

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,  
HON'BLE TECHNICAL MEMBER**

**IA No. 395/JPR/2022**  
**In CP No. (IB)-28/9/JPR/2021**

**IN THE MATTER OF:**

**MR. AJAY JAIN  
(SOLE PROPRIETOR OF M/S RADIUM FIBRES**

**.... Operational Creditor**

**VERSUS**

**M/S BALDVA TEXTILES PRIVATE LIMITED**

**...Corporate Debtor**

**IA (IBC) No. 395/JPR/2022**

**MEMO OF PARTIES**

**MR. RISHABH CHAND LODHA**

**Resolution Professional of**

**Baldva Textile Pvt. Ltd.**

**R/o E-5, Basant Vihar, Bhilwara,**

**Rajasthan- 311001**

**E-mail ID: cirp.baldvatextiles@gmail.com**

**...Applicant**

**VERSUS**

**MR. ANIL BALDVA**

**Suspended Director of**

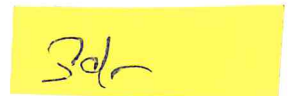
**Baldva Textiles Pvt. Ltd.**

**4, Keshi Puri, Bhilwara-311001**

***IA No. 395/JPR/2022***

***In CP No. (IB)-28/9/JPR/2021***





E-mail Id:  
baldva.tex@gmail.com

.....Respondent No. 1

**MR. ANSHUL BALDVA**  
 Suspended Director of  
 Baldva Textiles Pvt. Ltd.  
 4, Keshi Puri, Bhilwara-311001  
 E-mail Id:  
luvkush.syntex@gmail.com

.....Respondent No. 2

**MS. BASANTIDEVI BALDVA**  
 Erstwhile Director of  
 Baldva Textiles Pvt. Ltd.  
 4, Keshi Puri, Bhilwara-311001,  
 E-mail Id:  
Kamdheni.hi.fashion@gmail.com

.....Respondent No. 3

**MR. AJAY BALDVA**  
 Promoter Shareholder of  
 Baldva Textiles Pvt. Ltd.  
 4, Keshi Puri, Bhilwara-311001

..... Respondent No. 4

For the Applicant : Abhishek Naik, Adv.  
 For the Respondent : Amol Vyas, Adv.

**Order Pronounced On: 29.02.2024**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Interlocutory Application ('IA') bearing *IA No. 395/JRP/2022* is filed by the Resolution Professional of *M/s Baldva Textiles Private Limited* ('Corporate Debtor') under Section 43 read with Section 60(5) of the

Insolvency and Bankruptcy Code, 2016 ('Code/IBC') and Regulation 35A (3) of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulation, 2016 ('CIRP Regulation') seeking declaration of certain transactions as preferential and seeking appropriate directions against the Respondents.

2. The Adjudicating Authority *vide* Order dated 11.11.2021 admitted CP(IB) No. 28/9/JPR/2021 under Section 9 of the IBC, filed by *Mr. Ajay Jain* sole proprietor of *M/s Radium Fibers* ('Operational Creditor') against *M/s Baldeva Textiles Private Limited* ('Corporate Debtor') and *Mr. Prashant Agarwal* was appointed as Interim Resolution Professional ('IRP') to conduct the CIRP of the Corporate Debtor. However, in the third CoC meeting held on 13.01.2022 CoC resolved to appoint the Applicant as the Resolution Professional of the Corporate Debtor which was allowed by this Adjudicating Authority *vide* order dated 28.01.2022.
3. The Applicant has moved the present Application on the following set of facts:
  - 3.1 The Applicant submits that certain avoidance transactions were carried out by the Corporate Debtor along with the Respondents prior to the commencement of the Corporate Insolvency Resolution Process ('CIRP'). The Respondent No. 1 & 2 are the suspended directors of the Corporate Debtor, Respondent No. 3 is an erstwhile director who has retired from the directorship on 28.08.2019 and Respondent No. 4 is

the promoter and shareholder of the Corporate Debtor. It is further stated that all four (4) Respondents are related parties to the Corporate Debtor in terms of Section 5(24) (a) & (b) of the Code.

3.2 In view of the provisions of Code the Respondent No. 1 & 2 being the suspended directors of the Corporate Debtor are duty-bound to cooperate throughout for smooth functioning and carry out the CIRP. However, the Respondent No. 1 & 2 did not provide the relevant documents/information. It is submitted that with the available records the Applicant perused/examined the available financial documents and opined that the transactions of the Corporate Debtor are not falling in line with the ordinary course of business and have been carried out to provide benefits to others at the cost and expenses of the Corporate Debtor.

3.3 To ascertain the nature of the suspicious transaction the IRP took the assistance of *M/s Pipara and Co*, Chartered Accountants as Transaction Auditor ('Auditor') for carrying out the transaction audit of the accounts of the Corporate Debtor during the look-back period i.e., 11.11.2019 to 11.11.2021 qua related parties and 11.11.2019 to 11.11.2020 qua non-related parties.

3.4 The Transaction Auditor has submitted a detailed Transaction Audit report on 11.07.2022 to the Applicant, wherein the Auditor has identified several transactions/arrangements, which were improper,

wrongful, illegal, and identified as preferential transactions under Section 43 of the Code. Copy of the Transaction Audit Report dated 11.07.2022 is annexed as Annexure-A1 of the Application.

3.5 In compliance with sub-regulation (2) of the Regulation 35A of the CIRP Regulation the Applicant perused the Transaction Audit Report and prepared its Determination Report dated 13.07.2022 wherein it was opined that the Corporate Debtor has been subjected to preferential transactions under Section 43 and undervalued transactions covered and Section 45 of the Code. It is also submitted that several transactions are not ascertained due to the non-availability of relevant documents thus the Applicant reserves its right to file an appropriate Application as and when such determination is made. Copy of the Determination Report dated 13.07.2022 is annexed as Annexure-A2 of the Application.

3.6 The Audit Report and Determination Report have been prepared based on the following documents retrieved from the Suspended Directors and officials of the Corporate Debtor, as mentioned below:

- *Audited Financial Statement for the year ended 31.02.2020 and 31.03.2021;*
- *MCA published data relating to Corporate Debtor;*
- *Complete Set of Income Tax Return along with acknowledgement*
- *Copy of sales tax/VAT/service tax/GST returns;*
- *Copy of all bank accounts in soft copy along with narrations for the period under audit;*

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- Details of bank accounts opened or closed during such period by the company.

AVOIDANCE TRANSACTIONS: PREFERENCE TRANSACTIONS-

PAYMENT OF UNSECURED LOAN

3.7 As per the financial statements of the Corporate Debtor for the period from 11.11.2019 to 31.03.2020, the Corporate Debtor repaid an unsecured loan to the extent of Rs. 15,50,000/- (Rupees Fifteen Lakh Fifty Thousand Only) to Respondent No. 1 to 4. It is pertinent to note the Corporate Debtor has ignored/bypassed the repayment of debt of other similar creditors and gave preference to the Respondents. The details of the preferential payment of unsecured loan made to Respondents are as follows:

<i>Sr. No.</i>	<i>Date</i>	<i>Amount (in Rs.)</i>	<i>Purpose</i>
<i>Anil Baldva (Respondent No. 1)</i>			
1.	20.11.2019	2,00,000	Repayment of Unsecured Loan
2.	22.11.2019	50,000	Repayment of Unsecured Loan
3.	28.11.2019	2,50,000	Repayment of Unsecured Loan
4.	11.12.2019	4,00,000	Repayment of Unsecured Loan
5.	16.12.2019	1,00,000	Repayment of Unsecured Loan
6.	03.02.2020	50,000	Repayment of Unsecured Loan
7.	25.02.2020	30,000	Repayment of Unsecured Loan
8.	05.03.2020	50,000	Repayment of Unsecured Loan
<i>Total</i>		<i>11,30,000/-</i>	
<i>Anshul Baldva (Respondent No.2)</i>			
9.	22.11.2019	50,000	Repayment of Unsecured Loan
10.	25.02.2020	30,000	Repayment of Unsecured Loan
<i>Total</i>		<i>80,000/-</i>	

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<b><i>Basantidevi Baldeva (Respondent No. 3)</i></b>			
11.	03.02.2020	3,25,000	<i>Repayment of Unsecured Loan</i>
Total		<b>3,25,000/-</b>	
<b><i>Ajay Baldeva (Respondent No.4)</i></b>			
12.	30.11.2019	15,000	<i>No detail with regard to the payment mention in ledger statement</i>
Total		<b>15,000/-</b>	
Grand Total		<b>15,50,000/-</b>	

Copy of the Ledger Account annexed as Annexure-A4 (Colly) of the Application

4. The Respondents have filed their reply vide Dairy No. 531/2023 dated 27.02.2023 and stated the following:

4.1 The Respondents have submitted that this Adjudicating Authority vide order dated 09.11.2022 approved the Resolution Plan of *M/s BMD International*. As per the approved resolution plan, there was no provision with regard to the continuation of the present Application under Section 43 of the Code.

4.2 The transactions mentioned in the Application are not preferential transactions however it was done in an ordinary course of business. The present Application is filed by the Resolution Professional with the intent to harass the Respondents/Suspended Directors. Moreover, the transactions which are mentioned in the Application have taken place before the look-back period i.e., 2017-18.

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- 4.3 It is submitted that the suspended directors have been regularly providing the interest-bearing loan to the Corporate Debtor for the short term since 2017 and accounts for the period from 2017 to 2021 have been regularly audited by the statutory auditor of the Company. The payment of interest on unsecured loans has been mentioned in the audit report of the auditor.
5. We have heard the submissions made by the learned counsel for the Applicant and perused the Application and Reply along with the documents enclosed therein.
6. The provision of Section 43 of the Code is reiterated below for reference:

*Section 43: Preferential transactions and relevant time.*

- (1) *Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.*
- (2) *A corporate debtor shall be deemed to have given a preference, if—*
- (a) *there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and*
- (b) *the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.*
- (3) *For the purposes of sub-section (2), a preference shall not include the following transfer —*

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- (a) *transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;*
- (b) *any transfer creating a security interest in property acquired by the corporate debtor to the extent that—*
  - (i) *such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and*
  - (ii) *such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:*

*PROVIDED that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.*

*Explanation.—For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.*

- (4) *A preference shall be deemed to be given at a relevant time, if—*
  - (a) *it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or*
  - (b) *a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.*

7. Further, the Hon’ble Supreme Court has elaborated the scope and ambit of the Section in the matter of *Anuj Jain vs. Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Limited Etc. Etc. CIVIL APPEAL NOS. 8512-8527 OF 2019*, whereby the following has been held:

*“20. The analysis foregoing leads to the position that in order to find as to whether a transaction, of transfer of property or an interest thereof of the corporate debtor, falls squarely within the ambit of Section 43 of the Code, ordinarily, the following questions shall have to be examined in a given case:*

- (i). As to whether such transfer is for the benefit of a creditor or a surety or a guarantor?*
- (ii). As to whether such transfer is for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor?*
- (iii). As to whether such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53?*
- (iv). If such transfer had been for the benefit of a related party (other than an employee), as to whether the same was made during the period of two years preceding the insolvency commencement date; and if such transfer had been for the benefit of an unrelated party, as to whether the same was made during the period of one year preceding the insolvency commencement date?*
- (v). As to whether such transfer is not an excluded transaction in terms of sub-section (3) of Section 43?”*

8. Hence, conjoint reasoning of the aforementioned enunciates that Section 43(2) categorised those transactions as Preferential Transactions in which there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor/surety/guarantor and effecting a beneficial position to the creditor/surety/guarantor than it would have been in the event of a distribution of assets being made in accordance with section 53. On the other hand, Section 43(3) elucidates the transactions exempted from the clutches of Section 43(2) i.e., a preference shall not include transfers made in the ordinary course of the business or financial affairs of the Corporate Debtor or the transferee or any transfer creating a security interest in

property acquired by the Corporate Debtor to the extent that such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as a security interest and was used by corporate debtor to acquire such property and the same has been registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.

9. The payments made in favour of the related parties and non-related parties had the effect of putting the surety/creditor/guarantor in a more beneficial position than they would have been in the event of distribution of assets of the Corporate Debtor in accordance with Section 53 of the Code. The payments alleged under Section 43 as Preferential shall not fall under any of the exceptions under Section 43(3) of the Code. The Hon'ble Supreme Court in *Anuj Jain (supra)* held that the ordinary course of business ought to be seen from the perspective of the Corporate Debtor as well as the transferee.
10. In the case at hand, the Transactional Auditor has mentioned in their Audit Report that transactions amounting to Rs. 15,50,000/- (Rupees Fifteen Lakh Fifty Thousand Only) are considered preferential transactions where the Corporate Debtor has given preference in making payments of interest and unsecured loan to the related parties, details of the repayment of unsecured loan to the creditors are as follows:

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<i>Sr. No.</i>	<i>Date</i>	<i>Name of the Party</i>	<i>Amount</i>	<i>Purpose</i>
1.	30.11.2019	Ajay Baldva	15,000	Account payment made; no specific narration was mentioned
2.	20.11.2019	Anil Baldva	2,00,000	Repayment of Unsecured Loan
3.	22.11.2019	Anil Baldva	50,000	Repayment of Unsecured Loan
4.	28.11.2019	Anil Baldva	2,50,000	Repayment of Unsecured Loan
5.	11.12.2019	Anil Baldva	4,00,000	Repayment of Unsecured Loan
6.	16.12.2019	Anil Baldva	1,00,000	Repayment of Unsecured Loan
7.	03.02.2020	Anil Baldva	50,000	Repayment of Unsecured Loan
8.	25.02.2020	Anil Baldva	30,000	Repayment of Unsecured Loan
9.	05.03.2020	Anil Baldva	50,000	Repayment of Unsecured Loan
10.	22.11.2019	Anshul Baldva	50,000	Repayment of Unsecured Loan
11.	25.02.2020	Anshul Baldva	30,000	Repayment of Unsecured Loan
12.	03.02.2020	Basanti Baldva	3,25,000	Repayment of Unsecured Loan
<b>Total</b>			<b>15,50,000</b>	

11. It is noted that in various instances, the Corporate Debtor has given preference in the payments to the Respondents which attracts the provisions of Section 43 of the IBC, 2016. The transaction auditor in its report has identified repayment of the loans to the directors and opined that such transactions are covered under Section 43 of the Code, 2016. The Corporate Debtor has transferred Rs. 15,000/- (Rupees Fifteen Thousand Only) to Respondent No. 4, the nature of the transaction is considered as a preferential transaction in terms of Section 43 of the Code even though the purpose of the transfer is not defined.

12. Therefore, in view of the foregoing observations, we hereby direct the following in accordance with Section 43 of the Code:

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- 12.1 Respondent No. 1 is directed to repay the amount of Rs. 11,30,000/- (Rupees Eleven Lakh Thirty Thousand Only) to Corporate Debtor in terms of Section 44(1) of the Insolvency and Bankruptcy Code, 2016.
- 12.2 Respondent No. 2 is directed to repay the amount of Rs. 80,000/- (Rupees Eighty Thousand Only) to the Corporate Debtor in terms of Section 44(1) of the Insolvency and Bankruptcy Code, 2016.
- 12.3 Respondent No. 3 is directed to repay the amount of Rs. 3,25,000/- (Rupees Three Lakh Twenty-Five Thousand Only) to the Corporate Debtor in terms of Section 44(1) of the Insolvency and Bankruptcy Code, 2016.
- 12.4 Respondent No. 4 is directed to repay the amount of Rs. 15,000/- (Rupees Fifteen Thousand Only) to the Corporate Debtor in terms of Section 44(1) of the Insolvency and Bankruptcy Code, 2016.
13. The Registry is directed to provide a copy of this Order to all the parties.

  
**DEEP CHANDRA JOSHI,**  
**JUDICIAL MEMBER**

  
**RAJEEV MEHROTRA,**  
**TECHNICAL MEMBER**