



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 3213 OF 2023

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

Dr. Mamta Binani
The Resolution Professional

...Applicant

Vs.

Rolta Overseas Private Limited & others
...Respondents

In the matter of

C.P.(IB) No. 530/MB/202 0

Union Bank of India

Financial Creditor

Vs.

Rolta India Limited

Corporate Debtor

Order delivered on: 17.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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





Appearances:

For the Applicant/RP : Ms. Aakansha Nehra,
Advocate
For the Respondent : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 3213/2023 is filed by Dr. Mamta Binani ("Applicant") against Rolta Overseas Private 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 transactions for a cumulative amount of Rs. 4,00,02,000/- described in Paragraph 4.6.4 of the present application read with the Entry 20 in the table available at internal Page 189 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 cumulative amount of Rs. 4,00,02,000/- 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 cumulative credit balance of Rs. 4,00,02,000/- of Respondent No. 1 Rolta Overseas Private Limited (hereinafter referred to as "Rolta OPL") appearing in the books of the Corporate Debtor against debit balance appearing in the books of the Corporate Debtor owed to the Corporate Debtor by the Respondent No. 2 Rolta Defence Technology Systems Private Limited (hereinafter referred to as "Rolta DTS"), during the 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.

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 conducted further study, the Applicant has also found that these transactions that have been identified by the professional, fall under the scope of Section 43 of the Code.

2.2. That furthermore, in the humble submission of the Applicant even as on date amount is appearing to be due and payable to the Corporate Debtor from the Respondent No. 1 and 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 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.

3. The Respondent no. 1, Rolta Overseas Private Limited ("ROPL") an associate company of Corporate Debtor and the Respondent No. 2, Rolta Defence Technology Systems Private Limited ("RDTS") wholly owned subsidiary of Corporate Debtor has filed affidavit in reply both 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 Overseas Private Limited ("ROPL"), Respondent No. 1 herein, was purportedly adjusted against the debit balance of RDTS. 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 between 19th January, 2021 to 19th January, 2023. 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. The explanation of the management of the Corporate Debtor as stated at Page 233 of the Application in relation to the impugned transactions reads as under :





“Amount was provided by ROPL to RIL for giving to RDTS, which is a 100% subsidiary of RIL. As there was no operative Bank account of RDTS, this amount had to be given to RIL’ Axis Bank account. The said amount was utilized by RIL and adjusted the credit balance of Rolta Overseas Private Ltd. with the debit balance of Rolta Defence on their request”.

- 3.2. If relief sought in the Petition are granted, it will tantamount to unjust enrichment of Rolta India.
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. 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 materials available on record.
- 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”.

5.3. On perusal of the ledger statement in the books of Corporate Debtor placed on record by the Applicant, we note that the book entry dated 31.3.2021 was passed pursuant to clause no. 4 of agreement dated 25.01.2021. On perusal of the agreement dt. 25.01.2024, we find that this agreement was entered into between Respondent No.1 and 2 whereby the Respondent No.1 was to pay license fees under the IP license agreement to respondent No.2. This transaction had the affect of discharge of obligation of Respondent No.1 by the Corporate Debtor by settling the amount receivable from Respondent No.2.





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- 5.4. It is the case of the Respondent Nos. 1 & 2 that Amount was provided by ROPL to RIL for giving to RDTS, which is a 100% subsidiary of RIL. As there was no operative Bank account of RDTS, this amount had to be given to RIL' Axis Bank account. The said amount was utilized by RIL and adjusted the credit balance of Rolta Overseas Private Ltd. with the debit balance of Rolta Defence on their request.
- 5.5. The Respondent No.1 has explained that an amount of Rs.4.02 Crore was provided by them to the Corporate Debtor so as to make further payment to Respondent No.2. In view of the fact that Respondent No.2 had no operative Bank account at that time and the transactions relating to Respondent No.2 were being routed through Corporate Debtor's Bank account. It is undisputed fact that Respondent No.2 is 100% subsidiary of the Corporate Debtor and it is in ordinary course of business of a company to facilitate the business operations of its subsidiary company. Further, in ordinary course of business of subsidiary company to receive support structure from the holding Company.
- 5.6. In view of above, we consider it appropriate to hold that this transaction falls under the exception clause of Section 43 of the Code. Accordingly, no order can be passed u/s 44 of the Code.
6. In view of the above, the I.A. 3213/2023 is dismissed as disposed of.

Sd/-

Prabhat Kumar
Member (Technical)


Sd/-

Justice V.G. Bisht
Member (Judicial)



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28/05/2024
Deputy Registrar

National Company Law Tribunal Mumbai Bench
(D 5091) 28/5/24