

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**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 04.10.2023, At 11:00 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/869/2023 in CP (IB) No.150/7/HDB/2022
NAME OF THE COMPANY	Hari Shankar Paper Products Pvt Ltd
NAME OF THE PETITIONER(S)	Indiabulls Consumer Finance Ltd
NAME OF THE RESPONDENT(S)	Hari Shankar Paper Products Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/869/2023

Present: Ld. Counsel for the Petitioner.
Ld. Counsel for the Respondent.

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.869 of 2023 in
CP(IB) No.150/7/HDB/2020

In the matter of:

Indiabulls Consumer Finance Ltd.

....Financial Creditor

Vs.

Hari Shankar Paper Products Pvt. Ltd.

....Corporate Debtor

Between:

Mr. Umesh Chandra Sahoo,
Liquidator in the matter of
M/s. Hari Shankar Paper Products Pvt Ltd,
Plot No.4, Snowdrop Apartment, 2nd Floor,
Cuttack Road – 751 006.

....Applicant

Vs.

1. Mr. Shiv Shankar Taparia,
5-9-46/1, 2nd Floor,
Sri Sai Queen Stone Palace
Nr. Kirloskar Hospital, Basheerbagh,
Hyderabad – 500 001.
2. Mr. Ram Kishore Taparia,
5-9-46/1, 2nd Floor,
Sri Sai Queen Stone Palace
Nr. Kirloskar Hospital, Basheerbagh,
Hyderabad – 500 001.

....Respondents

Date of order: 04.10.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Ms. Mano Ranjani & Mr. M. Rama Rao, Advocates

For the Respondents : None

Heard on : 25.08.2023

PER: SANJAY PURI, MEMBER (TECHNICAL)

ORDER

1. This is an application filed by the Liquidator of Hari Shankar Paper Products Pvt Ltd, the Corporate Debtor (**CD**) which was admitted into Corporate Insolvency Resolution Process (CIRP) on 13.04.2022, and later approved for Liquidation on 11.11.2022.
2. It is submitted that during CIRP, on 12.07.2022, the Resolution Professional (**RP**) had appointed a Transaction Auditor (**TA**) to conduct transaction audit of CD in order to, “analyse transactions falling u/s 43, 45, 50 & 66 of the Code.” The Transaction Auditor submitted its draft report on 27.12.2022 and final report on 07.02.2023.
3. It is submitted that during the conduct of CIRP, the suspended directors of CD did not cooperate and failed to provide the documents sought by RP or TA. In that regard an application was also filed¹ by RP, where by an order dt. 26.09.2022 the suspended directors were ordered to cooperate in the conduct of CIRP and provide the documents sought for by the RP.
4. It is submitted that despite the order of this Authority, the ex-directors did not provide the documents which were essential to conduct transaction audit, and due to the “non-cooperation of the ex-

¹ IA No. 859/2022

management, the scope of transaction audit got limited.” The transaction audit report therefore was “based on the audited as well as unaudited balance sheet of the Corporate Debtor”, it was further submitted.

5. It has been claimed in the application that:

“The ex-directors have not taken due care of the financials of the Corporate Debtor. The details of the debtors who owe money to the Corporate Debtor is not recorded properly and the ex-directors have utilized the funds of the Corporate Debtor in most reckless manner. The ex-directors have taken loan from several entities/creditors and not utilized the said fund for the benefit of the Corporate Debtor. Therefore, the account of the Corporate Debtor turned NPA”.

6. It is submitted that after receiving the transaction audit report “and after analysing the supporting documents, the applicant formed an opinion and determined that transactions flagged in the audit report casts serious doubt to its genuineness.”

7. Following transactions have been identified as fraudulent and are stated to be “squarely covered under the provision of section 66 of the Code.”

A. Suspicious Transaction/Unsecured Loan advanced to related Parties:

S.No	Particulars /details of the related parties to whom unsecured loan was advanced	Year/time of payment	Amount (Rs.)
1.	Shiv Shankar Taparia	2018-19	8,50,004
		2019-20	5,75,961
2.	Ram Kishore Taparia	2018-19	32,47,770
		2019-20	5,76,461
3.	Rameshwari Devi Taparia	2018-19	70,686
4.	Sarla Taparia	2018-19	2,51,768
		Total :	55,72,650

B. Unsecured Loan advanced to unrelated Parties:

S.No	Particulars /details of the related parties to whom unsecured loan was advanced	Year/time of payment	Amount (Rs.)
1.	Bang Data Forms Pvt. Ltd.	2018-19	8,18,33,338

2.	Vijay Laxmi Sharda	2019-20	13,50,000
3.	Sri Chaitanya Education Trust	2019-20	8,39,961
Total :			8,40,23,299

C. Huge expenses booked by the related parties:

S.No	Particulars	Year/time of payment	Amount (Rs.)
1.	Shiv Shankar Taparia	2018-19	3,00,000
2.	Ram Kishore Taparia	2018-19	3,60,000
Total :			6,60,000

D. Huge advance paid to the related parties/amount siphoned off:

S.No	Particulars /details of the related parties to whom advance was paid	Year/time of payment	Amount (Rs.)
1.	Ram Kishore Taparia	2018	12,00,000
2.	Abhishek Enterprise	2017-18	1,20,53,755
3.	Cos Board Industries Limited	2017	75,00,000
4.	Tirupati Kagads Private Limited	2017-18	4,07,26,888
Total :			6,14,80,643

8. In the proceedings before this Authority, the respondents Mr Shiv Shankar Taparia and Mr Ram Kishore Taparia, who are stated to be the erstwhile Directors of CD, did not participate despite repeated opportunities and were thus set *ex-parte* on 23.06.2023. The application has thus been adjudicated on its merits.

A. Suspicious Transaction/Unsecured Loan advanced to Related Parties:

9. It is submitted that the CD had “advanced huge unsecured loan to the directors and [their] relatives...without and just cause and without any loan agreement” and that these loans were reflected “in the balance sheet for FY 2018-19 & 2019-20.” It is further submitted that these unsecured loans were “taken out at a time when the corporate debtor was defaulting in repayment of loan to its financial creditors” and that “there is no record available” if the said unsecured loans were repaid to the Corporate

Debtor. Therefore, it has been argued that, the nature of these loans “seems suspicious and it tantamount to siphoning of funds” from Corporate Debtor and thus covered u/s 66 of IBC. These are discussed as follows:

Transactions involving **Shiv Shankar Taparia**:

Rs 8,50,004 for FY 2018-19, and Rs 5,75,961 for FY 2019-20

10. The balance sheet for FY 2018-19 shows² that as of 31.03.2018, Mr. Shiv Shankar Taparia was an unsecured creditor of CD with a sum of Rs 56,42,530 outstanding in his name. As on 31.03.2019, the amount outstanding was reduced to Rs 47,92,526. The figure of **Rs 8,50,004** represents the difference between the debt owed to Shiv Shankar Taparia by CD at the beginning of FY 2018-19 and at the end of that fiscal year. It is evident that during FY 2018-19, CD repaid a sum of Rs 8,50,004 to Shiv Shankar Taparia, reducing the unsecured loan of Rs 56,42,530 that was outstanding at the beginning of the fiscal year. Therefore, contrary to the claim made in the application, CD did not advance any unsecured loan to Shiv Shankar Taparia, but returned Rs 8,50,004 during FY 2018-19 out of the debt owed to him. Section 66 cannot be invoked here, as no fraud is apparent.
11. So far as the sum of **Rs 5,75,961** is concerned, as seen from the balance sheet³ of FY 2019-20, it is altogether unrelated to Mr Shiv Shankar Taparia. This sum actually represents the difference between the unsecured loan owed by CD to Mr Ram Kishore Taparia at the start of FY 2019-20 (Rs 11,84,398) and at the end of that fiscal year (Rs 6,08,437). Once again, CD did not extend any loan of Rs 5,75,961 during FY 2019-20, instead this sum was repaid to Ram Kishore Taparia to reduce the debt owed to him. Section 66 cannot be invoked here as intent to defraud the creditors is not made out.

² Page 73 of the Application

³ Page 89 of the Application

Transactions involving **Ram Kishore Taparia:**

Rs 32,47,770 for FY 2018-19, and Rs 5,76,461 for FY 2019-20

12. Once again, the balance sheet of FY 2018-19 indicates that as of the 31.03.2018, Mr. Ram Kishore Taparia had given an unsecured loan of Rs 44,32,177 to CD, which was reduced to Rs 11,84,398 as on 31.03.2019. The figure of **Rs 32,47,779** represents the difference between what CD owed to Mr Ram Kishore at the beginning of FY 2018-19 and the amount remaining to be repaid to him by the end of that fiscal year. [Incidentally, the figure mentioned in the transaction audit report⁴ is Rs 32,47,779, as against Rs 32,47,770 in the application.] It is evident that during FY 2018-19, CD repaid a sum of Rs 32,47,779 to Ram Kishore Taparia, reducing the outstanding unsecured loan (initially Rs 44,32,177) that was in his name at the beginning of the fiscal year. Here too, intent to defraud creditors is missing and section 66 is not applicable.
13. Coming to the amount of **Rs 5,76,461** which was also allegedly “taken out” by Mr Ram Kishore Taparia in the form of “unsecured loan”, this sum cannot be discerned from the balance-sheet of FY 2019-20, the year this transaction was supposed to have happened. It appears that the transaction auditors in their report have referred to the difference between the amounts of unsecured loan standing in the name of Mr Ram Kishore Taparia, at the beginning and end of FY 2019-20 i.e. Rs 11,84,398 on 31.03.2019 Rs 6,08,437 on 31.03.2020, with a mistake of Rs 500. There is no basis to treat this amount as having been ‘taken out’ in suspicious manner. No case for application of section 66 has been made out.

Transactions involving **Rameshwari Devi Taparia & Sarla Taparia:**

Rs 70,686 and Rs 2,51,768 for FY 2018-19

14. Both of the above amounts, **Rs 70,686** and **Rs 2,51,768** were outstanding in the names of Rameshwari Devi Taparia and Sarla

⁴ Page 49 of the Application

Taparia respectively in the books of CD as creditor's balance as on 31.03.2018. These were reduced to nil as on 31.03.2019. In the transaction audit report, neither the opening nor the closing balance has been doubted. There is no reason hence to suspect these amounts which were repayment to the persons to whom these were owed by the CD. Here too, instead of advancing unsecured loans, CD had merely repaid the debt owed to Rameshwari Devi Taparia & Sarla Taparia. As no case for defrauding creditors has been made out, section 66 is not applicable for these transactions.

B. Unsecured Loan advanced to unrelated Parties:

15. It is alleged that the CD had “advanced unsecured loan to several parties without any just reason”. It is further stated that these “unsecured loan is reflecting in the balance sheet for FY 2018-19 & in 2019-20”. That since “there is no record as to under what circumstances these unsecured loans were advanced” these are “categorized under the provision of section 66 of the Code”. These are examined as below:

Transactions involving **Bang Data Forms Pvt Ltd**

Rs 8,18,33,338 for FY 2018-19

16. As seen from the balance sheet of FY 2018-19⁵ a sum of **Rs 8,18,33,338** was outstanding in the name of M/s Bang Data Forms Pvt Ltd as unsecured loan advanced by them to CD as on 31.03.2018. This unsecured loan was reduced to nil as on 31.03.2019. The transaction auditors have also acknowledged this transaction to be of “Unsecured Loan Repaid”. There appears nothing fraudulent about this transaction.

Transactions involving **Vijay Laxmi Sharda**

Rs 13,50,000 for FY 2019-20

17. Balance sheet of FY 2019-20 shows an outstanding unsecured loan of Rs 13,97,650 borrowed by CD from Vijay Laxmi Sharda as on 31.03.2019. This sum is reduced to Rs 47,650 at the end of the

⁵ Page 72 of the Application

financial year i.e. on 31.03.2020. Clearly, a sum of Rs 13,50,000 was repaid by CD to Vijay Laxmi Sharda during the year 2019-20. There is nothing to suspect this transaction for any fraud on creditors, which the transaction auditors also identified as “Unsecured Loan Repaid”.

Transactions involving **Sri Chaitanya Educational Trust**
Rs 8,39,961 for FY 2019-20

18. In respect of this transaction also, it is seen that it was that of unsecured loan repayment and not of extending of loan by CD. At the beginning of FY 2019-20, an amount of Rs 3,50,00,000 was outstanding in the name of Sri Chaitanya Educational Trust. This was reduced to Rs 2,62,60,039 as on 31.03.2020. Once again, the difference of Rs 87,39,961 was the loan repayment by CD to an “unrelated” party, and cannot be doubted. [In the application the amount is incorrectly mentioned as Rs 8,39,961, whereas the correct amount was Rs 87,39,961 that was correctly noted in the transaction audit report]⁶

C. Huge expenses booked by related parties:

19. According to the application, ex-directors of CD had “booked huge expenses...without any receipt or any paper supporting such expenses”. The “suspicious’ transaction identified in this regard for FY 2018-19 are of **Rs 3,00,000** and **Rs 3,60,000** in the names of Mr Shivshankar Taparia and Mr Ram Kishore Taparia respectively, and are claimed to be “liable under section 66 of the Code.”
20. Going through the transaction audit report⁷ it is observed that these two payments for FY 2018-19 have been identified by the auditors as “Director Remuneration Paid – verified through Draft Financial Statements”. There are other similar transactions noted on the same page by the auditors for FY 2017-18. None of these transactions have been flagged for being irregular or fraudulent. Even otherwise

⁶ Page 49 of the Application

⁷ Page 48 of the Application

no case has been made in the application to bring these transactions within the purview of Section 66 of IBC.

D. Huge advance paid to the related parties/amount siphoned off:

21. It is submitted that the “directors of the Corporate Debtor have paid huge advance to its related parties” and “in absence of proper documents, it cannot be ascertained as to why such huge advance were paid to them”. These transactions are:

Transactions involving **Ram Kishore Taparia**

Rs 12,00,000 for year 2018

22. It is alleged that a sum of **Rs 12,00,000** was paid to Mr Ram Kishore Taparia on 20.06.2018 and that “it is not clear as to why such huge amount was paid” to him. It is claimed that this amount was “siphoned off” by Mr Ram Kishore Taparia, who was one of the directors in CD.

23. From the balance-sheet and the transaction audit report, the reasons for this transaction are not apparent. Be that as it may, the applicant has not been able to show that this transaction of Rs 12 lakhs was carried out with an intent to defraud the creditors. Other than the happening of the transaction, there is nothing on record to establish any deceitful conduct on part of former directors of CD, five years before the initiation of CIRP. Under the circumstances, invoking section 66 of IBC in respect of this particular transaction appears misplaced.

Transactions involving **Abhishek Enterprise**

Rs 1,20,53,755 for year 2017-18

24. In the transaction audit report⁸, seven transfer of funds have been identified during the period starting from 22.09.2017 to 08.06.2018, totalling to **Rs 1,20,53,755**. Out of this amount, by the end of FY 2017-18 (i.e. by 31.03.2018) sum of Rs 1,08,38,255 was advanced to Abhishek Enterprise, which is a related party of

⁸ Page 53 of Application

CD. However, in the balance-sheet⁹ for the year ending 31.03.2018, 'nil' amount is shown as outstanding.

25. For the next year, Abhishek Enterprises is included in the list of 'Trade receivables and a negative balance of Rs 1,49,49,831 can be seen against its name i.e. by the end of FY 2018-19, Rs 1,49,49,831 had become receivable from Abhishek Enterprise. At the end of next FY 2019-20, the balance against this party is again reduced to 'nil' – meaning thereby that the sum of Rs 1,49,49,831 was received back from Abhishek Enterprise.
26. Abhishek Enterprise, identified as a related party, seems to have maintained a running account with CD. Due to the lack of a complete ledger account for this party, it's not possible to ascertain definitively why its balance in CD's records was reported as nil at the conclusion of FY 2017-18, despite Rs 1,08,38,255 being documented as paid to it before 31.03.2018. Neither the application nor the transaction audit report provides anything more than the information regarding specific payments made to this party. Furthermore, there is no suspicion raised regarding transactions with this party in subsequent years. The clear intention to defraud the creditors is not evident and invoking Section 66 with regard to these transactions may not be appropriate.

Transactions involving **Cos Board Industries Ltd**

Rs 75,00,000 for year 2017

27. Cos Board Industries Ltd is stated to have been paid **Rs 75,00,000** on 12.10.2017, whereas the account of this party shows balance of Rs 18,99,228 only in the Balance sheet of CD as on 31.3.2018 under the head 'Trade Payables'. This balance increases to Rs 38,81,160 at the end of FY 2018-19 and then becomes negative Rs 1,73,60,715 at the end of next fiscal of 2019-20. (i.e. as on

⁹ Page 76 of Application

31.03.2020 a sum of Rs 1,73,60,715 had become receivable from this party)

28. Here too, aside from the Rs 75 lakhs disbursed to this party, there is no additional evidence to indicate that it wasn't a part of an ongoing account that the party maintained with CD. None of the closing balances reported in the balance sheet for various years¹⁰ have been highlighted for any irregularities. The intention to defraud the creditors through this transaction is not readily apparent. Consequently, it appears that Section 66 may not be applicable in this scenario as well.

Transactions involving Tirupati Kagads Pvt Ltd

Rs 4,07,26,888 for year 2017-18

29. Similar to the other three transactions discussed in this part, in the case of Tirupati Kagads Pvt Ltd also, the transaction audit report¹¹ has outlined multiple payments made from 20.09.2017 to 13.06.2018, amounting Rs 4,07,26,888. Among this, Rs 3,45,26,888 was disbursed before 31.03.2018. However, as of that date, CD's balance sheet shows a nil balance against this party under the 'Trade Payables' heading. For the year ending 31.03.2019, this balance is reflected as Rs 5,63,55,587, which then turns negative to the tune of Rs 60,00,000 by 31.03.2020. None of the balances indicated in the balance sheet across various years have been questioned. In this scenario as well, it is apparent that this related party also maintained a running account with CD. The transaction involving the payment of Rs 4,07,26,888 more than five years before initiation of CIRP, by itself is insufficient grounds to assert that it was conducted with the intent to defraud the creditors. Therefore, provisions of section 66 may not be applicable in this case also.

¹⁰ Pages 73 and 90 of the Application

¹¹ Page 74 of the Application

Closing Remarks:

30. The foundation of this application, alleging numerous fraudulent transactions, rested on the Transaction Audit Report¹², which was also furnished alongside the application. Upon careful examination of this report, it is evident that no fraudulent transactions are explicitly mentioned. While certain transactions were identified as preferential, they occurred more than 2 years before the commencement of the Corporate Insolvency Resolution Process (CIRP). The application attempted to force suspicions onto various transactions without presenting any substantial evidence to support a determination of fraud against creditors. It lacked a viable starting point from the outset. Consequently, the application has been deemed lacking in merit and is hereby dismissed.

Application dismissed.

Sd/-

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

Sd/-

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

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¹² Page 35 to 63 *ibid*