

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON'BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 16.02.2023 AT 02:30 PM**

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|---|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA (IBC)/378/2022 in CP (IB) No.388/9/HDB/2019 |
| NAME OF THE COMPANY | Royaloak Steels Pvt Ltd |
| NAME OF THE PETITIONER(S) | Aadit Metal Trade Pvt Ltd |
| NAME OF THE RESPONDENT(S) | Royaloak Steels Pvt Ltd |
| UNDER SECTION | 9 of IBC |

ORDER

IA(IBC)/378/2022

Application is dismissed, vide separate orders.

Sd/-
MEMBER (J)

Sd/-
MEMBER (T)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.378/2022 in CP(IB) No. 388/9/HDB/2019
U/s. 43 of IB Code, 2016

In the matter of:

Mr. Rajkumar Mahto (Liquidator)

....Applicant

Vs.

M/s. Sunil Hitech Engineers Ltd. & Others

....Respondents

In the matter of:

M/s. Aadit Metal Trade Private Limited

....Operational Creditor

Vs.

M/s. Royaloak Steels Private Limited

...Corporate Debtor

Date of Order: 16.02.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Petitioner : Ms. Sarvani Desiraju, Advocate

For the Respondents : Ms. Rishika Kumar, Advocate
Mr. Amir Bavani, Advocate

Heard on : 03.02.2023

**[PER: BENCH]
ORDER**

1. This application is filed u/s 43 of the IBC 2016, seeking for a direction to the Respondents to restore the amounts which are received by them as part of the preferential transactions.

2. Briefly, the facts as stated in the application are as follows:
 - a. The Applicant was appointed as Interim Resolution Professional (IRP) by Order dated 15.10.2019 and was later regularized as Resolution Professional (RP). No Resolution Applicant came forward after the public announcement, hence, an application was filed for liquidating the Corporate Debtor and the same was allowed on 22.01.2021. The Applicant was appointed as Liquidator.

 - b. During the Corporate Insolvency Resolution Process (CIRP), the Committee of Creditors (CoC) consisted of only Operational Creditor and after the advertisement for liquidation of the Corporate Debtor, a claim was received from one Operational Creditor and another claim was received from one Financial Creditor.

 - c. On 11.03.2020, the Applicant appointed Shah Gupta & Co., Chartered Accountant to carry out the Transaction Based Audit. The Report of the said Forensic Audit was received by the Applicant on 23.11.2020. The Transaction Based Auditor identified certain sale transactions as preferential transactions, as these transactions were not supported by any documents.

- d. An application for avoidance of Preferential Transaction has already been filed against M/s. HGEL International Private Limited for sales made to them for which there is no recovery. The Applicant found it difficult to treat the entire sale amount from 17 entities as Preferential Transaction, on which the Transaction Based Auditor explained to the Applicant that these transactions have taken place without any supporting documents and there is no other option but to treat them as Preferential Transactions. Hence, this application.
3. Respondent No.1 filed counter denying the contents of the application and further stating that the Applicant had failed to make out any cause u/s 43 of IBC. There is no determination of any of the transactions to categorize them as preferential transactions. 1st Respondent is at an advanced stage of liquidation. The Applicant has not adduced any relevant evidence, documentary or otherwise, substantiating the averments in respect of the preferential transactions, which allegedly took place between the Corporate Debtor and Sunil Hitech Engineers Limited. The Transaction Based Audit report makes it clear that the 1st Respondent is not a related party to the Corporate Debtor. The Applicant has failed to discharge the onus of proving the litmus test as laid down u/s 43 of the IBC and failed to prove the fact as to how the Corporate Debtor has indulged in a preferential transaction. Even if it is accepted that the transaction between the Corporate Debtor and Respondent No.1 is a preferential transaction, it is beyond one year from the date of commencement of the CIRP and hence cannot be termed as preferential transaction.
4. On the above grounds, the Respondent seeks to dismiss the application.

5. Respondent No.10 filed a reply with the same contentions as made by the Respondent No.1.
6. The Respondents also relied on the judgement of the Hon'ble Supreme Court in *Civil Appeals No.8512-8527/2019 between Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited Etc. wherein, it was held as under:*

“Looking to the legal fictions created by Section 43 and looking to the duties and responsibilities per Section 25, in our view, for the purpose of application of Section 43 of the Code in any insolvency resolution process, what a resolution professional is ordinarily required to do could be illustrated as follows:

1. In the first place, the resolution professional shall have to take two major but distinct steps. One shall be of sifting through the entire cargo of transactions relating to the property or an interest thereof of the corporate debtor backwards from the date of commencement of insolvency and up to the preceding two years. The other distinct step shall be of identifying the persons involved in such transactions and of putting them in two categories; one being of the persons who fall within the definition of ‘related party’ in terms of Section 5(24) of the Code and another of the remaining persons.

2. In the next step, the resolution professional ought to identify as to in which of the said transactions of preceding two years, the beneficiary is a related party of the corporate debtor and in which the beneficiary is not a related party. It would lead to bifurcation of the identified transactions into two sub-sets: One concerning

related party/parties and other concerning unrelated party/parties with each sub-set requiring different analysis. The sub-set concerning unrelated party/parties shall further be trimmed to include only the transactions of preceding one year from the date of commencement of insolvency.

3. Having thus obtained two sub-sets of transactions to scan, the steps thereafter would be to examine every transaction in each of these sub-sets to find: (i) as to whether the transaction is of transfer of property or an interest thereof of the corporate debtor; and (ii) as to whether the beneficiary involved in the transaction stands in the capacity of creditor or surety or guarantor qua the corporate debtor. These steps shall lead to shortlisting of such transactions which carry the potential of being preferential.

4. In the next step, the said shortlisted transactions would be scrutinized to find if the transfer in question is made for or on account of an antecedent financial debt or operational debt or other liability owed by the corporate debtor. The transactions which are so found would be answering to clause (a) of sub-section (2) of Section 43.

5. In yet further step, such of the scanned and scrutinized transactions that are found covered by clause (a) of sub-section (2) of Section 43 shall have to be examined on another touchstone as to whether the transfer in question 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 per Section 53 of the Code. If answer to this question is in the affirmative, the transaction under examination shall be deemed to be of preference

within a relevant time, provided it does not fall within the exclusion provided by sub-section (3) of Section 43.

6. In the next and equally necessary step, the transaction which otherwise is to be of deemed preference, will have to pass through another filtration to find if it does not answer to either of the clauses (a) and (b) of sub-section (3) of Section 43.

7. Heard the Counsel for the Applicant and Respondent No.1. The other Respondents supported the argument of Respondent No.1. The Counsel for the Applicant submits that as per the report of the Transaction Based Auditor, some preferential transactions were noticed. She takes us through the said report, wherein it was observed as follows:

“We notice that all the main supporting documents relating to sales transactions were not held on record by CD. Lorry receipts in cases where there was physical movement of goods were also not provided to us. Necessary E-Way bills were not provided to us to track movement of goods. There were no documents through which we could confirm movement of goods”.

8. Hence, it is evident from the very report, that there are absolutely no supporting documents for the transactions that the Corporate Debtor has done with the Respondents. Moreover, the said report also shows the dates of the transactions which are all in the month of February, 2018, which is beyond one year prior to the date of the commencement of the CIRP period which is on 05.10.2019. Section 43 (4) of IBC, lays down that a preference shall be deemed to be given at a relevant time if a preference is given to a person other than

a related party during the period of one year preceding the insolvency commencement date.

9. It is not the case of the Applicant that the Respondents are related parties. Hence, the transactions with the Respondents have to be within one year prior to the commencement of the CIRP.
10. The transactions allegedly done by the Corporate Debtor with the Respondents are all beyond one year prior to the commencement of the CIRP.
11. Hence, without any sort of evidence that there were preferential transactions and without there being any evidence that the said transactions were done within one year prior to the commencement of CIRP, it cannot be held that the transactions done by the Corporate Debtor with the Respondents are preferential transactions.
12. On the above reasons, **IA.No.378/2022 in CP(IB) No. 388/9/HDB/2019 is dismissed and accordingly disposed of.**

**Sd/-
(CHARAN SINGH)
MEMBER (TECHNICAL)**

**Sd/-
(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

VL