

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Web-based Video Conferencing Platform)

I.A. No.482 of 2020 in
C.P. (IB) No.320/BB/2019
U/s 43 of I&B Code, 2016
R/w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Addanki Haresh
Resolution Professional
M/s. Right Engineers and Equipments Pvt. Ltd.
Corporate Debtor Address:
No.25, D Cross, Bilekahalli Industrial Area,
Banneraghatta Road,
Bangalore – 560 076.

... Applicant

Versus

H.P. Arun Kumar
H.No.3, Old No.68, Brindavana,
Behind Shanthinikethan School,
Anugraha Layout, BI
Bangalore – 560 076.

... Respondent No.1

C.M. Nagaraja
23, H.No.1, Brindavana,
Anugraha Layout,
Bangalore – 560 076.

... Respondent No.2

Usha
W/o. C.M. Nagaraja
23, H.No.1, Brindavana,
Anugraha Layout,
Bangalore – 560 076.

... Respondent No.3

Order delivered on: 02nd February, 2022

CORAM:

Sh. Ajay Kumar Vatsavayi
Hon'ble Member (Judicial)

Sh. Manoj Kumar Dubey
Hon'ble Member (Technical)

PRESENT:

For the Applicant : Mr. Addanki Haresh, Liquidator

For R-1 to R-3 in
IA No.482 of 2020 : Mr. Vinod Sunder Raman, Authorised Rep.

ORDER

Per: Ajay Kumar Vatsavayi, Member (J)

I.A. No.482 of 2020:

1. The Resolution Professional of the Corporate Debtor – M/s. Right Engineers and Equipment India Private Limited filed the instant I.A. against the Respondents under section 43 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:

"a. Declare that the payment of Rs.49.83 Lacs constitute preferential transactions, violating Section 43 of IBC.

b. Reverse the Advance repayment transactions made to Respondents as detailed in Paragraph 8 above, and direct the amount of Rs.49.83 Lacs paid by the Corporate Debtor to the Respondent be returned and vested in the Corporate Debtor.

c. Such other orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case, in the interest of justice and equity."

2. A common reply vide Diary No.1043 dated 23.03.2021 has been filed on behalf of Respondent Nos.1 and 2, who are the suspended Board of Directors of the Corporate Debtor, opposing the I.A. The Respondent No.3, who is the

wife of the Respondent No.2, also filed the reply / objections vide Diary No.1042 dated 23.03.2021, seeking dismissal of the I.A. against her in limine on the ground that no relief is claimed against her in the I.A.

3. The Applicant / Resolution Professional thereafter filed Additional Affidavit on 08.11.2021 seeking a direction against the Respondent No.3 to restore an amount of Rs.11,50,000/- in addition to the amount of Rs.49,83,107.90/- claimed against the Respondent Nos.1 and 2 in I.A. No.482 of 2020.
4. In view of the Additional Affidavit filed by the Applicant in the I.A., the Respondent No.3 was permitted to file objections to the said Affidavit, and accordingly she filed additional objections / reply vide Diary No.3309 dated 02.12.2021. The Applicant / Liquidator filed a common rejoinder vide Diary No.3413 dated 06.12.2021 to the original reply / objections filed on behalf of Respondent Nos.1, 2 and 3 and also to the additional reply / objections filed by the Respondent No.3.
5. Heard Mr. Addanki Haresh, for the Applicant / Liquidator in person and Mr.Vinod Sunder Raman, Authorised Representative for the Respondent Nos.1, 2 and 3 and perused the pleadings on record.
6. It is submitted by the Applicant / Liquidator that this Adjudicating Authority in CP (IB) No.320/BB/2019 filed by M/s. Sri M. Visveswaraya Co-operative Bank Ltd. filed against the Corporate Debtor – M/s. Right Engineers and Equipment India Pvt. Ltd. under section 7 of the I&B Code, 2016, vide its order dated 29.10.2019 admitted the CP and initiated the Corporate Insolvency Resolution Process (CIRP) and appointed the Applicant as the Interim Resolution Professional (IRP). Thereafter, the Applicant was appointed as the Resolution Professional (RP). This Adjudicating Authority,

vide order dated 02.12.2020, in I.A. No.484 of 2020 ordered that the Corporate Debtor – M/s. Right Engineers and Equipment India Pvt. Ltd. is to be liquidated and appointed the Applicant as the Liquidator to initiate the liquidation process.

7. It is further submitted by the Applicant / Liquidator that since the Audited Balance Sheets upto March, 2019 were showing certain transactions and transfer of funds to the Related Parties; M/s. Nagadheep Satyanrayana & Co., Chartered Accountants, Bangalore, were appointed and after their resignation M/s. Hegde Raj & Ullody, Chartered Accountants, Bangalore, were appointed to conduct the Forensic Audit for reviewing of the accounts for a period of two years in case of Related Parties and for a period of one year in other cases before the commencement of CIRP. At the 8th Meeting of the Committee of Creditors (CoC) held on 09.11.2020, the draft Forensic Audit Report submitted by the Auditors was discussed. The Committee identified the following:

- (a) Potential Preferential Transactions covered by section 43 – Rs.81.33 Lacs
- (b) Potential Fraudulent Transactions covered by section 66 – Rs.78.81 Lacs

Mr. Nagaraj, one of the suspended Director of the Company and the Respondent herein, requested the CoC and the RP to give some time to explain about the said transactions since in his view the transactions were conducted during the business expediency. The Forensic Auditor after discussing with the suspended Directors of the Company i.e. Respondent Nos.1 and 2 herein, submitted the final Forensic Report (Annexure-4) and the relevant portions of the same read as under:

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"FORENSIC REPORT – RIGHT ENGINEERS & EQUIPMENT INDIA PRIVATE LIMITED

#	Category	IBC Section	Observations												
2	Preferential Transactions	Section 43	<p>Amounts paid as 'Advance' to related parties (Mr. Nagaraj and Mr. Arun): We noted that the Company had given advances to its Directors. As explained to us this was for incurring business expenditure. There are two Accounts maintained in the books for the same, namely Nagaraj – Advance A/c and Arun Kumar – Advance A/c. The debits in the account represent advances paid to the parties and the credits generally represents expenditure incurred / claimed or amount paid back (through bank or cash) in some cases. An analysis of the said accounts for the last 2 years (28 October 2017 to 29 October 2019) is as follows:</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Mr. HP Arun Kumar</th> <th>Mr. CM Nagaraj</th> </tr> </thead> <tbody> <tr> <td>Balance as on 28 October 2017</td> <td>307,612.00</td> <td>85,693.24</td> </tr> <tr> <td>Balance as on 29 October 2019</td> <td>2,187,486.75</td> <td>2,088,926.39</td> </tr> <tr> <td>Increase in balance</td> <td>1,879,874.75</td> <td>2,003,233.15</td> </tr> </tbody> </table> <p>It is clear from the above that there is a significant increase in the balance with no corresponding increase in the expenditure claimed. Amounts have been paid without any specific reason and amounts have been paid without settling previous balances. Therefore, the said amounts are nothing but preferential payments made in the guise of business advances. The incremental increase of Rs.38.83 Lakhs, has therefore been considered as preferential payments under Section 43.</p>	Particulars	Mr. HP Arun Kumar	Mr. CM Nagaraj	Balance as on 28 October 2017	307,612.00	85,693.24	Balance as on 29 October 2019	2,187,486.75	2,088,926.39	Increase in balance	1,879,874.75	2,003,233.15
Particulars	Mr. HP Arun Kumar	Mr. CM Nagaraj													
Balance as on 28 October 2017	307,612.00	85,693.24													
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Increase in balance	1,879,874.75	2,003,233.15													

Annexure – 1 Related party loan repayment

Date	Particulars	Name	Amount (Rs.)
11-Jan-18	Syndicate OD A/c – 06971400000021	Mr. HP Arun Kumar	50,000
13-Jun-18	Cash	Mr. HP Arun Kumar	50,000
10-Sep-18	Syndicate Bank – 06971400000021	Mr. HP Arun Kumar	4,00,000
03-Apr-19	Cash	Mr. HP Arun Kumar	50,000
11-Jan-18	Syndicate OD A/c – 06971400000021	Mr. CM Nagaraj	50,000
13-Jun-18	Cash	Mr. CM Nagaraj	50,000
03-Apr-19	Cash	Mr. CM Nagaraj	50,000
10-Sep-18	Syndicate Bank – 06971400000021	Mr. CM Nagaraj	4,00,000
		TOTAL	11,00,000

8. The Applicant / Liquidator, submits that since the Respondent Nos.1 and 2 have not paid the said amount of Rs.49.83 Lacs, the amount classified as preferential transactions to the Corporate Debtor, he filed the instant application.
9. The Applicant / Liquidator submits that since it was observed that certain transactions were missed, the Forensic Auditor was requested to review the transactions once again and in view of the additional information and the additional report dated 03.11.2021 furnished by the Forensic Auditors, it was found that the Respondent No.3, who is the wife of the Respondent No.2, is liable to return an amount of Rs.11,50,000/- to the Corporate Debtor and accordingly he filed the Additional Affidavit on 08.11.2021 seeking the said additional direction against the Respondent No.3.
10. The Authorised Representative appearing for the Respondent Nos.1, 2 and 3 in support of their submission that the I.A. is liable to be dismissed draw our attention to certain "Disclaimers, Exclusions and Limitations", of the Forensic Audit Report. Accordingly, submitted that the Forensic Audit Report cannot be given effect to. Similarly, in respect of the claim against the Respondent No.3, it is submitted that the additional report said to have been submitted almost after one year from the original Forensic Audit Report that too without giving any opportunity to the Respondent No.3, is liable to be rejected.
11. It is seen that in respect of the original Forensic Audit Report as well as the additional Forensic Audit Report, the observations made by the Forensic Auditors and the figures arrived there to were supported by the Bank Statements. The Respondent Nos.1, 2 and 3 failed to dispute the said Bank Statements basing on which the Auditors have prepared the Forensic Audit

Report. Hence the amount referred above falls under the ambit of preferential transaction and hence the Respondents are liable to refund the same to the Corporate Debtor. It is also seen that the Audit was completed in 2021 only, and hence there is no delay either in filing the instant Application or the Additional Affidavit seeking additional directions against the Respondent No.3.

- 12.** It is not in dispute that the amounts finalised against the Respondent Nos.1 and 2 was after due deliberations and discussions and after providing sufficient opportunity to the Respondent Nos.1 and 2 by the Forensic Auditors. The Respondent Nos.1 and 2 failed to show any valid document against the well examined Forensic Audit Report. Further, even in respect of the claim made by the Respondent No.3, the Respondents failed to show any valid document, in support of their submissions. The respondents except claiming that the transactions were done in the ordinary course of business, were not able to substantiate the said submission.
- 13.** In the circumstances and for the aforesaid reasons, the instant I.A. is allowed as under:
- i. The subject transactions are declared as Preferential Transactions in terms of Section 43 of the I&B Code, 2016.
 - ii. The Respondent No.1 is directed to restore an amount of Rs.24,29,874/- (Rupees Twenty Four Lakhs Twenty Nine Thousand Eight Hundred and Seventy Four only) to the Corporate Debtor within 30 days from the date of receipt of this order.
 - iii. The Respondent No.2 is directed to restore an amount of Rs.25,53,233/- (Rupees Twenty Five Lakhs Fifty Three Thousand

— Sd —

Two Hundred and Thirty Three only) to the Corporate Debtor within 30 days from the date of receipt of this order.

- iv. The Respondent No.3 is directed to restore an amount of Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand only) to the Corporate Debtor within 30 days from the date of receipt of this order.

14. Accordingly, I.A. No.482 of 2020 is disposed of.

— Sd —

(MANOJ KUMAR DUBÉY)
MEMBER (TECHNICAL)

— Sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Krishna