

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 1664 OF 2021

Under Section 19 (2) of Insolvency &
Bankruptcy Code, 2016

Mr. Mahesh Sureka

Resolution Professional

...Applicant

V/s

Sameer Enterprises & others,

...Respondents

In the matter of

C.P.(IB) No. 4461/MB/2019

Minesh Prints Limited

...Corporate Applicant

Order delivered on: 03/01/2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the RP : Mr. Mahesh Surekha, RP

For the Respondent : Mr. Mr. Viraj Parikh, Advocate
i/b Mr. Saurabh Pandya,
Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 1664/2021 is filed by Sh. Mahesh Sureka, the Resolution Professional (“Applicant”) of the M/s Minesh Prints Limited against M/s Sameer Enterprises (“Respondent No. 1”), M/s Minesh Capital Holdings Private Limited (“Respondent No. 2”), M/s Asha Textiles (“Respondent No. 3”), M/s Bhagwati Enterprises (“Respondent No. 4”), M/s Sona Synthetic (“Respondent No. 5”), M/s Sparsh Silk Mills (“Respondent No. 6”), Sh. Anil Arvind Kumar Sadh (“Respondent No. 7”), Sh. Sunil Arvind Kumar Sadh (“Respondent No. 8”), and Sh. Minesh Anil Sadh (“Respondent No. 9”). The Applicant has sought following reliefs :
 - a. Direction to the Respondents to pay to the Corporate Debtor the total amount of undervalued transactions to the tune of the benefits received by them from the Corporate Debtor;
 - b. Direction to the erstwhile Directors and Promoters of the Corporate Debtor to pay to the Applicant the total amount of undervalued transactions to the extent the amount is not recoverable from other Respondents;
 - c. Costs of this interlocutory application;
2. The Corporate Debtor incorporated on 20th February, 1992, is engaged in spinning, weaving, finishing and trading of textile materials. This Tribunal vide its order dated 4th March, 2020, in Company Petition No. 4461 of 2019, admitted the Corporate

Debtor to the Corporate Insolvency Resolution Process ("CIRP") in terms of Section 10 of the Insolvency & Bankruptcy Code, 2016 ("Code") and the Applicant was appointed as the Resolution Professional.

2.1. The Applicant is stated to have appointed one M/s P. S. Samdani and Associates ("Auditors") vide an engagement letter dated 11th January, 2021, for conducting transactional audit in accordance with the provisions of the Code. In due course, the transactions for two years from the commencement of the CIRP for related parties and for one year for other parties were reviewed and submitted in accordance with the provisions of Code 3rd March, 2021, to the Applicant.

2.2. **Under valued sales transaction** : It is stated that, on evaluation it was found by the Auditors that the Corporate Debtor purchased materials worth Rs. 6,29,77,809/- from one Minesh Capital Holdings Private Limited (Related Party) on 17th October 2019. However, on the very next day, that is the 18th October 2019, the materials were sold to one M/s Sameer Enterprises for Rs. 4,39,733/-. This purports a huge unexplained difference between the sale and purchase price and therefore the said transactions are identified as under-valued transactions under section 45(2). Furthermore, the company sold the goods for less than 1 percent of the cost price which resulted into a loss of Rs. 6.25 crores. Due to this, the company incurred a net loss of Rs. 3.86 Cr in the Profit and Loss Account for the year ended 3 March 2020.

2.2.1. It is apparent from the aforesaid that the said transactions are not only under-valued transactions but also attract the provisions of Section 49 of the Code inasmuch as the said transactions are entered into with an aim to keep the assets beyond the reach of creditors. The said transactions would also tantamount to breach of Section 66 of the Code inasmuch as the erstwhile management of the Corporate Debtor did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor. It is for the above reasons that the said transaction is identified as an undervalued transaction relating to purchase and sale of goods involving related party.

2.3. **Unrealised receivables** : Moreover, trading transactions during the Financial Year 2017-18 were undertaken with parties already having balances, still recoverable. Further, sales invoices were not supported by delivery challans and GST@ 5% was not paid on such transactions. Total of trade receivables due as on 3rd March 2020, is Rs. 16.65 Cr. Even after this, the company did not file any legal suits for recovery of such balance payments from the debtors. An analysis of the unrecovered trade receivables as on 3rd March, 2020, revealed and uncovered grave anomalies and discrepancy in the books of accounts of the Corporate Debtor which tantamount to large scale undervalued transactions at the behest of the erstwhile management of the Corporate Debtor. The identification of the said undervalued transactions cast grave suspicion on the

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 1664 OF 2021

In

C.P.(IB) No. 4461/MB/2019

erstwhile management having played a schematic fraud upon the creditors and statutory authorities. The said undervalued transactions as identified by the Applicant and supported by the report of the transactional auditor can be more particularly described as here under:

Analysis of Unrecovered Trade Receivables as 03.03.2020 (Extracts of ledgers are annexed)

S.No.	Name of Receivable	Amount (Rs Cr.)	Observations
1	Asha Textile	7.20	<p>As on April 1, 2016 there was a balance of Rs. 2.27 Cr. to be recovered which increased to Rs. 9.11 Cr. as on April 1, 2018. During this period the company received a payment of Rs. 10.33 Lacs only. Even by March 31, 2019 there was outstanding dues of Rs.7.20 Cr. The company evidently supplied material to one party without taking into account party's capacity to pay. The supply was also disproportionate to company's own operations.</p> <p>The company did not take any legal action for recovery of dues</p> <p>The directors did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.</p>
2	Bhagwati Enterprise	7.40	<p>As on April 1, 2016 there was a balance of Rs. 2.28 Cr. to be recovered which increased to Rs. 8.81 Cr. as on April 1, 2018. During this period the company received a payment of Rs. 18.04 Lacs only. Even by March 31, 2019 there was outstanding dues of Rs.7.40 Cr. The company evidently supplied</p>

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 1664 OF 2021

In

C.P.(IB) No. 4461/MB/2019

			<p>material to one party without taking into account party's capacity to pay.</p> <p>The supply was also disproportionate to company's own operations.</p> <p>The company did not take legal action to recover the dues.</p> <p>The directors did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.</p>
3	Sona Synthetic	0.85	<p>The company did not make efforts for recovery of dues although balance is pending since June 2017.</p> <p>The company did not take legal action to recover the dues.</p> <p>The directors did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.</p>
4	Sparsh Silk Mills Pvt Ltd.	1.21	<p>The company did not make efforts for recovery of dues although balance is pending since Sept. 2017.</p> <p>The company did not take legal action to recover the dues.</p> <p>The directors did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.</p>
	Total	16.65	

2.3.1. It appears that these undervalued and trading transactions are on account of various debit and credit transactions entered between the Corporate Debtor and the Respondents. However, the Applicant was unable to ascertain whether these transactions were done on the basis of any legitimate underlying agreements. In fact, the Applicant could not determine any justifiable reasons for these transactions. The transaction audit report prepared upon the instance of the Applicant shows that these transactions are undervalued in nature and therefore covered by sections 45 as well as would attract the rigours of Sections 46 and 66 of the IBC. It is for the above reasons

that the said transactions are identified by the Applicant as Undervalued Transactions relating to trading activity.

2.4. Furthermore, based on the transactional audit report, there is a serious lack of internal control system or procedures in the Corporate Debtor particularly with respect to receivables management, payables management, inventories management, pricing of sales and purchase transactions, funding transactions with related parties and other parties, etc.

2.5. In these circumstances, it is the case of the Applicant that an order be passed under section 48 of the IBC against the Respondents directing them to refund the total amount of fraudulent transactions and preferential transactions back to the Corporate Debtor. The Applicant further states and submits that this would be in the best interests of the Corporate Debtor.

3. Respondent No. 3 and 4, the Suspended Directors of the Corporate Debtor, have jointly filed reply stating that the Corporate Debtor had only one secured creditor who was settled even prior to commencement of CIRP out of proceeds of sale of fixed assets with the consent of such creditor. Section 45 of the Code does not provide for any mechanism for recovery of monies from suspended directors. Nonetheless, there is no allegation of any personal benefit received.

3.1. The CIRP period of 180 days has expired and the Respondents are not aware of any resolution passed by the CoC for extension of the CIRP period or any order extending the CIRP period

passed by this Tribunal. Accordingly, the Applicant is now functus office after expiry of 180 days from 24th March, 2020.

3.2. The Resolution Professional has ignored the explanation provided by them vide Reply dated 3rd March, 2021, whereby it was stated that “*The goods purchased were not of the good quality and also were damaged very badly. The fabric had become like tender paper and could be easily torn with bear hands because of fungus grown on the fabric and rats spoilt it even further. The scrap of the fabric fetched a way better price that company could get*”. The Resolution Professional has also completely ignored the fact no payment whatsoever was made by the Corporate Debtor to Minesh Capital Holdings Private Limited for the said goods as their payment was withheld on account of the defective quality of goods.

3.3. The transactions in relation to unrealised receivables does not fall under section 45 of the Code as these transactions are not with related parties and much prior to 1 year from CIRP commencement date. Further, these transactions had taken place in ordinary course of business and Resolution Professional has completely ignored the complete explanation provided by the suspended directors for the transaction vide reply dated 3.3.2021, wherein it was clearly stated that “*There were no legal cases filed as the parties were in continuous contact with the Company and working for many years, and we expected the payment will be realised. Delivery challans was not made because the Invoice contained all the relevant information and was sufficient in accordance with law*”.

4. Heard learned Counsel and perused the material available on record.

4.1. We find that the Applicant has prayed in terms of section 45 of the Code, which provides for avoidance of Undervalued transactions. Section 45 of the Code reads as under –

Section 45: Avoidance of undervalued transactions.

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) 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.

4.2. The Applicant has stated that the sale of goods worth Rs. 6,29,77,809/- purchased from Minesh Capital Holdings Private Limited (Related Party) on 17th October 2019 was sold on the very next day, i.e. the 18th October 2019, the materials were sold to one M/s Sameer Enterprises for Rs. 4,39,733/-.

4.2.1. We find that goods purchased from related party have been sold at less than 1% of its purchase price on the very

next day. The Respondent No. 3 & 4 have stated that no payment has so far been made to the seller of these goods, which were not of the good quality and also were damaged very badly. If that be so, it was incumbent on the Respondent No. 3 & 4 to issue debit notes to the Seller of Goods, which has not be done. However, it has been stated by them that no payment has been made to the seller of goods so far. These facts clearly evidences that the transaction of purchase of goods of inferior quality, which could fetch less 1% of its value on the very next day, for a sum of Rs. 6,29,77,8093/- is an Overvalued Transaction and the Corporate Debtor ought to issue debit notes to the extent of difference between the selling price and purchase price and the same must be set off against the balance payable to them i.e. Minesh Capital Holdings Private Limited (Related Party) considering that no consideration towards said purchase has so far been made. Since, as per submission of the Respondent No. 3 & 4, such goods were of inferior quality and could not have fetched its normal price, we are of considered view that the transaction of sale of such goods on next date can not be considered as Undervalued transaction. However, both the transactions certainly demonstrates the contumacious conduct of Respondent No. 3 & 4 to keep away the properties of the Corporate Debtor away from its Creditors. Since, the Applicant has not made any prayer in terms of Section 66 of the Code, we refrain from passing any order in this relation.

4.3. As regards prayer in relation to Receivable amounting to Rs. 16.65 Cr. is concerned, we find that the Applicant has made allegation that no legal action was taken and goods were supplied without issuance of any delivery challan. We find that issuance of delivery challan is not a mandatory requirement and the invoice is sufficient evidence of transaction, unless mandated by the parties to the contract. It has been submitted by the Respondent No. 3 & 4 that Delivery challans was not made because the Invoice contained all the relevant information and was sufficient in accordance with law and legal action was not taken as they were expecting that the money shall be realised from these parties. Needless to say, failure to take necessary legal action for recovery of these dues is an act of negligence on the part of the Suspended Board and in the absence of any other adverse pleadings in this relation, we are of considered opinion that the outstanding debt, simpliciter, can not lead to conclusion that the transactions, from which such debt arose, were in nature of undervalued or fraudulent transaction, we are of considered view that such transaction does not meet the requirement of section 45 of the Code, accordingly, no order can be passed in terms of that section.

5. In view of the aforesaid, IA 1664/2021 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)