

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Insolvency) No. 139 of 2022**

In the matter of:

M/s. Radico Trading Ltd.

....Appellant

Vs.

Tarun Batra (Insolvency Professional) & Ors.

...Respondents

**For Applicant: Mr. Sangram Patnaik, Mr. Swayamsidha Patnaik,
Mr. Ankur Malik, Advocates.**

**For Respondents: Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Geetika
Sharma, Ms. Ankita Bajpai, Mr. Raghav Dembla,
Mr. Shaurya Shyam, Mr. Sujal Gupta, Advocates
for R1.
Mr. Rajiv Gupta, Advocate for R3 and 4**

ORDER

(Through Virtual Mode)

22.03.2022: Heard Learned Counsel for the Appellant and Learned Counsel for the Resolution Professional.

2. This Appeal has been filed against the judgment and order of the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.IV) dated 24.03.2021 in I.A No. 2277 of 2020 in CP(IB) No. 241/(ND)2019. An Application was filed by the Resolution Professional praying for following reliefs:-

*“a. Declare the transaction of Plant and Machinery of
the Corporate Debtor to Respondent No.3 as fraudulent;*

b. Issue necessary directions for cancellation of the transaction of sale of Plant and Machinery of Corporate Debtor to Respondent No.3;

c. Pass any other Order as the Hon'ble Adjudicating Authority deems fit."

3. The brief facts of the case which are necessary to be noticed for deciding this Appeal are:

Application under Section 7 was filed on 25.01.2019 before the Adjudicating Authority. On 03.05.2019 and 08.05.2019, the Appellant claim to have purchased Plant and Machinery for an amount of Rs. 7,55,200/- and Rs.14,40,600/- respectively. The transaction audit was got conducted and final report of transaction audit was presented before the Committee of Creditors (CoC). Final report of the transaction audit dated 15.05.2020 has reported a large number of irregularities in conduct and management of business affairs of the Corporate Debtor, including transactions which qualify as preferential transactions and undervalued transactions with intent to defraud the creditors. The Application filed by the Resolution Professional was considered by the Adjudicating Authority. The final report of the transaction audit was also looked into and following observations have been made by the Adjudicating Authority in para 11 and 12:

"11. As per the Final Audit Report dated 15.05.2020 the book value of the Machinery is Rs. 1.56 Cr. However, on perusal of the documents placed on

record by the Respondent No. 3 it has been observed that the Machinery has been purchased by the Respondent No. 3 vide bill no. 407 dated 03.05.2019 for an amount of Rs. 7,55,200/- and bill no. 408 dated 08.05.2019 for an amount of Rs. 14,40,600/- (Inclusive of GST). The Final Audit Report states that during the period under audit there have been no transaction as laid down in Section 49 and with respect to Section 66 of the code, the observations made only rely on the fact that the Corporate Debtor has trans-ferred its fixed assets just before the initiation of CIRP by the way of books entries. However, on scrutinizing the details of all the documents placed on record, we are of the view that the Directors of the Corporate Debtor were well aware of the fact that an application has been filed on 25.01.2019 and the same is pending for initiation CIR process against the Corporate Debtor, therefore the Directors of the Corporate Debtor **deliberately entered into an undervalued transaction.** 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 Section 49 and 66 of the Code. Therefore, we allow this I.A. No. 2277/2020 in Company Petition No. (IB)-241/(ND)/2019 and declare the sale of plant and machinery of the Corporate Debtor to the Respondent no. 3 as cancelled. As a consequence to the cancellation of the said transaction, it is hereby directed that the possession of the Plant and Machinery be handed over to the Resolution Professional and the Resolution Professional shall take all the steps to safeguard the same in the interest of the Creditors. Since the suspended Director/promoter and Additional Director of the Corporate Debtor ie. Respondent no. 1 and Respondent No. 2 knowingly carried on with the fraudulent transactions, therefore they are held liable to bear the liability of the Corporate Debtor Company, and it is further directed to the Respondent No. 1 and Respondent No. 2, to compensate and refund back the amount so raised on the sale of Plant and Machinery to the purchaser Respondent No.3.”

4. The Application of the Resolution Professional having been allowed, the Appellant aggrieved by the said order has come up in this Appeal.

5. Shri Sangram Patnaik, Learned Counsel for the Appellant challenging the order contends that Appellant was a bonafide purchaser for value and transaction ought not to have been declared undervalued transaction or cancelled. It is submitted that the bid was invited by the Corporate Debtor and three bids were received and the Appellant being highest bidder its bid was accepted. It also paid an amount of Rs.7,55,200/- and Rs. 14,40,600/- which transaction cannot be said to be neither undervalued nor could have been cancelled. It is submitted that under Section 46(2) of the IB Code, 2016, the Adjudicating Authority was required to appoint an independent expert to assess evidence relating to the value of the transactions mentioned in the section. It is submitted that no expert was appointed by the Adjudicating Authority and without there being any expert opinion, decision has been taken. It is further submitted that under Section 49(b) (ii), the interest of the Appellant was required to be protected because he is victim of such transaction.

6. The submissions of the Counsel for the Appellant has been refuted by the Learned Counsel for the Resolution Professional. It is submitted that the transaction, in question, was well within the period as prescribed under Section 46 and the transaction was clearly undervalued transaction since the book value of plant and machinery was Rs. 1.56 Crore and the said property was purchased for about Rs.21 Lacs which was grossly undervalued. It is submitted that in fact the plant and machinery was still in the possession of the Resolution Professional and those plant and machinery was never taken in possession. It is further submitted that before the Adjudicating Authority,

the Appellant was asked to show the bank statement regarding the payments made and before this Tribunal also the Appellant took opportunity to file relevant bank transactions. In the additional documents which have been filed, no bank transaction has been brought on record which indicate that transaction itself was not a bonafide transaction.

7. We have considered the submissions of the Learned Counsel for the parties and perused the record.

8. Insofar as the submissions of the Learned Counsel for the Appellant that transaction was not undervalued, suffice it to notice that book value of the machinery is Rs. 1.56 Crore as has been noted by the Adjudicating Authority, the sale of the plant and machinery for only Rs. 21 lacs is clearly an undervalued transaction and the submissions of the Appellant that transaction was not undervalued is wholly incorrect and cannot be accepted. The submission made by the Learned Counsel for the Appellant is on the basis of Section 46 of the Code, which reads as follows:-

“46. Relevant period for avoidable transactions. - (1)

In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that –

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.”

9. Section 46(2) empowers the Adjudicating Authority to require an independent expert to assess evidence relating to the value of the transactions. The power under Section 46(2) is enabling power and the expression used “may require” indicates that it is not necessary that for all applications filed under Section 46(1) there has to be mandatory expert appointed by the Adjudicating Authority. Therefore, we are not persuaded to accept the submissions of the counsel for the Appellant that it was mandatory for the Adjudicating Authority to require an independent expert to assess evidence relating to the value of the transactions. Thus, no error has been committed by the Adjudicating Authority in accepting the case of the Resolution Professional that transaction was undervalued.

10. Now, we come to the next submission of the Counsel for the Appellant based on Section 49(1)(ii). Section 49 on which reliance has been placed by the learned counsel for the Appellant is to the following effect:-

“49. Transactions defrauding creditors. - (1) Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such

transaction was deliberately entered into by such corporate debtor –

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order-

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions.”

11. The scheme of Section 49 indicates that where the corporate debtor has entered into an undervalued transaction and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor or in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority is required to make an order- (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and (ii) protecting the interests of persons who are victims of such transactions.

12. The provision as contemplated in Section 49(b)(ii) protecting the interests of persons who are victims of such transactions obviously does not

relate to the Appellant who was party to the transaction. Appellant cannot in any manner be said to be victim of such transaction. Hence, there is no question of protecting his interests by the Adjudicating Authority in exercise of powers under Section 49(b)(ii). The Appellant was in fact the beneficiary of the undervalued transaction and he cannot claim himself to be victim of the transaction.

13. Now, we come to the last submission of the Counsel for the Appellant that under the direction issued by the Adjudicating Authority in para 12, the Respondent Nos. 1 and 2 (to the Application) is to compensate and refund back the amount of the sale of plant and machinery to the Respondent No.3. It is always open for the Appellant who was Respondent No.3 before the Adjudicating Authority to take appropriate measures for refund back of the amount from Respondent Nos. 1 and 2.

14. We find no merit in this Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Shreesha Merla]
Member (Technical)**

Anjali/nn