

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3648 OF 2023

Under Section 43 & 44 of Insolvency &
Bankruptcy Code, 2016

Dr. Mamta Binani
The Resolution Professional

...Applicant

Vs.

**Rolta BI and Big Data Analytics Private
Limited & Others**

...Respondents

In the matter of

C.P.(IB) No. 530/MB/2020

Union Bank of India

Financial Creditor

Vs.

Rolta India Limited

Corporate Debtor

Order delivered on: 02.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Ms. Aakanksha Nehra a/w Mr/
Aashish Darne and Ms. Gunjan
Nayyar and Ms. Adya Singh,
Advocates

For the Respondent : Mr. Ameya Gokhale a/w Mr.
Manas Kotak, Advocates for
Respondent No.2 and 8

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 3648/2023 is filed by Dr. Mamta Binani (“Applicant”) against Rolta BI and Big Data Analytics Private Limited & others, in the matter of Rolta India Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking following reliefs :
 - a. Declare the transaction for an amount of Rs. 4,00,02,000/- (Rupees Four Crores Two Thousand Only) described in Paragraph 4.6 of the present application read with the Entry Number 18 in the table available at internal Page 206 of the Report dated 14.06.2023 issued by the Transaction Auditor (extracted and reproduced as Appendix "A" to the present application) as preferential in nature in terms of Section 43 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") and pass an order for avoidance of these transactions under Section 44 of the Code;
 - b. Direct the Respondent No. 1-3 to pay back the amount of Rs. 4,00,02,000/- (Rupees Four Crores Two Thousand Only) to the Corporate Debtor being the value of the treatment prayed to be

avoided in prayer clause 5.1.1 along with interest at such rate as deemed appropriate to this Hon'ble Tribunal to be paid till the actual date of payment;

2. That the Present application is being filed under Section 43 and Section 44 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "Code") on behalf of the Resolution Professional (hereinafter referred to as the "Applicant") of Rolta India Limited (hereinafter referred to as "Corporate Debtor") for avoidance of the preferential transactions described hereinbelow:

- a. adjustment of a credit amount of Rs. 4,00,02,000/- (Rupees Four Crores Two Thousand Only appearing in the books of the Corporate Debtor receivable from the Respondent No. 1- Rolta Bi and Big Data Analytics Pvt. Ltd. (hereinafter referred to as "Rolta BI");
- b. against debit balance appearing in the books of the Corporate Debtor owed by the Corporate Debtor to the Respondent No. 1- Rolta Private Limited (hereinafter referred to as "RPL").
- c. booked on 31.03.2021 falling within the lookback period commencing from 19.01.2021 to 19.01.2023 (hereinafter referred to as "Relevant Period");
- d. in preference to the other creditors of Corporate Debtor, when the Respondent No. 3 was acting as the Managing Director

(hereinafter referred to as "Relevant Transaction").

2.1. That the said transaction was identified by the professional appointed by the Applicant for reviewing of the transactions of the Corporate Debtor during the Relevant Period and on conducting further study, the Applicant has also found that the Relevant

Transaction that has been identified by the professional, falls under the scope of Section 43 of the Code.

- 2.2. That furthermore, in the humble submission of the Applicant even as on date, (i) amount is appearing to be due and payable to the Corporate Debtor from the Respondent No. 1 and (ii) preference has been enjoyed by the Respondent No. 2 whereby its amount due from the Corporate Debtor has been reduced. Hence, consequential directions of payment of the money equivalent to the value of transactions being avoided, deserves to be passed along with interest against all the Respondents being jointly and/or severally liable.
 - 2.3. That the explanation provided in the response sent by the management of the Corporate Debtor to the professional appointed by the Applicant, on being notified of these transactions, also does not fall under any of the exceptions provided under Section 43 of the Code.
 - 2.4. That hence, the present application seeking directions under Section 43 and 44 of the Code against the Respondents is being filed by the Applicant.
3. The Respondent No. 2 Rolta Pvt Ltd has filed Reply stating that adjustment of non cash credit entry does not satisfy the ingredients of the professional transaction because it does not entail any transfer of Property. Respondent has further contended that even if this Tribunal comes to a conclusion that the book entry is a preferential transaction, there can be no relief by way of contribution since no money has been received from Rolta India by RPL. At the very highest, the Tribunal may revert the book entry, which would also ultimately have the effect of diminishing the value of Rolta India. Any direction to the Respondents to pay the amounts constituting the value of the book entry would result in unjust enrichment of the Corporate Debtor. The relief sought by the

Applicant is untenable and unsustainable, in law and in light of the facts narrate above.

4. The Respondent No.3, Sh. Kamal Singh Krishan, the suspended board member during the relevant period and Chairman cum Managing Director of Corporate Debtor, has filed affidavit in reply dated 02.01.2024 stating that the Application is stated to have been filed based on a Transaction Review Report dated 14th June 2023 ("TRR") pursuant to a "detailed inquiry" conducted by the Auditor appointed by the Applicant viz. M/s Kansal Singla & Associates and the said report does not contain any finding against me. 7. In the absence of a finding in the TRR and any concrete allegation even in the Application, there is no case made against me and on this ground alone the application should be dismissed qua me. The paragraph 1.1.2.2 of the Application makes it clear that it is the Applicant's case that the purported benefit from the impugned transaction was only received by Respondent No. 2. Further, there is no allegation that I have derived any benefit from the Impugned Transaction. On this ground alone, it is submitted that the present Application ought to be dismissed qua Respondent No. 3.
5. Heard learned counsel for the both sides and perused the records.

5.1. Section 43 of the Code deals with preferential transactions and relevant time. Section 43 of the Code is as follows:

“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 subsection (2) to any persons as referred to in subsection (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 transfers —

(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.”

5.2. One of the ingredients for bringing a transaction within section 43 is “*a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor*”. The property is defined in Section 3(27) to include actionable claims. A book debt is an actionable claim and transfer of book debt to set off a liability results into transfer of a property. Section 3(34) includes any other form of transfer of right in the definition; accordingly, we do not find any substance in the argument that the adjustment by way of book entry does not result into a transfer of property in question.

5.3. In the present case, the amount receivable from the Respondent No. 1 which is a wholly owned subsidiary of the Corporate Debtor has been set off to pay of the liability due to Respondent No. 2, which is the holding company of the Corporate Debtor. The transaction of the adjustment resulted into reduction of receivables of the Corporate Debtor with consequent reduction in the payables. We note that the Respondent No.1 is a wholly owned subsidiary of the Corporate Debtor and value of its assets is reflected in the value of investments in the shares of the Respondent No. 1 held by the Corporate Debtor. Accordingly, a consolidation level qua the Corporate Debtor, the receivables from the wholly owned subsidiary stands nullified thus, neutralising the impact of this transaction on consolidated basis qua the Corporate Debtor. Hence, we are of the considered

view that no case of preference having been given to third party has been made out in the present case; because, even if this transaction is set aside, the Corporate Debtor will liable to pay to the Respondent No. 2 and its receivables from the Respondent No. 1 will reinstated. We have already noted that the value of the assets and liabilities of the wholly owned subsidiary is reflected in the financial statement of the Corporate Debtor; accordingly, reinstatement of receivable from the Respondent No. 1 shall on the other hand have the impact of diminishing the value of investment in the Respondent No. 1.

- 5.4. In view of above, we are of the considered view that no preference can ben said to have been given in terms of Section 43 of the Code in this case.
6. In view of the foregoing, IA 3648/2023 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)