

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

I.A. 3176 OF 2023

Under Section 43 & 44 of Insolvency &
Bankruptcy Code, 2016

Dr. Mamta Binani
The Resolution Professional

...Applicant

Vs.

Rolta International INC & Others

...Respondents

In the matter of

C.P.(IB) No. 530/MB/2010

Union Bank of India

Financial Creditor

Vs.

Rolta India Limited

Corporate Debtor

Order delivered on: 23.04.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Applicant/RP : Ms. Aakanksha Nehra a/w Mr/
Aashish Darne and Ms. Gunjan
Nayyar and Ms. Adya Singh,
Advocates

For the Respondent : Mr. Ameya Gokhale a/w Mr.
Manas Kotak, Advocates for
Respondent No.2 and 8

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 3176/2023 is filed by Dr. Mamta Binani ("Applicant") against Rolta International INC Limited, in the matter of Rolta India Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs :
 - a) Declare the transaction for an amount of Rs. 7,84,31,000/- (Rupees Seven Crores Eighty Four Lakhs Thirty One Thousand Only) described in Paragraph 4.6 of the present application read with the Entry Number 21 in the table available at internal Page 206 of the Report dated 14.06.2023 issued by the Transaction Auditor (extracted and reproduced as Appendix "A" to the present application) as preferential in nature in terms of Section 43 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") and pass an order for avoidance of these transactions under Section 44 of the Code;
 - b) Direct the Respondent No. 1-3 to pay back the amount of Rs. 7,84,31,000/- (Rupees Seven Crores Eighty Four Lakhs Thirty One Thousand Only) to the Corporate Debtor being the value of the

treatment prayed to be avoided in prayer clause 5.1.1 along with interest at such rate as deemed appropriate to this Hon'ble Tribunal to be paid till the actual date of payment;

2. That the Present application is being filed under Section 43 and Section 44 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "Code") on behalf of the Resolution Professional (hereinafter referred to as the "Applicant") of Rolta India Limited (hereinafter referred to as "Corporate Debtor") for avoidance of adjustment of a credit amount of Rs. 7,84,31,000/- (Rupees Seven Crores Eight Four Lakhs Thirty One Thousand Only) appearing in the books of the Corporate Debtor receivable from the Respondent No. 1 Rolta International Inc. (hereinafter referred to as "Rolta International") against debit balance appearing in the books of the Corporate Debtor owed by the Corporate Debtor to the Respondent No. 1- Rolta Private Limited (hereinafter referred to as "RPL"). booked on 31.03.2021 falling within the lookback period commencing from 19.01.2021 to 19.01.2023 (hereinafter referred to as "Relevant Period"), in preference to the other creditors of Corporate Debtor, when the Respondent No. 3 was acting as the Managing Director (hereinafter referred to as "Relevant Transaction").

2.1. That the said transaction was identified by the professional appointed by the Applicant for reviewing of the transactions of the Corporate Debtor during the Relevant Period and on conducting further study, the Applicant has also found that the Relevant Transaction that has been identified by the professional, falls under the scope of Section 43 of the Code.

2.2. That furthermore, in the humble submission of the Applicant even as on date, (i) huge amount is appearing to be due and payable to the Corporate Debtor from the Respondent No. 1 and (i) preference has been enjoyed by the Respondent No. 2 whereby its amount due from

the Corporate Debtor has been reduced. Hence, consequential directions of payment of the money equivalent to the value of transactions being avoided, deserves to be passed along with interest against all the Respondents being jointly and/ or severally liable.

2.3. That the explanation provided in the response sent by the management of the Corporate Debtor to the professional appointed by the Applicant, on being notified of these transactions, also does not fall under any of the exceptions provided under Section 43 of the Code.

2.4. That hence, the present application seeking directions under Section 43 and 44 of the Code against the Respondents is being filed by the Applicant.

3. Respondent No 2 has filed reply stating that the Applicant is seeking avoidance of a "non cash based book entry", which took place in the books of Rolta India Limited ("Rolta India / Corporate Debtor"). By this non cash based book entry, the credit balance of Rolta International Inc. ("Rolta International"), Respondent No. 1 herein, was purportedly adjusted against the debit balance of RPL. According to the Applicant, the Application is within the look back period since this non - cash based book entry was made in the books of the Corporate Debtor on 31st March 2021. The book entry which the Applicant is seeking to avoid neither contemplates a 'transfer' nor does it involve 'property' of the Corporate Debtor.

3.1. At the relevant time, the Corporate Debtor was in the business of providing IT solutions and services, primarily in the fields of geospatial and engineering. Rolta India commenced its operations by providing CAD (computer-aided design) services to Indian engineering firms and later, it diversified into providing software development and IT consulting services to clients in India and

around the world. Due to Rolta India's expertise in the IT field, Rolta India, through the years, had multiple customers across various businesses. Rolta International was one such customer of Rolta India. Rolta International is a wholly owned overseas subsidiary of Rolta India. Rolta International used to procure projects, which were executed by Rolta India, as its sub-contractor. For executing such projects, Rolta India would raise its invoices on Rolta International. Rolta International, in-turn, raised invoices on their customers. Upon receipt of payments from customers, Rolta International would remit the funds to Rolta India. All transactions between Rolta India and Rolta International, were in the ordinary course of business. In such usual course of business, in financial year 2020-2021, Rolta India rendered services to Rolta International and raised its invoice for such services.

3.2. Being a foreign entity, Rolta International made payments for such services to Rolta India in foreign exchange. These payments from Rolta International could only be received by Rolta India in a bank account maintained by it with its authorised dealer ("Designated Account") pursuant to the applicable provisions of Foreign Exchange Management Act, 1999. However, in or around September 2019, the Designated Account of Rolta India was attached by tax authorities in India due to issues pertaining to withholding of tax. In view of the foregoing, Rolta India instructed Rolta International to make payment of the said invoice amounts to RPL's designated account and requested RPL to accept the amounts from Rolta International on its behalf. This fact is borne out from Rolta India's endorsements on the invoices. Accordingly, these amounts were transferred by Rolta International to RPL.

3.3. The Corporate Debtor invoices on Respondent No. 1 for a sum of USD 10,67,013.67 and the said payment was received from

Respondent No. 1 in account of Rolta Private Limited. The total payment received in INR amounts to Rs. 7,78,25,604/-. In turn, RPL transferred a sum of Rs. 7,95,49,771/- to Corporate Debtor. Since, there was no business transaction between RPL and Rolta India qua these funds, these amounts were shown under the entry of a 'temporary loan' in the books of Rolta India. RPL merely acted as a facilitator for Rolta India for receipt of amounts which were due and payable from Rolta International to Rolta India in its ordinary course of business.

4. The Respondent No.3, Sh. Kamal Singh Krishan, the suspended board member during the relevant period and Chairman cum Managing Director of Corporate Debtor, has filed affidavit in reply dated 02.01.2024 stating that the Application is stated to have been filed based on a Transaction Review Report dated 14th June 2023 ("TRR") pursuant to a "detailed inquiry" conducted by the Auditor appointed by the Applicant viz. M/s Kansal Singla & Associates and the said report does not contain any finding against me. 7. In the absence of a finding in the TRR and any concrete allegation even in the Application, there is no case made against me and on this ground alone the application should be dismissed qua me. The paragraph 1.1.2.2 of the Application makes it clear that it is the Applicant's case that the purported benefit from the impugned transaction was only received by Respondent No. 2. Further, there is no allegation that I have derived any benefit from the Impugned Transaction. On this ground alone, it is submitted that the present Application ought to be dismissed qua Respondent No. 3.
5. Heard learned counsel for the both sides and perused the records.
 - 5.1. Section 43 of the Code deals with preferential transactions and relevant time. Section 43 of the Code is as follows:

“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 subsection (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.”

5.2. One of the ingredient for bringing a transaction within section 43 is “a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor”. In this case, the Respondent No. 1 is a further step down subsidiary of the Corporate Debtor and procures the business in International Market, which is sub-contracted to the Corporate Debtor for execution. It is undisputed fact that the Corporate Debtor had raised invoices for the services provided to Respondent No. 1 and all these invoices were outstanding. It has been explained by the Respondent No. 2, the Holding company of Corporate Debtor, that these invoices were realised in their account thus the money came to be remitted to them by Respondent No. 1 in discharge of its obligations to pay invoices raised by the Corporate Debtor. This arrangement was put in place to avoid appropriation of these amounts by Income Tax Department due to tax issues pertaining to Corporate Debtor and consequent attachment of its bank account. Respondent No. 2 has placed on record the Bank

credit advice issued by Union Bank of India upon receipt of each remittance from Respondent No. 1 and the same corroborates with the invoices raised by the Corporate Debtor on Respondent No. 1. Though, this arrangement may have the effect of contravening provisions of Foreign Exchange Management Act and Income Tax Act, it can not be denied, on the basis of fact placed on record, that the amounts in question were remitted by Respondent No. 1 to Respondent No. 2 for the benefit of Corporate Debtor only. It is also undisputed fact that a sum of Rs. 7,95,49,771/- was transferred to the Corporate Debtor out of realization of USD 10,67,013.67 translating into Rs. 7,78,25,604/-. Though the Corporate Debtor had retained the balance of Respondent No. 1 as receivable and entered the sums received from Respondent No. 2 as “Temporary loans”, it can not be denied on facts that the money received by Respondent No. 2 from Respondent No. 1 was against discharge of Respondent No. 1’s obligation towards Corporate Debtor, which was reflecting as receivables in the books of Corporate Debtor. Similarly, the payments made by RPL to Corporate Debtor were out of proceeds, it held for the benefit of Corporate Debtor. In effect, the Respondent No. 2 merely acted as facilitator to enable the Corporate Debtor to realise its outstandings from Respondent No. 1 and receive it for its business operations in turn.

- 5.3. It is trite law that accounting entries are not conclusive evidence of nature of transaction, which in any case is to be deciphered from the substance of the transaction. Accordingly, we are of considered view that no transfer of any property took place from Respondent No. 2 to Corporate Debtor, when it transferred the money out of amounts received from Respondent No. 1. Consequently, no transfer of any property could be said to have taken when these accounts were settled in accordance with the arrangement, thus debiting

Respondent No. 2 for the money received by it from Respondent No. 1 on behalf of the Corporate Debtor.

5.4. Hence, we are of considered view that the impugned transaction fails the test embodied in section 43 of the Code so as to constitute a preferential transaction.

6. In view of the foregoing, IA 3176/2023 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)