



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**IA No. 421/2022
IN
CP (IB) No.923/MB-IV/2020**

In the matter of
IA-421/2022

Gajesh Labhchand Jain

... Applicant

V/s.

Omnibus Infrastructure Private Limited & Ors.

... Respondents

IN

CP (IB) No.923/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

Axis Bank

... Financial Creditor

V/s.

Talwalkar Healthclubs Limited

... Corporate Debtor

Order Pronounced on: **09.06.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)



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Appearances (via videoconferencing):

For the Applicant/Liquidator:

Mr. Yashish Chandra a/w mr.
Ramakant Rai, Mr. Ravin Kapur,
and Mr. Shivam Sharan,Adv.

For the Respondents:

None present.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The present Application is filed by Mr. Saurabh Kumar Tikmani, the Resolution Professional (RP) of Talwalkars Healthclubs Limited (Corporate Debtor) under Section 43 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules). Later on, the Corporate Debtor was ordered to be Liquidated and Mr. Gajesh Labhchand Jain was appointed as Liquidator, who came to be substituted as the applicant in the present application.
2. The applicant has determined an amount of Rs.76 Lakhs, receivable from M/s Talwalkas Club Systems Private Limited (Respondent), as preferential transaction u/s 43 of the Code, and has prayed for appropriate directions to the respondent to pay the said amount along with interest at the rate of 12% per annum to the Corporate Debtor. The said finding is based on the Transaction Audit Report wherein, the Transaction Auditor has reported that the Respondent received a payment of INR 76 Lakhs from the



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Corporate Debtor during the period 2 (two) year prior to the ICD and the said amount is receivable as on 31.08.2019 as per the books of the Corporate Debtor. The said payment is stated to have been made during 10 March 2019 to 09, March 2021 i.e. within a period of two years from the insolvency commencement date as provided in section 43(4)(a) of the Code.

3. This bench finds that the applicant have made another Interlocutory Application no. 420/2023 wherein the said amount receivable from the Respondent is claimed to be nature of undervalued transaction and the applicant has sought direction therein asking respondent to pay the said amount along with interest at the rate of 12% per annum.
4. At the outset, this bench finds that this transaction does not fall u/s 43 as it does not result into any preference having been given to a creditor on account of an antecedent financial debt or operational debt or other liabilities owed by the Corporate Debtor. From the perusal of the transaction auditor report it is noticed the transaction auditor has stated the opening balance as on 01.04.2018 due to the respondent is nil and no debt is stated to be owed to the respondent company. Accordingly, this transaction does not fall under the preview of section 43 of the Code.
5. In view of this, this bench does not find any merit in the present application in so far as it seeks order for declaration of the aforesaid transaction as preferential transaction u/s 43 of the Code. It is pertinent to stated that this bench has given a finding in relation to the aforesaid transaction in its order in IA-420/2021 and has held that the said amount is recoverable from the respondent company even without being declared as preferential or undervalued transaction under the Code and such Respondent company



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ought to have paid the said amount to the Corporate Debtor. In so far as interest at the rate of 12% concerned, the decision of this bench in IA-420/2023 at para 10 of the order therein applies to the aforesaid transaction.

6. In view of the forgoing, this application (IA-421/2022) is **dismissed as not maintainable.**

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
09.06.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)