IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 238/JPR/2020
In CP No. (IB) 159/9/JPR/2019

IN THE MATTER OF:

SONA PROCESSORS (INDIA) PVT. LTD.

...Operational Creditor

VERSUS

G P COTTFAB PRIVATE LTD.

...Corporate Debtor

MEMO OF PARTIES

IA No. 238/JPR/2020:

MRS. SARITA DUCK,
Resolution Professional of G.P. Cottfab Pvt. Ltd.,
Having Office At: H-15, Chitranjan Marg, C-Scheme, Jaipur.

...Applicant

VERSUS

MR. YOGENDRA SONI,
Resident of R/o 10-K-12/A, Ramesh Chandra Vyas Colony, Bhilwara-311001.

MRS. SUMAN SONI
R/o: 10-K-12/A, Ramesh Chandra Vyas Colony, Bhilwara-311001,

MR. SUMANT SONI,
Proprietor Jai Shri Krishna Textile,
R/o: 263, Bazar, Ransi Gaon, Jodhpur-342601.

...Non-Applicants

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FOR THE APPLICANT : Amol Vyas, Adv.
FOR THE RESPONDENT : Puneet Maheshwari, Adv.

Order Pronounced on: 14.03.2024

ORDER

1. This IA has been filed by the Resolution Professional namely *Mrs. Sarita Duck*, ('RP'/ 'Applicant'), of the Corporate Debtor i.e. *M/s G P Cottfab Pvt. Ltd.* under Section 43 of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC') seeking declaration of certain transactions as preferential under Section 43 of the Code and seeking appropriate directions against the Respondents.

2. The Adjudicating Authority *vide* Order dated 12.09.2019 admitted the Application under Section 9 of the IBC, filed by *M/s Sona Processors (India) Limited* ('Operational Creditor') against the Corporate Debtor in the matter mentioned above. Since, no Resolution Plan was received by the Resolution Professional, the Committee of Creditors ('CoC') in the 5th meeting conducted on 29.02.2020 unanimously resolved to Liquidate the Corporate Debtor. Subsequently, *vide* Order dated 02.03.2021, the Corporate Director was directed to be liquidated.

3. The Applicant has moved the present application on the following set of facts:

   3.1 The RP had appointed *M/s G.L. Pemawat & Co., Mr. Siddharth Pemawat* ('Auditor') to conduct the transaction audit of the Corporate Debtor under Section 43, 45 and 66 of the IBC, 2016. The auditor has prepared its report

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based on the bank statement supplied by the Applicant. Copy of the Forensic Audit Report is annexed as Annexure-2 of the Application.

3.2 It is submitted that that the Respondent No. 1 & 2 are the Suspended Board of Directors of the Corporate Debtor and Respondent No. 3 being the proprietor of *M/s Jai Shri Krishna Textile,* is the son *Mr. Purshottam Soni,* guarantor for the facilities obtained by the Corporate Debtor. Thus, the Respondents are the related parties to the Corporate Debtor and the said transactions had taken place within 2 years from the date of admission of the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor.

3.3 It is pertinent to note that the Corporate Debtor had made the payment of Rs. 74,10,000/- (Rupees Seventy-Four Lakh Ten Thousand Only) from Bank Account No. 113411031167 to the Respondent No. 1. The details of the payment as mentioned below:

Date	***Amount***	***Cheque***	***Name***
29.06.2018	*25000*	*37318*	*Yogendra Soni*
26.06.2018	*120000*	*37315*	*Yogendra Soni*
19.06.2018	*75000*	*37735*	*Yogendra Soni*
26.04.2018	*75000*	*36693*	*Yogendra Soni*
25.04.2018	*25000*	*36691*	*Yogendra Soni*
16.04.2018	*60000*	*NEFT*	*Yogendra Soni*
06.03.2018	*600000*	*178601*	*Yogendra Soni*
12.02.2018	*60000*	*NEFT*	*Yogendra Soni*
06.02.2018	*1500000*	*196369*	*Yogendra Soni*
12.01.2018	*60000*	*NEFT*	*Yogendra Soni*
02.01.2018	*3800000*	*196306*	*Yogendra Soni*
26.12.2017	*1000000*	*196100*	*Yogendra Soni*
07.12.2017	*10000*	*NEFT*	*Yogendra Soni*

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3.4 The Corporate Debtor had further made preferential payment amounting to Rs. 27,92,207/- (Rupees Twenty-Seven Lakh Ninety-Two Thousand Two Hundred Seven Only) from its Bank Account No. 0052008700014643 from 08.01.2018 to 14.09.2018 to the Respondent No. 1. The details of the aforesaid preferential payments made by the Corporate Debtor are as follows:

Preferential Payment in past 2 year (Section 43) A/c No 0052008700014643		
Date	***Amount***	***Name***
08.01.2018	*615000*	*Yogendra Soni*
19.01.2018	*500000*	*Yogendra Soni*
01.03.2018	*400000*	*Yogendra Soni*
14.05.2018	*300000*	*Yogendra Soni*
07.07.2018	*100000*	*Yogendra Soni*
17.07.2018	*101207*	*Yogendra Soni*
19.07.2018	*250000*	*Yogendra Soni*
20.07.2018	*50000*	*Yogendra Soni*
21.07.2018	*50000*	*Yogendra Soni*
24.07.2018	*116000*	*Yogendra Soni*
27.07.2018	*100000*	*Yogendra Soni*
27.07.2018	*100000*	*Yogendra Soni*
21.08.2018	*30000*	*Yogendra Soni*
14.09.2018	*80000*	*Yogendra Soni*
Total	***27,92,207/-***	

3.5 The Corporate Debtor also made preferential payment to Respondent No. 2 to tune of Rs. 20,80,000/- (Rupees Twenty Lakhs Eighty Thousand Only) on various occasions from 26.12.2017 to 06.08.2018, which is done in violation of Section 53 of the IBC, 2016. Similarly, a payment of Rs. 1 Lakh was made to the Respondent No. 2 in two tranches of Rs. 50,000/- (Rupees Fifty

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Thousand Only) each. The details of the abovesaid payment made to the Respondent No. 2 is as follows:

Preferential Payment in past 2 year (Section 43) A/c No 113411031167		
Date	***Amount***	***Name***
26.12.2017	*780000*	*Suman Soni*
31.03.2018	*200000*	*Suman Soni*
06.08.2018	*100000*	*Suman Soni*
Total	***1980000/-***	

3.6 The Corporate Debtor made further payments to *M/s Jai Shri Krishna Textile,* wherein Respondent No. 3 is the proprietor. The details of the payment made as follows:

Date	***Amount***	***Cheque***	***Name***
07.04.2018	*188000*	*197042*	*Jai Shri Krishna Textile*
28.03.2018	*2000000*	*178638*	*Jai Shri Krishna Textile*
06.03.2018	*300000*	*178602*	*Jai Shri Krishna Textile*
06.02.2018	*500000*	*196371*	*Jai Shri Krishna Textile*
03.02.2018	*500000*	*196367*	*Jai Shri Krishna Textile*
02.02.2018	*700000*	*196364*	*Jai Shri Krishna Textile*
25.01.2018	*100000*	*196342*	*Jai Shri Krishna Textile*
18.01.2018	*100000*	*196336*	*Jai Shri Krishna Textile*
28.12.2017	*40000*	*196501*	*Jai Shri Krishna Textile*
13.12.2017	*1400000*	*33492*	*Jai Shri Krishna Textile*
06.12.2017	*1000000*	*196099*	*Jai Shri Krishna Textile*
Total	***6828000***		

3.7 It is submitted that the Corporate Debtor further made a preferential payment of Rs. 4,16,77,763/- (Rupees Four Crore Sixteen Lakh Seventy-Seven Thousand Seven Hundred Sixty-Three Only) to *M/s Jai Shri Krishna Textile* from its bank account no. 0052008700014643 which is in violation Section 53 of IBC. The details of the payments as follows:

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Date	Amount	Name
30.12.2017	3000000	Jai Shri Krishna Textile
30.12.2017	3000000	Jai Shri Krishna Textile
02.01.2018	1900000	Jai Shri Krishna Textile
06.01.2018	400000	Jai Shri Krishna Textile
08.01.2018	100000	Jai Shri Krishna Textile
11.01.2018	200000	Jai Shri Krishna Textile
15.01.2018	100000	Jai Shri Krishna Textile
22.01.2018	201000	Jai Shri Krishna Textile
24.01.2018	201000	Jai Shri Krishna Textile
24.01.2018	800000	Jai Shri Krishna Textile
25.01.2018	1100000	Jai Shri Krishna Textile
05.02.2018	5000000	Jai Shri Krishna Textile
05.03.2018	300000	Jai Shri Krishna Textile
08.03.2018	1000000	Jai Shri Krishna Textile
14.03.2018	600000	Jai Shri Krishna Textile
17.03.2018	300000	Jai Shri Krishna Textile
26.03.2018	5000000	Jai Shri Krishna Textile
27.03.2018	500000	Jai Shri Krishna Textile
28.03.2018	2000000	Jai Shri Krishna Textile
08.05.2018	300000	Jai Shri Krishna Textile
09.05.2018	400000	Jai Shri Krishna Textile
10.05.2018	300000	Jai Shri Krishna Textile
17.05.2018	300000	Jai Shri Krishna Textile
19.05.2018	20000	Jai Shri Krishna Textile
23.05.2018	25000	Jai Shri Krishna Textile
23.05.2018	350000	Jai Shri Krishna Textile
25.05.2018	350000	Jai Shri Krishna Textile
29.05.2018	200000	Jai Shri Krishna Textile
01.06.2018	1500000	Jai Shri Krishna Textile
01.06.2018	388763	Jai Shri Krishna Textile
04.06.2018	600000	Jai Shri Krishna Textile
04.06.2018	500000	Jai Shri Krishna Textile
06.06.2018	1000000	Jai Shri Krishna Textile
09.07.2018	500000	Jai Shri Krishna Textile
21.07.2018	218000	Jai Shri Krishna Textile
27.07.2018	150000	Jai Shri Krishna Textile
03.08.2018	300000	Jai Shri Krishna Textile
04.08.2018	1000000	Jai Shri Krishna Textile
08.08.2018	100000	Jai Shri Krishna Textile
09.08.2018	1000000	Jai Shri Krishna Textile
16.08.2018	150000	Jai Shri Krishna Textile

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21.08.2018	*1000000*	*Jai Shri Krishna Textile*
21.08.2018	*800000*	*Jai Shri Krishna Textile*
23.08.2018	*400000*	*Jai Shri Krishna Textile*
28.08.2018	*1000000*	*Jai Shri Krishna Textile*
29.08.2018	*1000000*	*Jai Shri Krishna Textile*
31.08.2018	*400000*	*Jai Shri Krishna Textile*
10.09.2018	*700000*	*Jai Shri Krishna Textile*
14.09.2018	*120000*	*Jai Shri Krishna Textile*
24.09.2018	*100000*	*Jai Shri Krishna Textile*
26.09.2018	*545000*	*Jai Shri Krishna Textile*
27.09.2018	*259000*	*Jai Shri Krishna Textile*
Total	***41677763***	

A Copy of the Bank Statements of the Corporate Debtor of the Account No. 113411031167 and 0052008700014643 is annexed as Annexure-4 of the Application.

4. The Respondents No. 1 & 2 have filed their reply vide Dairy No. 2009/2023 dated 16.08.2023 wherein they have stated the following:

4.1 The present Application is filed after the prescribed timeline under Regulation 35A of the CIRP Regulation. The Applicant was required to file the Application on or before the one hundred and thirty-fifth day of the Insolvency Commencement date. In the present case, the said timeline had expired on 25.01.2020. Also, it is contended that the Applicant has filed the Application merely on the basis of Bank Statements. The suspicion/assumption of the existence of the preferential/ fraudulent transaction has been formed without any opinion and determination.

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Moreover, the alleged transaction has taken place in the ordinary course of business and no preference or fraud has been committed.

4.2 The Applicant has only mentioned the payment transactions of transfer of funds from the Corporate Debtor's Bank accounts to the Respondents. However, it has failed to mention those payment transactions in which the funds have been received by the Corporate Debtor from the Respondents. The transaction audit submitted by the auditor is done in the absence of books of account, tally data, balance sheet, and profit and loss accounts of the Company. The transaction audit report is merely confined only to the bank statements of the Corporate Debtor available with the concerned bank for the period starting from December 2017 to September 2018.

4.3 The transactions that have been alleged by the Applicant against the Respondents are only a part of the transactions undertaken between the parties, also the transactions alleged by the Applicant have been taken out of context from the continuous transactions incurred between the parties to allege preferential payments. The Respondents are the promoters/ directors of the Corporate Debtor and had arranged the funds including, funds from their own sources to run the business of the Corporate Debtor. The Respondents have arranged the funds from time to time to run the business of the Corporate Debtor and also made the repayments timely to ensure the availability of funds as and when required in the business requirements of

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the Corporate Debtor. It is submitted that mere entries of the payment transactions from both sides in the ordinary course of business or a part of the financial affairs of the Corporate Debtor to regulate its business shall not preclude such transactions/ entries to be deemed as preferential by the Corporate Debtor. The transactions in the bank statements are running transactions that had taken place to carry out the operations and to fulfill the other business requirements of the Corporate Debtor. A copy of the GST returns evidencing the sale of goods by the Corporate Debtor is annexed as Annexure-2 of the Reply.

4.4 The Applicant has made the allegations merely on the basis of entries/transactions of the payments but has deliberately failed to disclose the transactions/ entries of payments received from Respondent 1, Respondent 2 and *M/s Jai Shree Krishna Textiles*. The Corporate Debtor used to sell and purchase the goods from the *M/s Jai Shree Krishna Textiles* in the ordinary course of business. There are continuous business transactions with regard to the sale-purchase of the goods and the payments made by the Corporate Debtor in exchange for goods and services which did not give any unfair advantage to the Respondents over the other Creditors and were not in violation of the provisions of the Code.

4.5 The Applicant does not have any specific material on record or cogent evidence that establishes the existence of the preferential/fraudulent

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transactions carried out by the Respondents. The Applicant has conducted the Transaction Audit after the expiry of prescribed timelines merely on the basis of entries in the Bank Statements that have taken place in an ordinary course of business of the Corporate Debtor. The same has been done without complying with the Regulation 35A of the CIRP Regulation.

5. We have heard the parties and also examined the observations given in the Transaction/Forensic Audit Report based on which the present application was filed by the Applicant. The Forensic Report has considered the alleged transaction conducted between the parties as fraudulent. The Forensic Auditor has observed that there is siphoning of funds by the Corporate Debtor to the Respondents.

6. To determine the issue at hand. we must examine the scope of section 43 which is extracted below:

" Section 43: Preferential transactions and relevant time.

(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

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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 transfer —

(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."

7. The Hon'ble Supreme Court has elaborated the scope and ambit of the Section in the matter of *Anuj Jain vs. Interim Resolution Professional for Jaypee Infratech*

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Limited vs. Axis Bank Limited Etc. Civil Appeal Nos. 8512-8527 OF 2019, whereby the following has been held:

> *"20. 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?"*

8. Hence, conjoint reasoning of the aforementioned enunciates that Section 43(2) categorised those transactions as Preferential Transactions in which there is a transfer of property or an interest thereof of the Corporate Debtor for the benefit of a Creditor/Surety/Guarantor and effecting a beneficial position to the Creditor/Surety/Guarantor than it would have been in the event of a distribution of assets being made in accordance with section 53. On the other hand, Section 43(3) elucidates the transactions exempted from the clutches of Section 43(2) i.e., a preference shall not include transfers made in the ordinary course of the

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business or financial affairs of the Corporate Debtor or the transferee or any transfer creating a security interest in property acquired by the Corporate Debtor to extent that 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 a security interest and was used by Corporate Debtor to acquire such property and the same has been registered with an information utility on or before thirty days after the Corporate Debtor receives possession of such property.

9. It is pertinent to note that Section 43 of IBC is a deeming provision and any transaction covered by sub-section (2) falls within the ambit of preferential transaction. However, sub-section (3) lays down exceptions one of which is when transfer is made in the ordinary course of the business of the Corporate Debtor and the transferee. The nature of transactions is not known that had taken place between the parties with respect to the payment made by the Corporate Debtor to the Respondent as alleged by the Applicant.

10. On the perusal of the Bank Statements, it is observed that the amount transferred from the Respondents to the Corporate Debtor is much higher than the amount alleged by the Applicant as a preferential payment. Upon the examination of the records, it is found that the Corporate Debtor had transferred an amount of Rs. 1,02,02,207/- (Rupees One Crore Two Lakh Two Thousand and Two Hundred Seven Only) to the Respondent No. 1 during 2017-18 and in the same duration, the Respondent No. 1 has transferred Rs. 1,25,50,000/- (Rupees One

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Crore Twenty-Five Lakh and Fifty Thousand Only) to the Corporate Debtor. Further, the Corporate Debtor had transferred Rs. 20,80,000/- (Rupees Twenty Lakh and Eighty Thousand Only) to Respondent No. 2 during 2017-18, and Respondent No. 2 has transferred Rs. 31,31,500/- (Rupees Thirty-One Lakh Thirty-One Thousand and Five Hundred Only) to the Corporate Debtor. In the case of Respondent No. 3, the Applicant has made the allegation merely on the basis of entries/ transactions of the payments, however, it has failed to disclose the entries/transactions of the payments received from Respondent No. 3. There are no documents on record that determine the nature of the transactions that has taken place between the parties.

11. It is contented that Respondents No. 1 & 2 were the promoters/directors of the Corporate Debtor and had arranged the funds from their sources to run the business of the Corporate Debtor. The Corporate Debtor was engaged in the business of manufacturing as well as trading textiles and as contended the Respondents arranged funds from time to time to meet the working capital requirement and also made the repayments to ensure the availability of the funds. In absence of any conclusive proof towards the nature of the transactions carried out between the parties herein i.e. the Corporate Debtor and the Respondents No. 1 and 2, we cannot allow this Application of the Applicant seeking reversal of these transactions.

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12. Also, with respect to the transactions undertaken between the Corporate Debtor and *M/s Jai Shree Krishna Textiles*, wherein Respondent No. 3 is the proprietor, we have perused the Bank Accounts along with the GST Returns duly file with the Statutory Authority. It is observed that the aforementioned documents clearly evidence the purchase/sale of goods between the parties, thereby justifying the transactions undertaken to meet their liability. These transactions appear to be in the ordinary course of business and hence, fall within the exception provided for under sub-clause (3) of Section 43.

13. In view of the above facts and circumstances of the case, the *IA(IBC) No. 238/JPR/2020* stands rejected and disposed off accordingly.

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

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RAJEEV MEHROTRA,
TECHNICAL MEMBER