

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH, BENGALURU  
(Exercising powers of Adjudicating Authority under  
The Insolvency and Bankruptcy Code, 2016)  
(Through Web-Based Video Conferencing)**

**IA No. 603 of 2019** in  
C.P. (IB)No.41/BB/2019  
U/s.43 & 60 of the IBC, 2016  
R/w Rule 11 of NCLT Rules, 2016

**In the matter of:**

**Mr. V. Duraisamy**

Resolution Professional of  
M/s. Sura Leathers Private Limited  
No. 397, Third Floor, Precision Plaza,  
Teynampet, Chennai 600 018.

Applicant/Liquidator

**Versus**

**1. Mr. Charles Harry**

Suspended Director of M/s Sura Leathers Pvt Ltd  
No. 150, 4<sup>th</sup> Cross, CT Bed, Thiyagaraja Nagar,  
Bengaluru 560 028.

Respondent No.1

**2. Mr. Doraisamy Arunachalam**

Suspended Director of M/s. Sura Leathers Pvt Ltd  
No. 25, 2<sup>nd</sup> Street, Sowrasteapuram, Ambur,  
Vellore 635 802.

Respondent No.2

**3. M/s. Supreme Overseas Exports India Private Limited**

11/1, 24<sup>th</sup> A Cross KR Road  
Bengaluru- 560 070 .

Respondent No.3

**4. Mr. M.S. Sri Harsha**

Erstwhile Director of M/s Sura Leathers Pvt Ltd  
No. 30/31, 3<sup>rd</sup> Cross, 7<sup>th</sup> block,  
Jaya Nagar, Bengaluru 560 082.

Respondent No. 4

**5. Mrs. Rehka Sriharsha**

No. 30/31, 3<sup>rd</sup> Cross, 7<sup>th</sup> Block,  
Jaya Nagar, Bengaluru,  
Karnataka 560 082

Respondent No.5

**Order Delivered on: 24<sup>th</sup> August, 2023**

- Coram:** 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

The RP	:	Shri Ravindra Beleyur
For the Applicant	:	Shri P. Prashanth
For R3	:	Shri V. Vineeth
For R-4 & R-5	:	Shri Prathap. K

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 14.11.2019 by the Resolution Professional of M/s Sura Leathers Private Limited (hereinafter referred to as "Corporate Debtor") under section 43 and 60 of the IBC, 2016, interalia praying that this Tribunal may set aside the adjustment of receivables from 3<sup>rd</sup> Respondent with that of the unsecured loan of 4<sup>th</sup> and 5<sup>th</sup> respondent to the tune of Rs. 11,58,32,881/- and direct the 3<sup>rd</sup> respondent to pay the receivables forthwith to the Corporate Debtor and further declare this transactions as preferential .
2. The facts of the case are mentioned below:
  - a) It is submitted that the Corporate Debtor was incorporated in 28.12.1998 and has been in operation until January 2019 as the same was closed due to labour unrest. The Corporate Insolvency Resolution Process was initiated against the CD by this Tribunal vide order dated 31.05.2019 and appointed the Applicant as the IRP.
  - b) It is submitted that 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the Managing Directors of the Corporate Debtor whose powers have been suspended in view of the ongoing CIRP. The 3<sup>rd</sup> and 4<sup>th</sup> respondents are promoters of the Corporate Debtor, having

substantial shareholding in the Corporate Debtor and 4<sup>th</sup> respondent acted as Managing Directors of the Corporate Debtor till before the initiation of Corporate Insolvency Resolution Process.

c) It is submitted that the RP as required under the provisions of the Code looked into the transactions relating corporate debtor for the past two years if related party or one years if otherwise. Therefore during 1<sup>st</sup> CoC meeting, the COC unanimously resolved to authorize the Applicant to appoint Transactional Auditor to audit the transactions of last two years. Accordingly, Mr. Ramamoorthi Srinivasan was appointed and the said auditor has submitted his reports. Ongoing through the report, the following transactions are declared as preferential by the auditor:

(1) During the year the company had paid off the unsecured loans of Rs. 11,58,32,881/- payable to Mr. Sriharsha and Ms. Rekha Sriharsha, by setting off the loan against the receivables due from M/s Supreme Overseas Exports Private Limited particularly when SBI has priority to receive the said payment being secured creditor. However the same was adjusted towards unsecured loan of the related parties and thereby the said transaction is preferential transaction.

d) Therefore the Applicant sent a notice to the suspended board of directors seeking explanation why the said transaction should not be treated as preferential transaction and however the suspended directors have not come forward to reply to the notice and thereby there is nothing to offer against the conclusion arrived by the Transaction Auditor.

e) The applicant submits that the adjustment of unsecured loan to the tune of Rs. 11,58,32,881/- in priority over the secured creditors payment due is preferential transaction. Moreover, the

said adjustment put the related party in beneficial position than the secured creditors. Therefore the said transaction of adjustment of unsecured loan of the related party through the receivables from Supreme Overseas Exports Private Limited is preferential transaction and the same has to be set aside.

3. The learned Counsel for the Respondent filed its objection stating as under:
  - a. It is submitted that Respondent No. 5 is not holding any position in the Respondent No. 3 Company or in Sura Leathers Pvt Ltd and neither involved in the day to day management of Sura Leathers Private Limited. Hence, the Respondent No. 5 is not a proper and necessary party to this proceedings.
  - b. It is submitted that Respondent No. 3 is involved in the business of manufacturing and exporting of leather garments and in the course of its business had purchased leather and other leather related products from Sura Leathers Private Limited and had also place orders for jobwork to be done by Sura Leathers Pvt Ltd.
  - c. Further, Rs. 11,58,32,881/- was shown as due and payable towards trade receivables from Supreme Overseas Exports India Pvt Ltd. This amount was due and payable for the jobworks undertaken by Sura Leathers Pvt Ltd., based on the orders placed by Respondent No.3 and this amount in the books of Sura Leathers Pvt. Ltd., over a period of 7 years.
  - d. It is submitted that an Agreement was executed between Respondents 3,4 &5 and M/s Sura Leathers Pvt Ltd on 17.11.2016, wherein it was agreed that Respondent 4 & 5 would advance a loan of Rs.15,00,00,000/- to Respondent No. 3, which was directly payable to Sura Leathers Pvt. Ltd., for and on behalf of Respondent No.3. this amount was to be adjusted towards the existing trade payables of Respondent No. 3 and the balance

amount was to be adjusted towards future trade payables of Respondent No. 3, thereby discharging the entire liability of Respondent No. 3 to Sura Leathers Pvt Ltd.

- e. However, various disputes arose with regard to quality of work undertaken by Sura Leathers Pvt. Ltd and taking note of the losses caused to the Respondent No. 3 due to the fault of Sura Leathers Pvt. Ltd., a settlement Deed was executed between Respondent No. 3 and Sura Leathers Pvt. Ltd wherein all losses suffered by Respondent No. 3 was set-off against the payments due and payable to Sura Leathers Pvt. Ltd., towards supply of leather and jobwork undertaken by them for Supreme Overseas. Accordingly a sum of Rs. 2,53,71,217/- was set-off from the amounts payable to Sura Leathers., due to defective quality of goods supplied and sub-standard jobwork done by Sura Leathers.
- f. It is further submitted that a sum of Rs. 15,00,00,000/- was received from the accounts of Mr. Sriharsha and Mrs. Rekha Sriharsha during the financial year 2016 to 2019 and a sum of Rs. 11,58,32,881/- was set- off against the amounts due and payable by the Respondent No. 3, and the balance amount was to be treated as due and payable towards future trade payables of Respondent No. 3. Further, a sum of Rs. 2,88,98,000/- was set-off against the losses suffered by respondent No. 3 due to the inferior quality of goods supplied and bad quality of job work done by Sura Leathers Pvt. Ltd.
- g. The respondent submit that the RP acknowledges the amounts were received from the Respondent 4 and 5 and there is no adjustment of loans between Respondent No. 3 and the Company. Hence, there is no benefit accruing to the Respondent No.3 or the other Respondents.

4. The Learned Counsel for the Applicant filed its rejoinder inter alia stating that in the statement of objection the respondent have admitted that a sum of Rs. 11,58,32,881/- was adjusted against the trade receivable from 3<sup>rd</sup> Respondent and supports the claim of the Applicant as preferential transaction. The claim that the remaining receivable was set off is incorrect and the same was not reflected in the Board resolution of M/s Sura leather Private Limited dated 31.03.2019. The board resolution was passed only to enter suitable agreement with 3<sup>rd</sup> respondent. The claim of Respondents that the transaction is in ordinary course of business is incorrect as the same is not in ordinary course of business. Further, the Board resolution to set off the dues of M/s Supreme Overseas Exports India Private Limited was passed on 31.03.2019, just two months prior to the commencement of CIRP, and after the filing of the CIRP application which is also in violation of the loan agreement dated 17.11.2016. The amount advanced by Mr. Sriharsha and Mrs. Rekha Sriharsha is to be repaid by M/s Supreme Overseas India Private Limited.
5. Heard the learned counsel for the Parties and perused the records available. On 22.05.2023 this Tribunal directed the Parties to file brief synopsis and the same is complied with vide diary Nos. 2754 and 2861 dated 29.05.2023 and 01.06.2023.
6. The present petition is filed by Resolution Professional of M/s Sura Leathers Pvt Limited seeking to set aside the adjustment of receivables from 3<sup>rd</sup> Respondent with that of unsecured loan of 4<sup>th</sup> and 5<sup>th</sup> Respondent to the tune of Rs. 11,58,32,881/- and direct the 3<sup>rd</sup> respondent to pay the receivables forthwith to the Corporate Debtor. The Resolution professional in support of his contention has attached the Copy of Transaction Auditor's Report wherein it is stated that *"During the year the company had paid off the unsecured loans of Rs. 11,58,32,881 payable to Mr. Sriharsha and Ms. Rekha*

*Sriharsha, by settling off the loan against the receivables due from Supreme Overseas Exports Pvt Ltd.*

*In our opinion, since no right of set off is available to any debtor after commencement of moratorium under Section 14 of the Code, the transaction falls within the scope of section 43 (2) of the Code.*

7. The main contention raised by the respondents is that the transaction were under taken in the ordinary course of business and not with an intention to defraud any creditors. Further, the resolution professional of Personal Guarantor, Respondent No. 4, has acknowledged receiving the amount in the Reply filed vide diary No. 5300.
8. On perusal of the document it is seen that the CIRP against the Corporate debtor commenced on 31.05.2019 however, vide Board Resolution dated 31.03.2019 resolved to set off dues of M/s Supreme Overseas Exports India Private Limited. It is pertinent to note that the said board resolution was passed just two months before the commencement of CIRP. As per the report of the transaction auditor the transaction happened between 1<sup>st</sup> April 2018 to 31<sup>st</sup> May 2019. Hence the transaction falls well within the relevant time prescribed under the code.
9. In the circumstances and for the aforesaid reasons, we are of the considered opinion that the instant I.A is to be allowed as under:
  - I. The adjustment of receivables from 3<sup>rd</sup> Respondent with that of the unsecured loan of 4<sup>th</sup> and 5<sup>th</sup> Respondent to the tune of Rs. 11,58,32,881/- is hereby set aside.
  - II. The Respondent No. 3 is directed to pay the receivables to the Corporate Debtor.
10. Accordingly, **IA No. 603 of 2019** is allowed.

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T. KRISHNAVALLI)  
MEMBER (JUDICIAL)**

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