



SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 09.04.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC) No.1820/2023 in Company Petition IB/64/9/HDB/2023
NAME OF THE COMPANY	Tirumala Hills Asphalt Pvt Ltd
NAME OF THE PETITIONER(S)	GP Petroleums Ltd Vs
NAME OF THE RESPONDENT(S)	Tirumala Hills Asphalt Pvt Ltd
UNDER SECTION	9 OF IBC

ORDER

IA(IBC) No.1820/2023

Orders pronounced, recorded vide separate sheets. In the result, IA(IBC) NO. 1820/2023 is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH II**

**IA No.1820 of 2023 in
C.P. (IB) No. 64/09/HDB/2023**

Application for avoidance of transactions u/s 45, 46, 48 and 49 of the Insolvency and Bankruptcy Code, 2016 and Regulation 35A of the CIRP Regulations r/w Rule 11 and 32 of the NCLT Rules, 2016.

In the matter of:

M/s. GP Petroleums Ltd

... Operational Creditor

Vs

M/s. Tirumala Hills Asphalt Pvt Ltd

..... Corporate Debtor

Between:

Adinarayana Babji Kota,
Resolution Professional of
M/s Tirumala Hills Asphalt Pvt Ltd
Regd office of the CD:
Flat No.4, H.No. 5-8-29,
4th Floor, Laxmi Sai Nilayam,
Fathe Sultan Lane, Hyderabad 500 001.
Address of the RP:
3-1-211 Upstairs, Somasundaram Street,
Secunderabad 500003
Process-specific email: tirumalahillscirp@yahoo.com
Registered email of RP: kotababji@gmail.com

.... Applicant

And

1. Mr. Kayagurala Jagadeesh Babu
5-146, Officers Colony,
Anantapur 515001
Email: jagadeesh.babu582@gmail.com

2. Ms. Baineni Dhanasree,
1/172, Ellutla, Anantapur,
Andhra Pradesh 515425
Email: bainanidhanasree1940@gmail.com



3. Mr. Mandli Narasimha Reddy
4/116, Bukkarayasamudram,
Bommalatapalli, Anantapur District 515 435.

.... Respondents

Date of Order : 09.04.2025

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant : Mr. Adinarayana Babji Kota, Liquidator

Per : Sanjay Puri

ORDER

1. In this application, the Resolution Professional (**RP**) has sought to make out a case of undervalued transactions amounting to **Rs 97,74,548** under Section 45 of the IBC¹, arising from the sale to Respondent No. 3 (**R3**) of the factory building and plant and machinery (**factory assets**), belonging to the Corporate Debtor (**CD**). The sale is alleged to have been made at a price significantly below the book value of the assets, as reduced by depreciation. In addition, the RP has also sought recovery of **Rs 59,14,653**, being the amount outstanding in the name of R3 in the books of the Corporate Debtor. The Respondents have remained unresponsive, despite valid service, and thus were rendered *ex-parte*.
2. To establish his case on both of the above counts, the RP has relied upon an unregistered 'Agreement of Sale'² and the ledger accounts maintained by the CD, wherein entries relating to the 'Factory Sale Receipts', sale of

¹ Insolvency and Bankruptcy Code, 2016

² Page 38 – 41 of the Application



goods and receipt of money pertaining to R3 are recorded. It is alleged that the factory assets, standing on leased land, having a book value of Rs 1,49,94,622 and a depreciated value of Rs 1,47,74,548, were purportedly sold for only Rs 50,00,000, thereby causing a loss of Rs 97,74,548 to the Corporate Debtor. It is further contended that the purported 'sale' transaction was not carried out in the ordinary course of business.

3. Based on the ledger account of R3 maintained in the books of the CD, to whom certain goods were sold during the look-back period of one year preceding the CIRP commencement date of 14 June 2023, it is noted that the outstanding balance as on 1 July 2022 was Rs 45,14,653. It is then alleged that the amount of Rs 50,00,000 received from R3 and recorded under the "Factory Sale Receipt" account in the ledger ought to have been adjusted against the "Supply of Goods" account maintained for R3. By carrying out following calculations, (flawed in our opinion) the RP has arrived at a figure of Rs 59,14,653 as receivable from R3, in addition to Rs 97,74,548 claimed in respect of the undervalued stated previously.

Particulars	Amount Rs.
Amount receivable as a trade debtor	4514653.87
Asset sale consideration	5000000.00
Total amounts receivable from Respondent No.3	9514653.87
Less: Amounts appropriated against asset sale	3600000.00
Net amount to be received from Respondent No.3	5914653.87

4. The Applicant RP has further contended that, since the agreement of sale, by which the factory assets were sold by the CD to R3, was not registered, the validity of the agreement itself is questionable. The RP has alleged that the agreement was "deliberately entered into by the CD for keeping the assets of the CD beyond the reach of creditors and in order to adversely impact the chances of recovery by of claim of operational creditors, within the meaning of Section 49(1) of the Code".

5. The RP's contention that the purported sale of the factory assets, as reflected in the unregistered agreement of sale, was not undertaken in the ordinary course of business, is well established. It has been clearly brought out in the application that Respondent No. 1, a director of the CD Company, was unable to manage the business and had, during the look-back period, taken the decision to sell the factory assets. This clearly characterises the transaction as not conducted in the ordinary course of business, for it was not part of an "*undistinguished general flow of business done, that it should form part of the ordinary course of business as carried on, calling for no remark and arising out of no special or particular situation*".³
6. The other contentions of the RP regarding the treatment of the factory assets sale transaction and the transactions of sale of goods to R3, as reflected in the ledger accounts, are not entirely convincing. First of all, from the facts on record, it is not conclusively established whether physical possession of the assets—namely the factory building and plant and machinery—was ever handed over to Respondent No. 3. While the Agreement of Sale appended to the application states that possession was to be delivered after Rs 36 lakhs out of the agreed consideration of Rs 50 lakhs was paid, there is no clear evidence on record confirming that such possession was indeed transferred⁴.
7. If the possession was not handed over, it is undisputed that the agreement of sale was unregistered, and that no registered sale deed was ever executed in favour of R3. Therefore, in view of the mandatory requirements under Section 54 of the Transfer of Property Act, 1882 and Section 17(1)(b) of the Registration Act, 1908, no legal title in the property can be said to

³ *Downs Distributing Company Pty Ltd v. Associated Blue Star Stores Pty Ltd* [(1948) 76 CLR 463] as extracted in **Anuj Jain, IRP v. Axis Bank Ltd & Ors [(2020) 8 SCC 401]**

⁴ Balance Rs 14 lakhs was paid on 31.03.2023 as per the 'Factory Sale Receipt' Account maintained by the CD



have passed from the CD to R3. The transaction, therefore, does not amount to a completed sale, and the RP's claim that it constituted an undervalued sale under Section 45 of the IBC becomes otiose.

8. On the other hand, if possession was indeed delivered, Respondent No. 3 may claim protection under Section 53A of the Transfer of Property Act. However, such protection does not confer ownership, nor does it validate the transaction as a completed sale. In such a scenario, the transaction may instead fall for consideration under Section 49 of the IBC as a transfer intended to defraud creditors, and requiring restoration of the assets to their pre-transactional state.
9. The RP however, is at pains to submit that restoration of the assets to their pre-transactional state, as contemplated under Section 49 of the IBC, is not being sought in the present application. This position has been taken, according to the RP, keeping in view the nature of the assets, which are depreciable in character and susceptible to wear and deterioration over time. The RP has submitted that attempting to restore the assets to their original position would, in fact, be detrimental to the interests of the Corporate Debtor, in light of the substantial value erosion that may have occurred since the date of the purported transaction.⁵

Under the circumstances, we are presented with two distinct scenarios, and we rule as under:

Possession of the factory assets – if not handed over to R3

10. If possession of the factory assets was not handed over to R3, then the transaction of sale remains incomplete. In such a case, the RP is directed to deal with the said assets as belonging to the CD. So far as the receipt of

⁵ This contention of 'value erosion' comes in the way of the 'undervalued asset' position taken by the RP elsewhere, but as no counterargument has been made in this regard, we disregard the same



Rs 50 lakhs from R3 is concerned, the RP may consider adjusting this amount against the receivables outstanding in the account of R3, particularly those arising from the supply of goods made to the said respondent.

Possession of the factory assets – if handed over to R3

11. On the other hand, if the physical possession of the factory assets was indeed handed over to R3 for a consideration of only Rs 50 lakhs as against their depreciated value of Rs 1,47,74,548 on execution of the 'Agreement of Sale', then the undervaluation to the extent of Rs 97,74,548, as projected by the RP, becomes evident and is significant. In this situation, as the transaction falls within the ambit of Section 45 of the IBC, the position as it existed prior to the transaction must be restored under section 49 of IBC. The RP is directed to take appropriate steps for taking possession of the factory assets, and deal with the same as if no 'Agreement of Sale' transaction had ever been entered into. Similar to the first scenario, the amount of Rs 50 lakhs received from R3 may be adjusted against the outstanding receivables in respect of goods sold by the CD to R3 during the relevant period.

The application is therefore allowed with the above remarks.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**