

**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 22.12.2023 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	IA No.1048/2020 in CP (IB) No.430/9/HDB/2018
<b>NAME OF THE COMPANY</b>	Shree Rudra Shakti Industries Pvt Ltd
<b>NAME OF THE PETITIONER(S)</b>	V.N. Commercial Corporation
<b>NAME OF THE RESPONDENT(S)</b>	Shree Rudra Shakti Industries Pvt Ltd
<b>UNDER SECTION</b>	9 of IBC

**ORDER**

**IA No.1048/2023**

Orders pronounced, recorded vide separate sheets. In the result, this petition is disposed of.

**SD/-**

**MEMBER (T)**

**SD/**

**MEMBER (J)**

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

**IA No.1048 of 2020 in  
CP (IB) No.430/09/HDB/2018**

*[Application under Section 47 and Section 60(5) of the Insolvency and  
Bankruptcy Code read with Rule 11 of the National Company Tribunal Rules, 2016  
and Order 1 Rule 10(2) of Civil Procedure]*

**IN THE MATTER OF M/s.SHREE RUDRA SHAKTI INDUSTRIES PRIVATE LIMITED**

**Bewteen:**

**M/s.V.N.Commercial Corporation,**  
No.3-6-369/A/20,  
Street No.1,  
Himayathnagar,  
Hyderabad – 500 029.

**.....Applicant**

**A N D**

1. Mr.Chakravarthi Srinivisan,  
Resolution Professional of Corporate Debtor,  
1-4-211/42/1, Pradhamapuri Colony,  
Sainikpuri, Hyderabad – 500 062.  
**.... Resolution Professional /Respondent**
2. Mrs Narala Varalakshmi,  
Erstwhile Resolution Professional of Corporate Debtor,  
No.301, 3<sup>rd</sup> Floor, Bhavya's Fanstastike,  
8-2-684/A, Road No.12,  
Banjara Hills,  
Hyderabad – 500 034.  
**.... Erstwhile Resolution Professional /Respondent**
3. Mr Sham Sunder Agarwal,  
Director in suspended Board of Directors  
Shree Rudra Shakti Industries (P) Ltd.,  
H.No.6-1-72, Flat No. B-503,  
Shree Mahalakshmi Meadows,  
Lakdikapool, Hyderabad-500004.  
**.... Director (Suspended Board)/Respondent**

4. Mr. Srikanth Agarwal,  
Director in suspended Board of Directors,  
Shree Rudra Shakti Industries (P) Ltd.,  
H.No. 6-1-72, Flat No. B-503,  
Shree Mahalakshmi Meadows.  
Lakdikapool, Hyderabad - 500004  
**.... Director (Suspended Board)/Respondent**

5. Mr. Balkishan Bhora,  
7-14. Industrial Area, Kottur,  
Maheswaram,  
Telangana - 509228.  
**.... Financial Creditors/Respondent**

6. M/s. Bajaj Finance Limited,  
4th Floor, 6-3-891 & 892,  
Somajiguda,  
Rajbhavan Road,  
Hyderabad - 500 082.  
**.... Financial Creditors/Respondent**

7. Mr.Naveen Kumar Kedia  
R/0.5-9-22/3,  
Aadharsh Nagar,  
Hyderabad-500 063.  
**.... Respondent**

8. The Registrar,  
Office of the Registrar of  
Properties & Stamps,  
Red Hills, Hyderabad.  
**.... Respondent**

**Date of order: 22.12.2023**

**Coram:**

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

**Per: Rajeev Bhardwaj, Member (Judicial)**

**Counsel/Parties present:**

For Applicant : Mr.Y.Suryanarayana, Advocate  
For Respondents : Mr.V.K.Sajith, Advocate for Respondents  
No.3, 4 & 5  
Dr.Pundla Bhaskara Mohan, Advocate for  
Respondents No.7

**ORDER**

1. The instant Application has been filed under Section 47 and Section 60(5) of the Insolvency and Bankruptcy Code read with Rule 11 of the NCLT Rules, 2016 and Order 1 Rule 10(2) of Civil Procedure by M/s.V.N. Commercial Corporation seeking the following reliefs:

- a) To declare the fraudulent and undervalued sale transaction dated 26.04 2019 bearing document No. 5028/2019 registered with the sub registrar office, shadnagar in respect of land and building of the corporate debtor as null and Void and consequently restore the position of the said property as it existed before such sale transaction in accordance to the provisions of Sec.44 of IBC, 2016.
- b) To declare the fraudulent sale of Inventory by the Respondent No. 3 & 4 as undervalued transactions and consequently direct the Respondent No. 3 & 4 to deposit the differential amount of Rs.97,00,000/- in accordance to the provisions of Sec. 66 of IBC, 2016;
- c) To declare the fraudulent sale of Plant and Machinery by the Respondent No 3 & 4 as undervalued transactions and consequently direct the Respondent No. 3 & 4 to deposit the differential amount Rs.50,00,000/-

d) To declare the transactions referred above in para II (b) as preferential transaction and consequently pass an order directing the respondents herein to pay a sum of Rs.1,34,10,326/- which is received by him from the Corporate Debtor to the Corporate Debtor's Account.

2. The facts necessary to dispose of the present application, as stated, are that :

2.1 M/s.V.N. Commercial Corporation (hereinafter referred as **Applicant/Operational Creditor/OC**) filed an application under Section 9 on 23.06.2018 against M/s.Shree Rudra Shakti Industries Private Limited (hereinafter referred as **Corporate Debtor/CD**), which was admitted on 14.05.2019.

2.2 The respondent No.2 was appointed as Interim Resolution Professional and later on confirmed as Resolution Professional by the Committee of Creditors (CoC) on 31.07.2019. Besides the applicant, the CD also owed money to the other operational creditors.

2.3 For siphoning off the property of the corporate debtor, the suspended directors, i.e., the respondents No.3 and 4 of the CD have a hatched a conspiracy. The respondent No.3 entered into private negotiations with secured creditor, i.e., AP State Mahesh Cooperative Bank (in short "**APSMCB**") for the settlement of its outstanding loan amount in lieu of releasing the assets of the corporate debtor. Therefore, bogus memorandum of understanding (**MoU**) was executed by the corporate debtor to sell land and building of the factory to respondent No.7 at a throwaway price by undervaluing the property

etc., and the said MoU is at **Annexure 1 - page nos.41-42 of the application.**

- 2.4 The building of the CD comprising Plot No.7 and a part of Plot No.14 in Survey No.103, IDA, Kothur, Ranga Reddy District, Telangana was purchased by the CD from Hyderabad Silk Private Limited vide sale deed dated 30.09.2002 (**page no.44 of the application**) and another portion of plot No.14, survey No.103 was sold by the same vendor to respondent No.5 vide sale deed dated 30.09.2002 (**page no.73 of the application**). It is claimed that the transaction of respondent No.5 is benami on behalf of the suspended directors of the CD as he was their watchman and further was also not having enough income to purchase that property. The respondent No.5 remained an employee of the CD even in 2018 as watchman drawing wages of Rs.5,462/- and this is also clear from the records of the Employee State Insurance Corporation - **ESIC (Annexure 5 – page nos.224-227)**.
- 2.5 A part of the property bought by respondent No.5 was sold to respondent No.7 vide sale deed dated 26.04.2019 (**page No.92 of the application**) for a sum of Rs.27,21,000/- and General Power of Attorney dated 18.05.2019 (**page no.121 of the application**) was executed regarding the remaining part the property in favour of Smt.Sheetal Agarwal, daughter of suspended director of the CD.
- 2.6 The CD has also sold the property which was purchased on 30.09.2002 from Hyderabad Silk Private Limited to respondent No.7 for an amount of Rs.2,80,00,000/-.

- 2.7 The aforesaid sale transactions were executed by the CD and respondent No.5 in favour of respondent No.7 falling within the purview of Sections 43, 45, 47, 66 etc., of the IBC. This conclusion has also been arrived at in the Auditor's Report which was got conducted by the respondent No.2.
- 2.8 After execution of the sale by respondent No.5 in favour of respondent No.7, he has moved an application on 06.08.2019 before the respondent No.2 for admission of his claim as financial creditor. After the admission of claim of No.5, he along with M/s.Bajaj Finance Limited, financial creditors replaced the earlier CoC of operational creditors.
- 2.9 In the 6<sup>th</sup> meeting of the CoC held on 11.11.2019, a proposal was made to replace the respondent No.2 and after the proposal was accepted, the respondent No.1 was appointed as Resolution Professional.
- 2.10 Before the removal of the respondent No.2 as the Resolution Professional and after receipt of the audit report, the respondent No.2 moved IA Nos.742, 743, 744 and 745 of 2019 relating to avoidance transactions.
- 2.11 Since the applicant was not a member of CoC, it along with some other operational creditors filed IA Nos.944, 949, 946 and 947 of 2019 in IA Nos.742, 743, 744 and 745 of 2019 respectively for impleading them as party. They also filed IA Nos.948 and 1006 of 2019 in IA Nos.742, 743, 744 and 745 of 2019 to reopen these IAs

for fresh hearing, as after hearing the arguments, these IAs were fixed for orders

2.12 However, the respondent No.1 with the approval of the CoC, filed memo on 16.12.2019 to withdraw all the IAs on the ground that the earlier resolution professional, i.e., respondent No.2 had wrongly filed the above said IAs. This Authority granted permission to withdraw these IAs vide order dated 19.12.2019, against which the applicant filed an appeal before the Hon'ble NCLAT.

2.13 On the basis of the facts narrated above, the applicant has asserted that the provisions of the IBC have been violated and fraud has been played by transferring the assets of the CD. It is not only the value of the land which has been undervalued, but also value of the Plant & Machinery. The sale invoices and other relevant documents were not provided for audit and all these things were sold at a throwaway price. The applicant has specifically given the details as to how these transactions are fraudulent and preferential. **(Para No.20 of the application).**

3. The respondent No.1 while filing the reply has taken preliminary objections of 'res judicata, estoppel, filing of the application by non-juristic person, malafide intention and non-maintainability of the application in view of filing of an appeal before the Hon'ble NCLAT by the applicant.

3.1 On merits, it is submitted that vide sale deed 25.04.2019, the CD sold the property for a consideration of Rs.2,80,00,000/-. The sale consideration is not undervalued in view of the valuation certificate

and documents of the neighbouring land showing that similar type of land is available at a less price.

- 3.2 The building in question was 40 years old and this was not having any value. Even the respondent No.7 has to pay the electricity dues amounting to Rs.55,33,789/- and TDS of Rs.2,80,000/- . The part of property sold by respondent No. 5 has nothing to do with the CD. This transaction does not fall within the definition of avoidance transactions.
- 3.3. The respondent No.7 has paid more than 55 per cent of the government prescribed rates as the sale consideration and further incurred heavy expenditure on electricity, TDS and sprucing up of the premises.
- 3.4 In these circumstances, the respondent No.7 has claimed that he is bonafide purchaser of the property in question.
4. The respondent Nos.3 and 4 submitted that the property of the CD was under the mortgage with “APSMCB” and proceeds of the sale was utilised to settle the outstanding loan amount and get the documents of the property released.
- 4.1 The respondent No.2 allegedly appointed an unregistered organisation as valuer, which is illegal. One of the signatories to the valuation report is Mr.N.Raghavendra Rao, who is a valuer of Plant & Machinery with IBBI, but not for land and building. Hence, no reliance can be placed on the report of the valuer.

- 4.2 During the tenure of respondent No.2, she moved IA No.742, 743, 744 and 745 of 2019 and the subject matter in the present application was also included in the IA Nos.744 of 2019, thus, this is hit by res-judicata.
- 4.3 It is submitted that after the constitution of fresh CoC, it was found that the respondent No.2 was working under the instructions of the applicant and therefore was replaced with respondent No1. It is also submitted that in view of the filing of the appeal by the applicant against the order dated 19.12.2019 of this tribunal, the present application is not maintainable.
5. The respondent No.6 has only reiterated the facts already submitted by the other parties as when the application was admitted into CIRP, constitution of the CoC consisting of the applicant as major voting shareholder and thereafter replacing the old CoC with new one consisting of respondent No.5 and the replying respondent, filing of different IAs by the Respondent No.2 and her replacement by the Respondent No.1.
- 5.1 It is submitted that the respondent No.6 was not aware about the transactions executed with the CD and therefore not opposed the same and it gained knowledge of these transactions only when the present application has been moved.
- 5.2 It is submitted that when notice was received seeking approval of the resolution plan submitted by one Mr.N.Venu Babu, the respondent No.6 was surprised to note that its approval for the plan has wrongly been mentioned.

- 5.3 After receipt of the alleged resolution plan, detailed enquiry was conducted and found that there were other fraudulent transactions undertaken by the CD which were suppressed by the respondent No.1 in collusion with the erstwhile promoters of the CD.
- 5.4 The respondent No.6 has supported the allegations of the applicant that the transactions in question are hit by Section 43, 44, 47, 50, 66 etc.
6. We have heard the learned counsel for the parties and have also gone through the entire records.
7. This case is a classical example as to how the provisions of law can be misused by scrupulous elements. Ultimately, object of law is to unravel truth. Truth should be the Guiding Star in the entire Judicial Process. To search it out, chaff from the grain is to be removed. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. Hon'ble Krishna Iyer J. in *Jasraj Inder Singh versus Hemraj Multanchand, (1977) 2 SCC 155* described truth and justice as under:
- "8. ...Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings." 11.3 In *Union Carbide Corporation v. Union of India, (1989) 3 SCC 38*, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:

"30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said :

"Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial..."

8. In another case *Chandra Shashi versus Anil Kumar Verma, (1995) 1 SCC 421*, the Hon'ble Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.
  
10. With that in mind, the value maximisation, which is one of the main objectives of the IBC, is to be achieved. The sequence of events in the present case show how meticulously one has tried to defeat the very object of the IBC. The application under section 7 IBC was filed on 23.06.2018 and the Corporate Debtor was put in CIRP on 14.05.2019 and in between the property of the CD has been sold. For this, the foundation was laid with the execution of MoU (**Annexure 1 of the application**) on 08.12.2018, whereby the CD agreed to transfer its property comprising plot No.7 and part of No.14 in

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survey No.103 in favour of the respondent No.7 with the condition that the CD shall first clear the backlog of loan amount of “**APSMCB**”. The other transactions followed this agreement. The role of players can be understood from the following table:

	Sale Deed No and date	Description of Land	Vendor	Vendee	Consi derati on	Remarks
1.	4620/2002 - SRO Shadnagar executed on 30.09.2002  Copy of sale deed attached at Pg.44 of the Application	All that part and parcel of the land measuring Ac.1- 20 Guntas in Survey No. 103, situated in Gram Panchayat Kothur in the limits of Kothur Village in Kothur Mandal, Mahbub-nagar District, S.R.O.Shadnagar.	Hyderabad Silk Mills Pvt.Ltd	Mehendra Industries Pvt Ltd. (now M/s.Shree Rudra Shakti Industries Private Limited)	22.71 Lakhs	
2.	4621/2002- SRO Shadnagar executed on 30.09.2002  Copy of sale deed attached at Pg.73 of the Application	All that part and parcel of land admeasuring Ac.0-32.6 Gts in Survey No.103 situated in gram panchayat Kothur in the limits of Kothur village in Kothur mandal mahabubnagar District.	Hyderabad Silk Mills Pvt.Ltd	Balkishan Bohra (Respondent 5)	1.37 Lakhs	
3.	5027/2019 –SRO Shadnagar executed on 26.04.2019  Copy of sale deed attached at Pg.92 of the Application	Part of Plot No.14 in Survey No.103, comprised of land totally admeasuring Acre 0-19.88 Guntas equivalent to 2406.00 square yards out of Acre 0-32.6 Guntas consisting of RCC admeasuring about 500 square feet situated in the limits of Kottur mandal, Ranga Reddy District.	Balkishan Bohra (Respondent 5)	Naveen Kumar Kedia (Respondent 7)	27.21 Lakhs	The Vendor has pledged the said property and acted as a guarantor for the loan taken by Shree Rudra Shakti Industries Private Limited from <b>APSMCB</b> under document no.11473 of 2016. The vendor got released the documents from bank vide doc.no 5017 of 2019
4.	5028/2019 – SRO Shadnagar executed on 26.04.2019  Copy of sale deed attached at Pg.110 of the Application	entire Plot No.7 and Part of Plot No.14, in Survey No.103, comprised of land colane and collectively admeasuring Acre 01-20 Guntas, equivalent to 7260.00 square yards, consisting of Zinc and Asbestos Sheets Shed admeasuring about 25650 square feet, situated in industrial Area of Kottur (I.D.A Kottur) Village in the limits of Kottur Mandal, Ranga Reddy District (Previously under Mahboob Nagar District)	Shree Rudra Shakti Industries Private Limited (previously known as Mahendra Industries Pvt.Ltd)	Naveen Kumar Kedia (Respondent 7)	2.80 Cr	The Vendor has taken loan from <b>APSMCB</b> under document no.11473 of 2016. The vendor got released the documents from bank vide doc.no 5017 of 2019

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5	8414/2019 -SRO Shadngar executed the GPA on 18.05.2019  Copy of General Power of Attorney attached at Pg.121 of the Application	Al that Part of Plot No.14, comprised of land admeasuring Acre O- 12.72 Guntas equivalent to 1538.6 Sq.yards, consisting of ACC Labour Rooms having total built up area about 2000 Sq. feet in Survey No.103, Situated at Industrial Area of Kothur (I.D.A. Kothur) Village in the limits of Kothur Mandal, Ranga Reddy District Under the jurisdiction of Shadnagar Sub-Registrar .	Balkishan Bohra (Respondent no 5)	Sheetal Agarwal w/o Lokesh K Aggarwal  Witnesses:- Respondent No 3 and Respondent No 4	NA	
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10. Thus, it becomes clear from the perusal of the table that the entire property at one time was owned by Hyderabad Silk Mills Pvt Ltd. Major portion of the said property was sold to the CD and a small part was purchased by respondent No.5. The MoU (**Annexure A of the application**) was executed regarding the property purchased by the CD and finally this property was sold vide sale deed dated 26.04.2019 (**page no.110 of the application**) to the respondent No.7. Respondent No.5 sold a part of the property purchased from Hyderabad Silk Mills Pvt Ltd. to respondent No.7 vide sale deed dated 26.04.2019 (**page no.92 of the application**) and he executed General Power of Attorney dated 18.05.2019 (**page no.121 of the application**) for the remaining part of the property in favour of Smt.Sheetal Agarwal, daughter of suspended director.

11. Respondent No.5 is one of the key players in the entire episode because he was the employee of CD, drawing a paltry sum of Rs.5,462/- wages as evidenced from the records of the ESIC (**Annexure 5 of the application**). He entered into an agreement dated 08.12.2018 with the CD for advancing loan amount of Rs.27,21,000/-. This loan agreement has been filed in IA No724 of

2019 by the respondent No.5 for admitting his claim. The agreement was written on the stamp paper purchased by respondent No.3 on 30.08.2011. On 26.04.2019, he executed sale deed (**page no.92 of the application**) in favour of respondent No.7 for a total consideration of Rs. 27,21,000/-. It is this amount which is shown to have been advanced by him as loan to the CD and this was stated to have been used for paying a part of the loan taken from “APSMCB” and further releasing title deeds vide document No.5017 of 2019. The relevant extract of the sale deed dated 26.04.2019 is available at page 92 of the application, which reads as under:

*WHEREAS the Vendor herein has pledge above said property and act as a Guarantor for the loan taken by Shree Rudra Shakti Industries Private Limited from the Mahesh Co-op Urban Bank Ltd, Charminar Branch by virtue of registered Deposit of Title Deed Document No.11473 of 2016, Registered at office of the Sub-Registrar Shadnagar. Thereafter the vendor herein got released the documents from the bank vide Release of Deposit of Title Deeds registered as document no. 5017 of 2019, dated 26-04-2019, Registered at office of the Sub-Registrar Shadnagar.*

12. It is on the basis of the alleged loan advanced to the CD, respondent No. 5 became financial creditor and then he having 61.30% voting share virtually hijacked the CoC.
13. In the sale deed dated 26.04.2019 (**page no.110 of the application**) executed by CD in favour of respondent No.7 also, there is reference in relation to release of title deeds from “APSMCB” by paying the loan amount. Both sale deeds and loan agreement were executed by the CD and respondent No.5 after the filing of the present application under Section 9 of the IBC.

14. After the admission of the present application under Section 9 of the IBC on 14.05.2019, respondent No.1 was appointed as IRP, whose appointment was confirmed as RP in the 1st CoC meeting held on 02.07.2019. The CoC in its 2<sup>nd</sup> meeting held on 31.07.2019 has given consent for the appointment of an independent professional for transaction audit and valuation of property. M/s.N.R. Associates was appointed as valuer for the valuation of land & building of the CD and the report was discussed in the 3<sup>rd</sup> meeting of the CoC held on 11.09.2019. The respondent No.2 filed IA Nos.744, 745, 743 and 742 of 2019 praying for different reliefs.
15. The present applicant remained member of the CoC having major voting share upto third meeting of the CoC held on 11.09.2019. However, in the 4<sup>th</sup> meeting of the CoC held on 15.10.2019, the respondent No.5 and respondent No.7, M/s.Bajaj Finance Limited became the members of the CoC having voting share of 61.30% and 38.70 respectively being the financial creditors. After the new CoC was constituted, things started changing speedily as not only respondent No.2 was replaced with respondent No.1 as RP, but also avoidance applications filed by respondent No.2 were withdrawn and further action was recommended against respondent No.2 by the IBBI. The relevant details of the meetings of the CoC are given in the following table:

**Gist of the Minutes of the Meetings of M/s.V.N.Commerical Corporation and M/s.Shree Rudra Shakti Industries Private Limited**

Minutes of the Meeting of the CoC	Members of the Committee	Particulars	Relevant resolutions
<b>First</b> Minutes of	Total Seven members	To take note the	Appointment of exiting IRP as the RP, Pursuant to regulation 19

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the Meeting held on 02.07.2019 Page 167	wherein V.N Commercial Corporation has a major voting share	constitution of CoC and claims received by the IRP	IBBI(insolvency resolution process for corporate person ) regulations 2017 and approval of CoC accorded for convening the meeting of CoC at shorter notice after consultation with CoC subject to minimum notice period of 24hrs
<b>Second</b> Minutes of the Meeting held on 31.07.2019 Page 179	Total 18 members wherein V.N Commercial Corporation has a major voting %	To take note of updated claims and to appoint independent professionals to carry out transactions audit and valuation of land.	The RP also brought to the notice of the CoC that on the basis of previous financial statements for 3 years, there was need to have transaction audit to ascertain the avoidance transactions. Consent of the CoC (100% voting) for the appointment of independent professionals for transactions audit and valuation of property.
<b>Third</b> minutes of the meeting held on 11.09.2019 Page 187	Total 18 members wherein V.N Commercial Corporation has a major voting %	To approve the appointment of registered valuers and to take note of the transaction audit report and to take note of the claim filed by Mr.Balkishan Bohra vide I.A No 724	M/s NR Associates was appointed as valuer by the RP for the valuation of land and building of the Corporate Debtor whose appointment was ratified. The CoC appointed 1. Mr. ArrepuVenkatRaju, Registered Valuer with registration no. IBBI/RV/05/2019/12224 and 2.Mr. Kasivajjula Sri Rama Rao, Registered Valuer with registration no. IBBI/RV/05/2019/12224 to arrive at the fair and liquidation value of Assets of the Corporate Debtor. The Transaction Audit Report was also considered by the CoC It was informed by the RP that IA Nos 742,743 and 745 have been filed regarding avoidance transactions.
<b>Fourth</b> minutes of the meeting held on 15.10.2019 Page 198	Total 6 members ( two financial creditors added i.e. Bajaj Finance Limited and Mr. Balkishan Bohra with voting of 38.70 and 61.30 respectively)	To take note of updated claims and to discuss whether to give extension for EOI and approve cost extension or initiation of liquidation process	The CoC has taken note of the claim of the respondent No. 5 and of Bajaj Finance Limited.
<b>Fifth</b> minutes of the meeting	Total 4 members ( two financial creditors added i.e. Bajaj		That the RP was authorised to publish EOI in form G in two newspapers.

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held on 27.10.2019 Page 203	Finance Limited and Mr. Balkishan Bohra with voting of 38.70 and 61.30 respectively)		
<b>Sixth</b> minutes of the meeting held on 11.11.2019 Page 206	Total 4 members (two financial creditors added i.e. Bajaj Finance Limited and Mr. Balkishan Bohra with voting of 38.70 and 61.30 respectively)	Proposal to replace the RP	In this regard CoC advised to convene a meeting on 14.11.2019 at 3.00 PM at RP's office.
<b>Seventh</b> minutes of the meeting held on 15.10.2019 Page 211	Total 3 members ( two financial creditors added i.e. Bajaj Finance Limited and Mr. Balkishan Bohra with voting of 38.70 and 61.30 respectively)	Replacement of existng RP.	"Resolved that Mr. Pavan Kankani, representative of Mr. Balkishan Bohra placed before the Committee of Creditors the consent form of proposed Resolution Professional Mr. Chakravarthi Srinivasan, an Insolvency Professional bearing IP Registration NO. IBB1/IPA- 002/IP-N00649/2018-19/11990, the Committee of Creditors be and is hereby consented to replace the existing Resolution Professional with the proposed Resolution Professional with remuneration of Rs 50,000/- per month. Further Resolved an IA be filed by the Financial Creditor Mr. Balkishan Bohra or through his representative Mr.Pavan Kankani before the Adjudicating Authority for replacement of Resolution Professional."
<b>Eighth</b> minutes of the meeting held on 15.10.2019	Total 3 members ( two financial creditors added i.e. Bajaj Finance Limited and Mr. Balkishan Bohra with voting of 38.70 and 61.30 respectively)	To take note the appointment of new RP Mr.Chakra-varthi Srinivasan and to withdraw the IAs filed by the erstwhile RP.	RESOLVED FURTHER THAT the IAs Filed on the basis of assumptions of the RP and without any basis against the Property of the Third party who has purchased the same after paying the entire consideration and on the Fact that the property was Mortgaged with AP Mahesh Co-operative Bank and the sale proceeds remitted to the Bank the IA's may be by discontinued as the same is illegal as well as waste of time and money. All the IA's filed by the erstwhile RP shall be withdrawn with the specific Permission from the Hon'ble adjudicating Authority to file such petitions afresh after thoroughly examining the Books and transactions. The RP may examine the books, appoint competent Professional if

**National Company Law Tribunal, Hyderabad Bench, Court-II**

**IA No.1048 of 2020 in  
CP (IB) No.430/09/HDB/2018**

**Date of Order : 22.12.2023**

			required and thereafter determine the transactions and take steps for the same." "Resolved Further that the irregular and biased conduct of the Resolution Professional be reported to the IBBI with the requisite documentation and communications sent by the erstwhile P and there after follow up with IBBI to initiate an enquiry considering the unprofessional Conduct of Mrs. Narala Varalakshmi the erstwhile RP of the Corporate Debtor
<b><u>Nineth</u></b> minutes of the meeting held on 15.10.2019 Page 219	Total 2 financial creditors M/s. Bajaj Finance Limited and Mr. Balkishan Bohra with voting of 38.70 and 61.30 respectively)	To confirm the minutes of 8 <sup>th</sup> CoC and to take note of the action taken by the RP since the last meeting and to take note of the resolution plans.	RESOLVED FURTHER THAT in terms of the provisions contained in the Resolution Plan which requires the shareholders to transfer their entire shares in the Corporate Debtor in favour of the Resolution Applicant, Mr. Venu Babu Nelakuditi or his nominee(s), in lieu of a separate shareholders agreement, the shareholders of the Corporate Debtor shall also sign at the bottom of the Resolution Plan signifying their acceptance to the terms and conditions of the Resolution Plan and in particular, to transfer the shares in favour of the Resolution Applicant." RESOLVED FURTHER THAT in terms of Regulation 39(4), Me Chakravarthi Srinivasan, Resolution Professional, be and is hereby directed to submit th Resolution Plan, along with the Compliance Certificate lin Form H under Regulation 39(4) to the Hon'ble Adjudicating Authority on or before 24 <sup>th</sup> January, 2020, that is at least 15 days before the maximum period for completion of the corporate insolvency resolution process under section 12 of the INC which ends on 8 <sup>th</sup> February, 2010"

16. In view of the aforesaid background, learned counsel for the applicant has submitted that the CoC has decided wrongly to withdraw the avoidance applications due to malafide reasons so that the respondents can escape from the consequences of violations made by them under law.

17. It is further urged that being the creditor of the CD, the applicant is fully competent to file application under Section 9 because the transactions have been undervalued.
18. On the other hand, learned counsel for the Respondent No.7 submitted that the Respondent No.1 is not only a bonafide purchaser, but also purchased the property above the market value and further report of the valuer is not admissible under law because M/s.N.R.Associates is not an authorised valuer for land & building, but for plant & machinery.
19. Dr.K.Bhaskara Rao, learned counsel for Respondent No.7 also questioned the maintainability of the present application as it has been filed by the sole proprietorship concern by submitting that in such capacity, the application cannot be filed. The application is further hit by the principles of res judicata and estoppel.
20. For respondents No.3 and 4, the arguments have been advanced that nothing suspicious took place and therefore the provisions of Section 43, 44, 45, 47 and 66 are not attracted. The amount of loan taken from “**APSMCB**” was paid by selling the properties of the CD to respondent No.7, and moreover the valuation report is also unreliable and not trustworthy.
21. Adverting to the plea of the respondent Nos. 3 & 4 that sole proprietorship firm is not entitled to file the present application, it is no more res integra that a proprietorship firm has no legal entity like a registered firm. However, its proprietor can file suit etc on behalf of the proprietorship firm. Section 2 IBC will be applicable to a sole

proprietorship as it is covered within the expanded meaning to the term “person” defined under Section 3(23) of the Code. Here we may profitably refer to the decision in *Neeta Saha versus Ram Niwas Gupta, Company Appeal (AT) (Insolvency) No. 321 of 2020, NCLAT, New Delhi (2020)*. In the present case, application has been filed on behalf of M/s.V.N. Commercial Corporation by its sole proprietor Sh. Vijendernath, thus, the contention of the respondent Nos. 3 & 4 is not tenable.

22. Another issue which has been raised is that the applicant can't file this application as it is barred by the principle of res-judicata. In *Satyadhyan Ghosal v. Deorajin Debi (1960) 3 SCR 590*, a three judge Bench of Hon'ble Supreme Court, speaking through Justice KC Das Gupta, explained the doctrine of res judicata in the following terms:

“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter- whether on a question of fact or a question of law- has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”

23. There is no doubt such plea can also be taken in IBC proceedings. In *Ebix Singapore Pte Ltd. versus Committee Of Creditors Of Educomp (2021) ibclaw.in 153 SC*, it was held that the doctrine of resjudicata is applicable to the proceeding of IBC. It would be applicable to prevent the abuse of process of law and give a finality to any proceeding, or orders, and to avoid an endless litigation to frustrate the very object of enacting IBC. But the IA Nos. 742 to 745 were not decided on merits and attained finality. Moreover, now the applicant has approached this Authority in the capacity of creditor under Section 47 in contrast to the earlier IAs which were filed by respondent No.2 as Resolution Professional. Thus, this plea also does not hold water.
24. The last legal point which has been taken by learned counsel for the respondents is that the applicant is estopped to challenge the same subject matter again as it was party to the decision for the withdrawal of the IAs in the 7<sup>th</sup> meeting of the CoC held on 15.10.2019.
25. The principle of estoppel implies that a man shall not say one thing at one time and later say a different thing. Estoppel is based on the principle of equity. Section 115 of the Indian Evidence Act, 1872 incorporates this principle as when one person either by his act or omission or by declaration, has made another person believe something to be true and persuaded that person to act upon it, then in no case can he or his representative deny the truth of that thing later in the suit or in the proceedings.

26. However, the decision in the 7th meeting of the CoC was taken by respondent No. 5 and respondent No. 6 as members of the CoC and the presence of the applicant in the said meeting is immaterial as its objection would not have any weight. The decision take in the said meeting was also subject to certain conditions that status of transaction will be determined after the examination of books of accounts, but these conditions were not met. Above all, the applicant has filed the application as creditor under Section 47 IBC which is independent right. Hence, the applicant cannot be estopped from filing the present application.

27. On the analysis of the transactions made by the CD etc, the following relevant points emerge which directly or indirectly have impact on the present application or ultimate process of CIRP/Liquidation:

a) The application under Section 9 was filed on 23.06.2018 and the CIRP was initiated on 14.05.2018. All the transactions are within the avoidance period. From the acts of the respondent Nos. 3 & 4, it goes without saying that the respondent Nos. 3 & 4 expected that there were chances of admission of application under Section 9 of the IBC, so they started disposing of the assets of the CD.

b) The first sign of visible reaction of the respondent Nos. 3 & 4 came when the MoU (**Annexure 1 of the application**) was executed for the sale of property of the CD on 08.12.2018. One condition was specifically incorporated giving hint as what would happen in future. This condition is given below:

*"That the First Party should get the Bank loan cleared from the AP Mahesh Co-op Urban Bank Ltd before the registration of Absolute Sale Deed in favour of Second Party or his Nominee. The Second Party will*

*make the payment to the First Party to clear the Bank Loan after three months from the date of this MOU”.*

c) The sale deed dated 26.04.2019 (**page no.110 of the application**) executed by the CD in favour of respondent No.7 for a sum of Rs.2,80,00,000/- was stated to have been made to clear the loan of “APSMCB”. At the time of clearance of loan, it was not only the “APSMCB” but respondent No.7 was also the financial creditor. The so called sale for clearance of loan of “APSMCB”, obviously gives preference to one creditor to the other. Besides, undervaluation of this transaction depends upon the valuation report.

d) Another sale deed dated 26.04.2019 (**page 92 of the application**) executed by respondent No.5 in favour of respondent No.7 for a sum of Rs.27,31,000/- for paying the loan amount of “APSMCB” has no link with the sale deed executed by CD only on the basis that the respondent No.5 remained in the employment of the CD in the year 2018 at a paltry sum of Rs.5,5462/- as reflected from the ESIC documents (**Annexure 5 of the application**). When sale transaction is seen in isolation it looks simple and innocuous deal as it is the individual’s wish to work on wages with any person, but when we see it in combination of other factors, doubt is created as respondent No.5 remained employee of the CD for such a small amount despite extending loan of Rs.27,31,000/- to the CD knowing fully well that he would ultimately get no return. That loan agreement dated 22.04.2019 was executed on the stamp paper purchased on 30.08. 2010. No prudent person would act in such a way. But this transaction was part of the larger planning as divulged from the subsequent events

when the respondent No.5 became the major voting shareholder in the CoC and then he did all the wrong things for the decent burial of the CD.

e) Respondents Nos.3 & 4 have not only sold the immovable property of the CD, but also plant & machinery etc. However the sale invoices and other relevant documents pertaining to the sale were not provided for the audit or relied upon by the respondent Nos. 3 & 4. This also puts a question mark about the entire sale process carried out by respondent No.2.

f) M/s.N.R.Associates was appointed as valuer for the valuation of land & building of the CD by respondent No. 2 and appointment was ratified by the CoC in its 3rd meeting held on 11.09.2019. As per the IBBI data available on the website, M/s.N.R.Associates has been authorised to conduct the valuation of plant & machinery and not of land & building. This report was also considered by the CoC comprising of the operational creditors including the applicant. On the basis of this report, the respondent No.2 filed IA Nos.742, 743, 744 and 745 of 2019 alleging preferential, fraudulent transactions etc. Filing of the IAs were also noted by the CoC in its 3<sup>rd</sup> meeting.

i. As per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, two registered valuers are required to be appointed and this provision is reproduced as below:

**35.Fair value and Liquidation value.** (1) Fair value and liquidation value shall be determined in the following manner:- (a) the two registered valuers appointed under regulation 27 shall submit to the

resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;

(b) if in the opinion of the resolution professional, the two estimates of a value are significantly different, he may appoint another registered valuer who shall submit an estimate of the value computed in the same manner; and

ii. The above regulation was in the knowledge of the CoC when M/s.N.R.Associates was appointed and therefore the burden cannot be shifted on respondent No.2 that wrong valuer has been appointed. The respondents have also taken the stand that reliance cannot be placed on the un-registered valuer to substantiate that the transactions of sale made by the CD in favour of respondent No.7 have been undervalued. We also fully agree that the valuation report cannot be relied upon, but it was also the duty of the respondent No.1 and subsequent CoC to correct the mistake.

g) On the basis of valuation report of M/s.N.R. Associates, the decision of the respondent No.2 was right to file IA Nos.742, 743, 744 and 745 of 2019, but the decision to withdraw these IAs without conducting subsequent inspection of the books of accounts or not taking a decision to file fresh IAs is actuated with motive. In the 8<sup>th</sup> meeting of the CoC held on 14.11.2019, the decision taken is very material as what was to be done by the CoC/RP after the withdrawal of the IAs and the relevant decision is reproduced below:

*RESOLVED further that the IAs Filed on the basis of assumptions of the RP and without any basis against the Property of the Third party who has purchased the same after paying the entire consideration and on the Fact that the property was Mortgaged with AP Mahesh Co-operative Bank and the sale proceeds remitted to the Bank the IA's may be by discontinued as the same is illegal as well as waste of time and money. All the IA's filed by the erstwhile RP shall be withdrawn with the specific Permission from the Hon'ble adjudicating Authority to file such petitions afresh after thoroughly examining the Books and transactions. The RP may examine the books, appoint competent Professional if required and thereafter determine the transactions and take steps for the same."*

*"Resolved Further that the irregular and biased conduct of the Resolution Professional be reported to the IBBI with the requisite documentation and communications sent by the erstwhile RP and there after follow up with IBBI to initiate an enquiry considering the unprofessional Conduct of Mrs. Narala Varalakshmi the erstwhile RP of the Corporate Debtor."*

h) Despite the decision, no examination of the books of accounts and transaction audit was conducted and it was not determined as to whether the transactions were hit by sections 43,45,47,66 etc.

i) It is also to be examined by this Authority while approving the resolution plan under Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, whether there is any avoidance transaction. The respondent No.1 and CoC did not take any decision on this point because the valuers as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 were not appointed despite it was decided by the CoC to take stock of the entire things. Reasons are apparent that the respondent No.5 is interested in concealing the truth. When the transaction report is defective, this Authority can't take any decision for approving the resolution plan.

28. Viewing from every angle, we have no hesitation to say that respondent No.1 in connivance with respondents No.3, 4, 5 and 7 have given a complete go-by to the provisions of the IBC or rules made thereunder. The entire thing started moving at a fast pace after respondent No.5 was planted as majority voting shareholder in the CoC. The respondent No.5 could have also filed the claim before respondent No.2 initially, but the real trigger was filing of IA Nos.742, 743, 744 and 745 of 2019 when he jumped into bandwagon and took control of the CoC. He started taking decisions as per the wishes of the interested parties so that the non-cooperative RP, i.e., respondent No.2 is replaced with more pliant RP i.e. respondent No.1 and further the decision to file the IA Nos.742, 743, 744 and 745 of 2019 is reversed. The CoC went on to recommend action against respondent No.2 which otherwise should be taken against the respondent No. 1 for such serious irregularities.
29. After siphoning off the entire property, nothing is left and the resolution plan as submitted by Mr.N.Venu Babu for a sum of Rs.20 lakhs has been submitted for approval. All this has happened because respondent No.1 and respondent No.5 have tried their best to help respondent No.7 and put the entire things under the wraps.

30. Prima facie, sale of property of the CD in favour of respondent No. 7 is not covered under the ordinary course of business as per the principles laid down in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited versus Axis Bank Limited and others (2020)8 SCC 401*. However, final opinion can be given after the report (s) of the valuer is considered.
31. As a sequel to our discussions, there is need to give directions in the context of non-compliance of the provisions of IBC which have come to our notice by way of the present application :
- (i) Respondent No.1 is directed to be replaced with Mr.Ram Narayana Boga, Insolvency Professional, Mobile No. 7358046767, email: ramnboga@gmail.com
  - (ii) Respondent No. 5 shall not be part of the CoC.
  - (iii) Two valuers as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 be appointed and after considering their report as per the provisions of the IBC and rules thereunder, ascertain whether there is violation of Sections 43,44, 45, 50 and 66 or any other law.
  - (iv) The IBBI be also intimated about the act and conduct of the Resolution Professional i.e., respondent No.1.
32. Accordingly, the application is disposed of with liberty to file fresh application after the report of the valuers is received.

**SD/-**  
**SANJAY PURI**  
**MEMBER (TECHNICAL)**

**SD/-**  
**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**