiding the commencement of corporate insolvency resolution process in respect of the corporate debtor.

5. The Respondent No. 1 is the suspended director of the Corporate Debtor and has filed the reply dated 12.10.2020 and has submitted that the test to decide "Fraudulent Trading" or "Wrongful trading" is to see whether any fraud is committed with the creditors only which has caused any loss to the creditors and the creditors of the Corporate Debtor ought to have suffered the financial loss arising out of the alleged "Fraudulent Trading" or "Wrongful Trading". The Respondent No. 1 has made the following submissions:

- i. It is submitted that the accounts of the Corporate Debtor with the creditor bank were running smoothly and comfortably and there was no default in accounts till mid of 2018 however, in view of the temporary difficulties faced by the Corporate Debtor the creditors declared their account as NPA on 08.09.2018.

- ii. It is submitted by the Respondent No.1 that till date none of the creditors have levelled any allegations of diversion or siphoning of funds against the Corporate Debtor or its management including the answering respondent. It is submitted that AKG & Associates (Chartered Accountants), were appointed as the Transaction Auditor of M.K Overseas Private Limited by the Resolution Professional for the period from Financial Year 2017-18 till the date of the CIRP and the aforesaid transaction auditor sent a letter dated 03.03.2020 in the form of a questionnaire to the Corporate Debtor raising frivolous and vague queries. In response to the aforesaid questionnaire, the Respondent no.1 sent a detailed reply along with the supporting documents to the transaction auditor answering all the queries. It is submitted that transactions as alleged in the present application were made in ordinary course of business and there is no evidence to show that they were made to defraud the creditors of the Corporate Debtor or for any fraudulent purpose.
- iii. It is submitted that the Respondent No 1 has not written off the inventories of "Frozen Buffalo Meat" to the extent of Rs.265.53 Crore by writing of Rs.223.53 Cr during the Financial Year 2018-2019 and inventories of animal fat and poultry feed of Rs. 42 Crore during Financial Year 2019-2020. It is submitted that the Corporate Debtor purchased frozen buffalo meat of export quality from Al Junaid Food Products Pvt Ltd. to export the

same but the frozen meat which the Corporate Debtor sold to them was the one which is preserved for a long time and could not be exported due to its bad quality as per the Government norms. It is further submitted that the Corporate Debtor was primarily an export unit, therefore, it has constraints to sell the exportable goods in the domestic market. This is the reason why the Corporate Debtor sold the goods which were not of exportable quality at lower price.

- iv. It is submitted by the Respondent No 1 that that the inventories were not written off. It is submitted that the relevant documentary evidences including the details of Derabasi Stock, inventory, lab report, approval from regulatory authorities, permission of lenders and other stakeholders, place of disposal, method of disposal etc. are not available as the Respondent No 1 has not the access to the place where the records were kept. Moreover, the office is not running and there is no staff available till date.
- v. It is submitted that Respondent No.1 has not diverted the funds amounting to Rs. 119.36 crore, Respondent No1 had written off the export debtors to the tune of Rs.119.36 crore due to the amount receivable from these parties could not be recovered despite a long follow up with them, the relevant documentary evidences for the recovery of these debtors is not available as the Corporate Debtor does not have the access to the place

where the records are kept as per the RBI notification no.RBI/2012-13/435 and circular No. A.P.(DIR Series) Circular No.88dated 12/03/2013, copy enclosed as Attachment no.6, the star trading export house can write off the export receivables upto 10% of the sale turnover of last Financial Year. So, the CD had written off the export receivable upto that extent as the same were not recoverable and became the bad debts for the company.

vi. It is submitted that the corporate debtor had sold the some of the vehicles to the customers at a low price as some of the vehicles had met with an accident and were old due to which these were not in a good condition. Most of the vehicles were 9-10 years old and the corporate debtor had sold these assets in cash so that the creditors could be paid as they created problems for us on daily basis. To get rid out of this some of the old vehicles were sold in cash.

vii. It is submitted that that the Sale proceeds of the Daryaganj Property were never divertedto varied bank accounts of the Corporate Debtor. It is submitted that the property situated at 4611/19-C/xi, Ansari Road, Daryaganj, New Delhi was mortgaged with Yes bank for working capital facilities. It was agreed between the company and the lender that the company will construct 15 flats on the said property and sell the same to different buyers. It is further submitted that it was well in the

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knowledge of Yes Bank that after the construction of the flats, the company will deposit the sale proceeds in Yes Bank.

6. The Respondent No. 3, M/S Navish Nagpal & Company, filed the reply dated 23.09.2020 and has submitted that the application under reply is totally devoid of merits as no averments have been made against the Respondent No.3 pointing out that the statutory audit of the Corporate Debtor Company being not conducted properly in accordance with the prescribed procedure for the Financial Year 2018-2019 except a prayer being made in the application that the Respondent No.3 be called to explain the circumstances under which he audited the balance sheet of the Corporate Debtor and not kept a note for such a huge amount as stated in the application as written off and inventories sold at losses and such the Respondent No.3 was not required to be made a party in the application under reply. The Respondent no.3 further submitted the following:

- i. That the application under reply against the answering Respondent no 3 is also non maintainable as the office of the statutory auditor does not come within the purview of section 66 of the I&B Code,2016 which is applicable only for the said period during which business affair of the Corporate Debtor were carried out and that the liability under the said section is confined to be of the director/partner of the Corporate Debtor as well as the provisions of section 68(1)(b) is applicable upon an officer of the Corporate Debtor which is defined under section

2(60) of The Companies Act, 2013 and the office of the statutory auditor is not an officer of the Corporate Debtor . Furthermore the respondent no. 3 was appointed as statutory auditor of the Corporate Debtor only on 06.09.2019 after the closing of the Financial Year during which the alleged irregularity were mentioned.

ii. That the application under reply is also not maintainable being filed by the Resolution Professional /Applicant without appreciating the report of the transaction auditor in which specific assertion has been made by the transactional auditor that the requisite record to substantiate the financial data reflected in the balance sheet had neither been produced /provided by the suspended directors of the Corporate debtor nor any record has been available in the office of the CD and as such the Respondent no. 3 cannot be held liable /accountable for the said lapses on the part of the suspended board of the directors of the Corporate Debtor.

iii. That the application under reply is also not sustainable in the law as the- Applicant/Resolution Professional has failed to appreciate the note given by the Respondent no 3 in his statutory audit report of the Corporate Debtor for the relevant year as it has been specifically mentioned in point no. 2(i) (iv) of the Independent Audit Report which has been reproduced below:

*"the company has made a bad debts of Rs.119,35.74,242.20(Rs. One Hundred Nineteen Crores Thirty Five Lakh Seventy Four Thousand Two Hundred Forty Two and Twat:), Paisa only) for which no detailed information related to such bad debts have not been provided by the management.-*

*Furthermore in point no. 2(i) (ix) of the Independent Audit Report which has been reproduced below:*

*"The various balance of sundry debtors, sundry creditors, and loans taken and other loans & advances are subject to confirmation from the respective parties."*

- iv. That the application under reply is also not maintainable against the Respondent no. 3 in view of the Accounting Policies followed by the Corporate Debtor company wherein it has been stated that the stock valuation of the raw material would be at cost or realizable value whichever is less and as such action of the Respondent no. 3 of relying upon the cost of the inventory shown in the balance sheet relying upon the physical verification by the management at regular intervals. Further in the Audit report it has been mentioned that the frequency and documentary evidence for auditors review of such verification needs to be enhanced. Furthermore it also cannot be questioned /held to be not in accordance with the duties cast upon him as statutory auditor , when there is no specific entry of writing off the amount of the inventory in the financial statement produced

before him and audited by the answering Respondent no. 3, Furthermore the applicant, while filing the application under reply also failed to appreciate that the suspended Board of Directors of the Corporate Debtor provided a certificate /report of Government doctor to the transactional auditor by which the relevant stock, whose sample was tested and was found not to be fit for human consumption. The auditor has only taken the closing stock valuation as physically verified by the management.

- v. That the application under reply also merits dismissal as answering Respondent no. 3 being qualified Chartered Accountant, has discharged his duties as statutory auditor of the corporate debtor in accordance with the Standard Accounting Procedure as well as in accordance with the Companies Act, 2013 after accepting his appointment as an statutory auditor and that too despite being not paid the agreed professional charges by the corporate debtor and then submitted his report to the corporate debtor along-with his observation on the financial statement produced before him by the suspended Board of Directors of the corporate debtor and as such if some material information had been concealed or misrepresented/misquoted in the said financial statement by the suspended Board of Directors of the corporate debtor, then the answering Respondent no 3 cannot be faulted with or held

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responsible for the said conduct of the suspended Board of Directors of the Corporate Debtor .

7. The Respondent No.2 Mr. Kamal (Suspended Director) and Respondent No. 4 The Janta Co-Operative Bank have not filed their replies and were proceeded ex parte videorder dated 17.12.2020.
8. The Applicant has further filed its rejoinder dated 07.11.2020 to the reply of the Respondent No. 1 and has stated the following:
  - i. The stand taken by the Respondent No.1 to avoid query of not having access to the documents is completely farcical and nothing but evasion to cooperate. The reference and reliance upon RBI circular dated 12.03.2013 is completely misplaced as the same gives scope to the exporter to write off unrealized trade receivable to the maximum of 10% and not beyond, that too on the basis of proper and complete documents.
  - ii. It is submitted that the diversion of funds is a matter of record. It is submitted that the ROC and CERSAI records show that the Drayaganj Property is mortgaged to YES Bank. It is further submitted that none of the sale deeds of the Drayaganj property depict about the mortgage or NOC from the Bank.
9. The Applicant has further filed its rejoinder dated 09.11.2020 to the reply of the Respondent No. 3 and has stated the following:
  - i. It is submitted that the Respondent No.3 has given audited report for the Corporate Debtor without any basis and without any documentary support.

ii. It is submitted that words used in Section 66(1) is "any person" and the respondent No.3 having certified the balance sheet statutory audit report of the Corporate Debtor without any sufficient documentary basis falls within the rigors of "any person" who helped the Corporate Debtor to carry out its business activities.

iii. It is submitted that the Respondent No. 3 has audited and signed the balance sheet with insufficient supporting documents and as such has committed a professional breach and he is liable to be called before the Adjudicating authority and explain the circumstances under which the audit of the Corporate Debtor could be done and audited balance sheet/statutory audit report could be signed by the Respondent No.3.

10. The Arguments were heard in the present application. In order to deal with issue in hand we would like to analyse Section 66 & 68(i)(b) of the Code. The provision of Section 66 deals with fraudulent trading or wrongful trading, therefore, "intent to defraud the creditors" is essential as it is imperative to prove that the business is conducted or a transaction has been made in a fraudulent manner in order to intentionally defraud the creditors of the Corporate Debtor. The provision applies when the person knowingly carries out the fraudulent activity. **Section 66(1) states** that :



*“ (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.*

**68. Where any officer of the corporate debtor has,—**

*(i) within the twelve months immediately preceding the insolvency commencement date,*

*b) fraudulently removed any part of the property of the corporate debtor of the value of ten thousand rupees or more;*

*such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:*

*Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.*

11. On perusal of the observations made by the Transaction Auditor and the relevant replies filed by the Respondents it is observed that the

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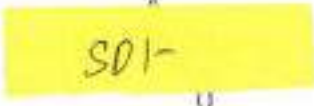
Respondent No.1 has not provided any documentary evidence to corroborate the genuineness of the transactions made during the Financial Year 2018-2019 and support his arguments. It is also pertinent to mention that Respondent No.2 Mr. Kamal (suspended director) has been proceeded ex parte. The Respondent No.1 has also not been able to satisfy the bench with respect to the various cash withdrawal made through the Account of the Janta Co-operative Bank Ltd, who is also Respondent No. 4 in the present application and has been proceeded ex parte. These facts support that there was an intention to defraud the creditors by keeping these assets of the Corporate Debtor beyond the reach of the Creditors or any such person who is entitled to make a claim against the Corporate Debtor.

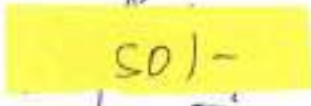
12. In our view, these transactions are covered under the provisions of the 66 of the Code. Therefore, we allow this I.A. No. 3135/2020 in Company Petition No. (IB)-1731(ND)/2019. Since the suspended Director of the Corporate Debtor i.e. Respondent no. 1 and Respondent No.2 knowingly carried on transactions which cannot be explained, therefore they are held liable to bear the liability of the Corporate Debtor Company. It is further directed to the Respondent No. 1 and Respondent No. 2, to compensate and refund back all the amount so raised, received, disposed off or utilized vide these fraudulent transactions. Though there is no direct proof of involvement however, the Auditor i.e. the Respondent No.3 has signed the Balance Sheet and the Auditor's report. The Auditor's report does

not give a valid explanation with respect to these transactions and saying that the report was merely on the basis of the documents supplied to him does not absolve him of his duties. The RP may take appropriate steps by filing complaint against Respondent No.3 and Respondent No. 4 before the concerned authorities under which they are regulated being the Institute of Chartered Accountants and the Reserve Bank of India or any other body. Further, the Respondent No.3 and Respondent No. 4 are also directed to pay fine of Rs.1,00,000/- (One Lakh) each in the Prime Minister's Relief Fund.

13. The Application is allowed and disposed of in terms of above orders.

14. Copy of this order be sent to the parties.

  
**Sumita Purkayastha**  
**Member (T)**

  
**Dr. Deepti Mukesh**  
**Member (J)**

**NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**I.A. No. 3175/2020**

**IN**

**(IB)-1731/(ND)/2019**

**UNDER SECTION SECTION 43 & 45 OF INSOLVENCY AND  
BANKRUPTCY CODE**

**IN THE MATTER OF**

**SURESH KUMAR JAIN**

**(Resolution Professional of**

**MK Overseas Pvt Ltd)**

**...APPLICANT**

**VERSUS**

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VERSUS

1. SHAKEEL AHMAD

Suspended director

....RESPONDENT No.1

2. KAMAL

Suspended director

....RESPONDENT No.2

3. Mr. MOHD KAMIL

Ex- Director

....RESPONDENT No.3

4. Mrs. NASIRA BEGUM

Ex- Director

....RESPONDENT No.4

**Order Pronounced on: 04.10.2021**

**CORAM:**

**DR. DEEPTI MUKESH**  
**HON'BLE MEMBER (Judicial)**  
**SMT. SUMITA PURKAYASTHA**  
**HON'BLE MEMBER (Technical)**



**For the Applicant** : Mr. Chandrashekhar A. Chakalabbi, Adv.

**For R-1, 3 &4** :Mr. Sanjay Bhatt, Mr. Karan Mehta, Advs.

## **ORDER**

### **As Per Smt. Sumita Purkayastha, Member (Technical)**

1. This is an order being passed in IA.3175/ND/2020. The application has been filed by the Resolution Professional under Section 43 & 45 of the Code, seeking following prayers:
  - a. issue notice to the respondents and take appropriate action against the respondents and make appropriate order under Section 44 &46 of the Code for such property gone into preferential transaction and undervalued transaction to reverse and vest into the assets of the Corporate Debtor M.K. Overseas Pvt Ltd;
  - b. Pass such other or further orders as may be deemed just and fit under the circumstances of the case.
  
2. The brief facts of the case are that an application by MANYOGA INVESTMENT LTD. (herein the Operational Creditor) under Section 9 of IBC, 2016 against the Corporate Debtor and vide order dated 19.09.2019, the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor and Mr Suresh Kumar Jain was appointed as an Interim Resolution Professional and later he was confirmed as the Resolution Professional by the CoC 30.10.2019.



Thereafter A.K.G. Associates was appointed for carrying out transaction audit for the period of two preceding years from the commencement of the CR process taking into account the ambiguity in the books of account of Corporate Debtor.

3. The Final report dated 02.07.2020 of the transaction audit has reported that within one year from the date of commencement of the CIRP several preferential transaction under section 43 & 45 of the code have taken place which have been likely to put an adverse effect on the CIRP and reduce the assets of the Corporate Debtor.
4. The observations made by A.K.G & Associates (Transaction Auditor) on behalf of the Resolution Professional, in the final report dated 02.07.2020 with respect to the present application made under Section 43 of the code are reproduced as:
  - i. It is observed by the transaction auditors that the Corporate Debtor has adjusted/set off creditors balances against debtors' balances to the extent of Rs.8.00 crore during the period of one year preceding the insolvency commencement date. The Corporate Debtor had made adjustments to its books of accounts and has set off balances of trade payables against trade receivables without routing the receipts/ payments through banking channels. It is submitted that there is a transfer of property/interest of the Corporate Debtor (CD) for the benefit of such creditors for antecedent operational debts



owed by the Corporate Debtor and a preference has been given to such creditors during the period of one year preceding the insolvency commencement date. That such adjustment/repayments have the effect of putting such creditors in a beneficial position than they would have been in the event of distribution of assets being made in accordance with Section 53 of IBC,2016. Accordingly, such transactions are in contravention of the "order of priority" as set out in Section 53 of IBC, 2016 and are preferential in nature. The table below would demonstrate the payments made by the Corporate Debtor and received by the respective parties on or after 20th September, 2018 and which is required to be returned to form part of the assets of Corporate Debtor in terms of section 44 of the Code.

S.NO	PARTY NAME	LEDGER	TOTAL DEBIT AMOUNT	TOTAL CREDIT AMOUNT
1.	Agro Food Industries		Rs.5,33,736/-	
2.	Al Junaid Food Products Pvt. Ltd.		Rs.5,96,05,000	
3.	Al Zeed Leathers		Rs. 3,46,500	
4.	Asian Agro Industries Ltd			Rs.1,30,30,362
5.	Fijan Bio Products		Rs. 20,03,872	

	(Shahzad Qureshi)		
6.	Juneja Marketing Company	Rs.28,08,00	
7.	M K Overseas Exports Pvt. Ltd.	Rs.1,38,44,655	
8.	Nasira Begum (Director)		Rs. 5,96,05,000
9.	Prime Natural Frozen Foods (Old Account)		Rs. 56,92,108
10.	Prime Natural Frozen Foods (Rent Account)		Rs. 16,96,045
11.	Wings Security and Allied Services Pvt. Ltd.	Rs. 8,81,7 52	
	Grand Total	8,00,23,515	8,00,23,515

- ii. It is submitted that as per the books of accounts, the Corporate Debtor had sold its subsidiary "Al Dua Food Processing Private Ltd" to Al Hamd Agro Food Products Private Limited during the Financial Year 2018-19 and accepted liabilities (97 parties) of Rs.19.68 crore of this subsidiary in such sale transaction. It is pertinent to mention that the Corporate Debtor assumed 21 creditors (totalling Rs.6.54 crore) during Financial Year 2017-2018 and 76 creditors (totalling Rs. 13.14 crore) during

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Financial year 2018-2019 on or after 20.09.2018 till triggering of CIRP. The transaction audit report reflecting these transactions have been annexed. It pertinent to mention that no disclosure pertaining to such arrangement in the financial statements of the Corporate Debtor. Also there were no documents available on record which may indicate that prior approval of the creditors was obtained by the Corporate Debtor for carrying out such arrangement.

5. The observations made by A.K.G & Associates (Transaction Auditor) on behalf of the Resolution Professional, in the final report dated 02.07.2020 with respect to the present application made under Section 45 of the code are reproduced as

- i. It is submitted that the Corporate Debtor had a plant in Mumbai bearing address- Plot M-6, Taloja Industrial Area, Village Pale Khurd, Taluka Panvel, Distt Rajgad, Maharashtra. The said plant with a combined book value of Rs.9.16 crore was mortgaged to YES bank for availing credit facilities (Post shipment in Foreign Currency and Packing Credit in Foreign) from YES bank. It is submitted that a conditional NOC dated 01.08.2019 was granted by Yes Bank to the Corporate Debtor for sale of such property. The conditional NOC required the above plant to be sold to Adriatic Sea Food Private Limited for at least Rs. 17.86 crore. That during the month of August 2019, said plant was transferred to Adriatic sea Food Private Limited

vide Agreement for Assignment cum Transfer of Lease-cum-Sale dated 05.08.2019 for Rs. 11.00 crore, against which only Rs. 0.63 crore were received as consideration till 30.08.2019 from the under mentioned parties:

DATE	PARTY NAME	SALE PROCEEDS IN Rs. (Crore)	SALE PROCEEDS RECEIVED IN
August 2019	Sameer Haji Mohammed Latif (Director of Adriatic Sea Food Private Limited)	0.28	YES Bank A/c xx0739
August 2019	Adriatic Sea Food Private Limited	0.35	YES Bank A/c xx0739
	TOTAL	0.63	

- ii. It is submitted that as per the information available the possession of the plant has been handed over by the Corporate Debtor to the buyer in the month of August 2019 only which is in anticipation of triggering of the CIRP. It is further submitted to point out that the said property record as available with CERSAI show that the above property has been charged with YES bank. It is clear that the ex-management of the Corporate Debtor has transferred and handed over the possession of such property at Rs. 0.63 crore only against the amount as per YES Bank's conditional NOC i.e. Rs. 17.86 Crore, indicating an

undervaluation thereof by Rs. 17.23 Crore. The relevant extract of the ledger, CERSAI search report , copy of the conditional NOC from YES bank and copy of the sale Agreement has been annexed under para 16.2 of the report annexed with this application.

- iii. It is further submitted that sale of the above mentioned property was cancelled as the buyer paid Rs. 62.25 lakh and YES bank kept such amount under lien till the balance amount of Rs. 10.37 crore is received and due to initiation of the CIRP the buyer failed to pay the consideration in full. Hence, the amount was forfeited and necessary entry was passed in the books of account. The application to that affect for treating the sale as NIL and recovery of possession is pending before the Hon'ble Tribunal as C.A NO. 1304/2020.
- iv. It is submitted that a review of the books of accounts of the Corporate Debtor, it was observed that the Corporate Debtor was engaged in circular trading of stock (totalling to 49.11 Crore). It is submitted that the Corporate Debtor has carried out circular trading of "Bone in buffalo meat" for Rs. 41.41 Crore with Al dua Food Processing Pvt Ltd. during the Financial Year 2017-2018 incurring a loss of Rs. 0.72 crore on such transaction. It is further submitted that the Corporate Debtor has carried out circular trading of "Frozen Buffalo meat" for Rs. 7.70 crore with Al Junaid Food products Private Limited during

Financial Year 2018-2019, incurring a loss of Rs. 3.85 Crore on such transactions. It has been observed by the auditor that sale of the same items of inventory were made to the same party from which such items were purchased, which constitutes Circular Trading of goods, moreover the sales of the same item of inventory were made at a price lower than the purchase price paid to the same party consequently such transactions have led to a loss of 4.57 crore to the Corporate Debtor.

- v. It is submitted that in relation to its transaction with Al Junaid Food Product Private Limited the Corporate Debtor has claimed that purchases made from it could not be exported due to its bad quality and had to be sold back to it at lower prices. However, it is pertinent to note that neither any debit note was issued to such party for neither the loss in value, nor any purchase returns were accounted for towards such "bad quality" of purchases as claimed by the Company. According the claim is not tenable.
- vi. It is submitted that the property bearing address 4611/19-C/xi, Ansari Road Daryaganj New Delhi having book value of Rs. was mortgaged with YES Bank for working capital facility. It is further submitted that as per the books of accounts the transaction auditor have observed that the Corporate Debtor had constructed/developed various flats on this property and sold to various buyers and the combined book value of the land

(Rs. 9.63 Crore) and building (Rs. 4.55 Crore\_ appearing in the books was Rs. 14.18. Crore. It is submitted that as per the books of accounts and copies of Conveyance Deeds provided by the Resolution Professional, the combined sale consideration booked and realized by Corporate Debtor was Rs. 10.43 crore however, no documents/details were available on record with regard to valuation of such property and NOC obtained from lenders. It is submitted that the above property has been sold by the CD to various parties and reported a book loss of Rs. 3.75 crore (Rs. 14.18crore -Rs. 10.43 crore)

vii. It is submitted that the Corporate Debtor has reported book loss of Rs. 1.79 Crore on sale of its 42 vehicles during the Financial Year 2018-2019 and 2019-2020. It is found in the transaction audit that the assets/vehicles were sold/transferred for a consideration which was significantly less than the book value of such assets. Therefore, the said transaction, prima facie, may be categorized as undervalued transaction.

viii. It is further submitted that all the movable assets of the Corporate Debtor were under general charge of Bank of Baroda on account of credit facilities obtained there from. However, no records were available to confirm that any NOC (No Objection Certificate) was obtained from Bank of Baroda for carrying out such sale transactions in respect of said vehicles. It is further submitted that a total of 33 vehicles were sold fully in cash for a

total consideration amounting to Rs. 0.40 crore and the details of transferees have not been recorded by the Corporate Debtor. It is submitted that the Ex-management of Corporate Debtor has failed to support its replies with adequate documentary evidences and its claims that such vehicles were sold in cash to pay off creditors is without merit.

6. The Respondent No. 1 is the suspended director and Respondent No. 3 & 4 are the Ex- Directors of the Corporate Debtor and has filed the reply dated 12.10.2020. The Respondent No. 1, 3 and 4 have made the following submissions:

- i. It is submitted that a conjoint reading of Section 43 and 45 of the code requires that the Resolution professional has to demonstrate the undervalue transaction with any related party within one year and unrelated party within two years preceding the insolvency commencement date. The Resolution Professional has failed to demonstrate the aforesaid requirement in the application.
- ii. It is submitted that the business of the answering respondents herein was adversely affected on account of issuance of Notification dated 23.05.2017 published in Gazette of India which was a draft relating to Prevention of Cruelty to Animal, which gave an impression that the Central Government has banned the sale of cattle for slaughter or religious sacrifices at livestock markets and animal fairs.



- iii. It is submitted that AKG & Associates (Chartered Accountants), were appointed as the Transaction Auditor of M.K Overseas Private Limited by the Resolution Professional for the period from Financial Year 2017-18 till the date of the CIRP and the aforesaid transaction auditor sent a letter dated 03.03.2020 in the form of a questionnaire to the Corporate Debtor raising frivolous and vague queries. In response to the aforesaid questionnaire, the Respondents sent a detailed reply along with the supporting documents to the transaction auditor answering all the queries.
- iv. The Hon'ble Supreme Court in the matter of **Anuj Jain v. Axis Bank 2020 SCC Online 237** has mentioned that the ingredients, a liquidator or Resolution Professional would need to satisfy to avail the remedies available under Section 43 and 45. The relevant extracts of the judgment are reproduced herein under:

*"97... The analysis foregoing leads to the position that in order to find as to whether a transaction, of transfer of property or an interest thereof of the corporate debtor, falls squarely within the ambit of Section 43 of the Code, ordinarily, the following questions shall have to be examined in a given case:*

*(i) As to whether such transfer is for the benefit of a creditor or a surety or a guarantor?*

*(ii) As to whether such transfer is for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor?*

*(iii) As to whether such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53?*

*(iv) If such transfer had been for the benefit of a related party (other than an employee), as to whether the same was made during the period of two years preceding the insolvency commencement date; and if such transfer had been for the benefit of an unrelated party, as to whether the same was made during the period of one year preceding the insolvency commencement date?*

*(v) As to whether such transfer is not an excluded transaction in terms of sub-section (3) of Section 43?*

That it is submitted that the alleged transactions as stated by the Applicant does not fulfil the guidelines/mandate as prescribed by the Hon`ble Supreme Court of India in the aforesaid judgement to be followed to attract the provision of Section 43 and 45 of the Code.

- v. It is submitted that no material particulars/evidence have been produced to show that the alleged transactions being i). Adjustment/Set Off of Trade Payables against Trade



Receivables; ii), Payment of Liabilities assumed/accepted from Al Dua Food Processing Pvt Ltd, iii) Sale of Mumbai Plant, iv) Circular Trading with related parties, V) Sale of the Drayaganj Property, vi) sale of the vehicles was not in ordinary course of business of the Corporate Debtor.

- vi. It is submitted that the Respondent No. 3 and 4 cannot be held liable for the transaction as alleged by the Applicant herein as they had resigned from the Corporate Debtor on 12.09.2018 and the said fact is not in dispute. Thus, the transactions cannot fall within the ambit of 'relevant time' as prescribed under the provision of the Code keeping in view the cessation date of the Respondent No.3 and 4 herein.
- vii. It is submitted that the Corporate Debtor has not made any adjustments to the books of accounts and has not set off the balances of trade payable against trade receivable without routing the payments through banking channels. The Respondents deny that there is a transfer of property for the benefit of the creditors antecedent operational debt and preference has been given to such creditors during the period of one year preceding the insolvency commencement.
- viii. It is submitted that M/S Al Dua Food Products Pvt Ltd was a subsidiary company of the Corporate Debtor till 07.07.2018. the Corporate Debtor purchased and sold the bone-in frozen buffalo meat for export for taking advantage of better price as the cost

of the raw material varies on the basis of availability of livestock from location to location. The bankers were also aware about the transactions and there were a part of the routine transaction.

- ix. It is submitted that the Corporate Debtor had given the advances to various parties for the specific purpose of business among the companies for the purchase of raw material from them but due to stress in business, these companies could not return the advances.
- x. It is further submitted that while selling Al Dua Food processing, it was agreed between the promoters and the buyers that the liability of Rs.13.11 crore will be borne by the M.K. Overseas Pvt Ltd. (Corporate debtor). The consent of the creditors has also been taken and necessary entries have also been passed in the books of accounts of the Corporate Debtor.
- xi. It is submitted that the Corporate debtor had taken working capital limits under multiple banking arrangements from YES Bank as one of the lenders and to secure the fund based limits, the Corporate Debtor mortgaged the property situated at Plot No.-M6, Taloja Industrial Area Village, Pale Khur Taluka Panvel, Distt Raigad Maharashtra. Its is submitted that to settle the overdue, on the behest of YES Bank, the Corporate Debtor agreed to sell the property to Ardiatic Sea Foods Pvt Ltd for Rs. 11 Core. The YES Bank has also given the approval to sell the

same by executing the conditional sale deed in favour of the buyer. It is further submitted that sale of the above mentioned property was cancelled as the buyer paid Rs. 62.25 lakh and YES bank kept such amount under lien till the balance amount of Rs. 10.37 crore is received and due to initiation of the CIRP the buyer failed to pay the consideration in full. Hence, the amount was forfeited and necessary entry was passed in the books of account on 19.09.2019.

- xii. It is submitted that the Corporate Debtor was never engaged in Circular Trading of stock with the parties as alleged in the application. It is submitted that the allegations made are without proof or documentary evidence.
- xiii. It is submitted that the Corporate Debtor purchased frozen buffalo meat of export quality from Al Junaid Food Products Pvt Ltd. to export the same but the frozen meat which the Corporate Debtor sold to them was the one which is preserved for a long time and could not be exported due to its bad quality as per the Government norms. It is further submitted that the Corporate Debtor was primarily an export unit, therefore, it has constraints to sell the exportable goods in the domestic market. This is the reason why the Corporate Debtor sold the goods which were not of exportable quality at lower price.
- xiv. It is further submitted that the Corporate Debtor vide letter dated 07.07.2018 transferred the liabilities of certain creditors

and sundry advances of M/S Al Dua Food Processing Private limited to M/S M.K Overseas Pvt ltd.

- xv. It is submitted that that the Sale proceeds of the Daryaganj Property were never diverted to varied bank accounts of the Corporate Debtor. It is submitted that the property situated at 4611/19-C/xi, Ansari Road, Daryaganj, New Delhi was mortgaged with Yes bank for working capital facilities. It was agreed between the company and the lender that the company will construct 15 flats on the said property and sale the same to different buyers. It is further submitted that it was well in the knowledge of Yes Bank that after the construction of the flats, the company will deposit the sale proceeds in Yes Bank. YES bank had also given consent to sell the flats to different buyers and the same was possible only due to NOC provided by the YES Bank and despite the purchasers have filed a frivolous civil suit against the Corporate Debtor.
- xvi. It is submitted that the corporate debtor had sold the some of the vehicles to the customers at a low price as some of the vehicles had met with an accident and were old due to which these were not in a good condition. Most of the vehicles were 9-10 years old and the corporate debtor had sold these assets in cash so that the creditors could not be paid as they created problems for us on daily basis. To get rid out of this some of the old vehicles were sold in cash.

7. The Respondent No.2 Mr. Kamal (Suspended Director) and Respondent No. 4 The Janta Co-Operative Bank have not filed their replies and were proceeded ex parte vide order dated 17.12.2020.
8. The Arguments were heard in the present application. In order to deal with issue in hand we would like to analyse Section 43 & 45 of the Code.

*“ 43. (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.*

*(2) A corporate debtor shall be deemed to have given a preference, if—*

- a) there is 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.*

*(3) For the purposes of sub-section (2), a preference shall not include the following transfers—*

- a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;*
- b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—*
  - i. such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and*

- ii. *such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:*

*Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.*

*Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.*

*(4) A preference shall be deemed to be given at a relevant time, if—*

- a) *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; or*
- b) *a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date."*

*\*45. (1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) of section 43 determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter*

*(2) A transaction shall be considered undervalued where the corporate debtor—*

- (a) makes a gift to a person; or*
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor"*

9. It can be understood that Preference under the Code primarily entails, certain form of benefits that are provided by the Corporate Debtor to

its creditor/surety/guarantor on account of any antecedent financial, operational or other form of debt, which in turn has the effect of putting such creditor in a beneficial position with respect to other creditors in the event of distribution of assets under the scheme of the Code. A transfer to be classified as preferential under the Code needs to fall within the look back period mentioned under Section 43. Look back period is generally considered to be the time frame for the purpose of avoidance of transactions on account of preference. An order under Section 44 of the Code by the Adjudicating Authority can be passed only when the transaction/transfer is in a manner specified under 43(2) and is to any of the persons specified under 43(4). However, a transfer made in the ordinary course of business or financial affairs of the Corporate Debtor or the Transferee, or which intends to create a security interest that leads to new value shall be excluded from the application of 43(2). Further Section 45 of the Code states that if the liquidator or the resolution professional after examination of the transactions of the Corporate Debtor determines that certain transaction were made during the relevant period under section 46, which were undervalued, he shall make an application before the Adjudicating Authority to declare such transaction entered by the Corporate Debtor as void and reverse the effect of such transaction.

10. On perusal of the observations made by the Transaction Auditor and the relevant replies filed by the Respondents it is observed that the

Respondents have not provided any documentary evidence or any correspondence to corroborate that the adjustment/set off creditor's balance against debtor's balance to the extent of Rs. 8.00 Crore during the FY 2018-19 and 2019-20 was not made. Further the Respondents have not provided a satisfactory argument as to why the Corporate Debtor, made payment of the liabilities assumed/accepted from Al dua processing Pvt Ltd to the tune of Rs. 0.33 Crore during Financial Year 2017-18 and 2018-19. Further We would like to refer the Order dated 07.09.2021 of this Adjudicating Authority in the matter of **M/S Supreme Packaging Industries Vs. M/S Al Dua Food Processing Pvt. Ltd. IB. 1803/(ND)/2018** wherein the CIRP of the Corporate Debtor **M/S Al Dua Food Processing Pvt. Ltd** has been initiated and the following observations have been made:

*"Para 20. The corporate debtor has not raised any dispute or replied to the notice under Section 8, raising any existence of dispute, hence the objections raised by the corporate debtor are creation of afterthought with intent to ward off creditors. For first time the corporate debtor raised dispute in reply to application u/9 on 06.03.2019 stating that the applicant had consented to the taking over of its debt due to corporate debtor by M K Overseas by letter dated 30.06.2018. Corporate debtor admits that on 07/07/2018, MK overseas took over corporate debtor when revenue from operation of corporate debtor was 77.58 crores.*

*Admittedly, M.K.Overseas& corporate Debtor has common directors and corporate debtor is the subsidiary of MK Overseas, wherein MK Overseas is holding 95% shares. The present application was filed at the time when already no. of insolvency applications against MK Overseas filed by various creditors was pending. It was also stated that*

*MK Overseas has large no. of creditors being banks and other operational creditors, wherein the order of CIRP, was passed vide order dated 19.09.2019 in IB/1731/2019. Even in the reply filed by Corporate Debtor there is no whisper of Share Purchase Agreement. The only objection was raised relying on the letter dated 30.06.2018 allegedly written and signed by partner of Applicant Company, giving consent for receiving all due amount from MK Overseas. Thus, it is evident that a sham defence is raised by the corporate debtor. The applicant filed an application under Section 340 Cr.P.C. for forgery and fabrication of document on 19.07.2019. The bench had called for the documents to show signatures of all partners of applicant. Copy of registered deed of partnership dated 09.09.2015 was shown to bench where there are only two partners being Mr.Mohd. Shariq and Smt. Sana, none of the signatures matches with sign on letter dated 30.06.2018 solely relied upon by the corporate debtor. The corporate debtor in the reply on 23.08.2019 to the said application, has first time revealed about the share Purchase Agreement and claimed that the said debt of applicant is payable by M K Overseas. It is important to note that order was reserved in application to initiate CIRP against MK Overseas on 06.09.2019. The applicant filed another application on 31.01.2020 to call upon the RP of MK Overseas to file a detailed report with respect to claims filed and list of creditors. The application was allowed & RP filed report. The observations of RP of MK Overseas are reproduced here under:*

*"Since no scheme of arrangements for transfer of certain liabilities of Al Dua Food Processing Pvt. Ltd. to M/S. M K Overseas Pvt. Ltd. is submitted, claims admitted earlier stands rejected and information to the OC's given"*

*Para 21 We are of confirmed inference that the MK Overseas & corporate debtor in connivance with each other to defraud its creditors have acted malafidely and the directors of the corporate debtor and MK Overseas should be made liable for criminal proceedings. The corporate Debtor had tried to explain, that its shareholding has been transferred to Al*

*Hamd Agro Foods Pvt. Ltd. in terms of registered Share Purchase Agreement by duly paying stamp duty on such agreement. Though, the assets and receivables from the creditors are transferred to Al Hamd Agro Foods Pvt. Ltd. but the liability of certain creditors was transferred to M K Overseas which was already a sinking ship. It is important to mention that in CIRP of M.K. Overseas there are multiple applications pending, including one for changing RP wherein various creditors have raised allegations against conduct of RP. We have no doubt in holding that corporate debtor is liable to pay the dues of the applicant and the share purchase agreement is nothing but sham document created to defraud its creditors."*

11. It has been observed that the Sale of the Mumbai Plant could not be realized and hence stands cancelled as the buyer paid Rs. 62.25 lakh and YES bank kept such amount under lien till the balance amount of Rs. 10.37 crore is received and due to initiation of the CIRP the buyer failed to pay the consideration in full. Hence, the amount was forfeited. It has been observed that the sales of the items of the inventory were made at a price lower than the purchase price paid, consequently such transactions have led to a loss of 4.57 crore and the Respondents have defended some but not been able to provide a satisfactory reason for doing the same. Further, We are of the view the Corporate Debtor entered into an undervalued transaction at a book loss of Rs.2.32 crore with respect to the sale of the Daryaganj property vide various sale deeds from February 2018 to May 2019, which is till 4 months prior to the insolvency commencement date of the Corporate Debtor i.e. 19.09.2019 hence, it is within the look back period. Further it has been observed that the sale of the vehicle below the

Book value to the extent of Rs. 1.90 Crore has been made from March 2019 to September 2019 which is prior to the insolvency commencement date of the Corporate Debtor i.e. 19.09.2019 hence, it is within the look back period. It has been further observed that the Application for initiation of the CIRP of the Corporate Debtor was filed on 15.07.2019 and was admitted on 19.09.2019. We are of the view that the ex-management of the Corporate Debtor were well aware of the fact that an application has been filed and the same is pending for initiation of CIR process against the Corporate Debtor, therefore the ex-management continued with undervalued transaction with respect to sale of the vehicle as some of the vehicles have also been sold after the Application to initiate CIRP of the Corporate Debtor has been filed.

12. In our view, these transactions are covered under the provisions of the 43 & 45 of the Code. Therefore, we allow this I.A. No. 3175/2020 in Company Petition No. (IB)-1731/(ND)/2019 with the following directions:

- a) It is directed to the Respondents who were directors/shareholders of the Corporate Debtor and in control of the Corporate Debtor to retrieve the amounts set off against the benefitted creditors of the Corporate Debtor along with the liabilities assumed/accepted from Al dua processing Pvt Ltd to the tune of Rs. 0.33 Crore during Financial Year 2017-18 and 2018-19 to the Resolution Professional within 3 weeks from the date of this order;

- b) As a consequence to the cancellation of the Sale of the Mumbai Plant, it is hereby directed that the possession of the Mumbai Plant be handed over to the Resolution Professional.
- c) The Respondents are directed to compensate the shortfall in amount so raised on the sale of the inventory items.
- d) It is hereby directed to the Respondents to reimburse the sale amount of the flats sold at Daryaganj property to the Resolution Professional;
- e) It is directed to the Respondents to pay such sums, in respect of benefits received on sale of the vehicles to the Resolution Professional.

13. The Application is allowed and disposed of in terms of above orders.

14. Copy of this order be sent to the parties.



**Sumita Purkayastha**

**Member (T)**



**Dr. Deepti Mukesh**

**Member (J)**