



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV

IA-2116/2022 in C.P.(IB)-2146(MB)/2019

Under Section 43 of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Chetan T. Shah

...Resolution Professional

Vs.

Mr. Jayesh Vinod Valia Respondent-1
(*Ex-MD & Promoter of the CD*)

Mr. Sunil Vasantao Patil Respondent-2
(*MD of the CD*)

Mr. Jayesh Palsanekar Respondent-3
(*CFO of the CD*)

Pushpanjali Drums Pvt. Ltd. .. Respondent-4
(*Preferred Creditor*)

RV Lifestyle Ltd. Respondent-5
(*Preferred Creditor*)

Vas Educomp Pvt. Ltd. Respondent-6
(*Preferred Creditor*)

In the matter of

Stressed Assets Stabilization Fund

...Financial Creditor

Vs.

Precision Containeurs Limited

...Corporate Debtor

Order Pronounced on : **21.03.2023**



Coram:

Hon'ble Shri Kishore Vemulapalli : Member (Judicial)

Hon'ble Shri Prabhat Kumar : Member (Technical)

Appearances:

For the Applicant : Mr. Mayank C. Padiya, Authorised Representative and Mr. Chetan T. Shah, RP.

ORDER

Per: Vemulapalli, Member (Judicial)

1. This Application has been filed by the Resolution Professional on 22.07.2022 under Section 43 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') on behalf of the Committee of Creditors (CoC) seeking this Adjudicating Authority to declare a sum of ₹2,43,40,7907/- as preferential transactions and direct all the respondents to return the amounts into the account of the Corporate Debtor.
2. The facts leading to the Application are as under:
 - 2.1 Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an order dated 10.03.2022 of this Court in C.P.(IB)-2146(MB)/2019 on an application filed by Stressed Assets Stabilization Fund (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code 2016. Mr. Ramnarayan Rajaraman (Reg. No.: IBBI/IPA-002/IP-N0006992018-19/12204 was appointed as Interim Resolution Professional (IRP), who was later replaced by Mr. Chetan T. Shah having Registration No.: IBBI/IPA-001/IP-P00026/2016-17/10059 as RP in the first CoC meeting



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-2116(MB)/2022 in CP(IB)-2146(MB)/2019

held on 08.04.2022 and the same was confirmed by this Adjudicating Authority vide an order dated 26.04.2022.

2.2 Based on the Transaction Auditor Report and other documents/information/material collected during the process, the Applicant most respectfully submits as follows:

2.2.1 The Corporate Debtor has entered into following loan repayment transactions with the Unsecured Financial Creditors (related parties) within the look back period of two years, which in the opinion and determination of the Applicant are preferential transactions u/s 43 of the Code:

Summary of the loan repayment transactions:

Sr. No.	Name of Company	Amt Rs.
1	Pushpanjali Drums Pvt. Ltd.	28,48,057
2	RV Lifestyle Ltd.	2,81,650
3	Vas Educomp Pvt. Ltd.	2,12,11,000
	Grand Total	2,43,40,707

2.2.2 The Copies of the ledger statements in the books of the CD are appended to the application. Date-wise details of the above transactions with each party is as below :

Sr. No.	Name of the Party	Date of Transaction	Amount Rs.	Source of Funds
1.	Pushpanjali Drums Pvt. Ltd.	23-07-2020	5,68,350	Advance received for sale of Factory Shed, Supreme Industrial Estate, Bhimapor, Daman
		16-03-2021	22,79,707	Loan repayment received from Yashraj Containeurs Limited (related party)
	Total (A)		28,48,057	



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-2116(MB)/2022 in CP(IB)-2146(MB)/2019

2.	RV Lifestyle Ltd.	23-07-2020	2,81,650	Advance received for sale of Factory Shed, Supreme Industrial Estate, Bhimapore Daman
	Total (B)		2,81,650	
3.	Vas Educomp Pvt. Ltd.	31-03-2021	15,00,000	Loan repayment received from Yashraj Containeurs Limited (related party)
		28-06-2021	1,00,000	
		05-08-2021	10,00,000	
		11-08-2021	15,00,000	
		30-08-2021	3,40,000	Loan repayment received from Yashraj Containeurs Limited (related party)
		28-09-2021	9,50,000	
		12-10-2021	15,00,000	Full and final consideration against sale of Factory Shed, Supreme Industrial Estate, Bhimapore Daman
		12-11-2021	10,00,000	Loan repayment received from Yashraj Containeurs Limited (related party)
		22-11-2021	1,00,000	
		23-11-2021	4,00,000	
		24-11-2021	25,000	
		03-12-2021	10,00,000	
		04-12-2021	10,00,000	
		20-12-2021	3,23,000	From sale of three quarters situated at villages Chanod and Gunjan, Taluka, Vapi, District. Valsad
		12-01-2022	9,00,000	
		13-01-2022	6,00,000	
31-01-2022	89,73,000	Amount receivable from Yashraj Containeurs Ltd CYCL") was set-off with payable to Vas Educomp Private Limited by way of book entry		
Total (C)		2,12,11,000		
Grand Total (A+B+C)			2,43,40,707	

2.2.3 Source of Funds for the aforesaid loan repayment transactions with the related parties:

a. The following assets were sold by the Corporate Debtor within the look back period, proceeds of which were utilized to settle the dues of the aforesaid unsecured financial creditors (related parties):

Sr. No.	Description of Property	Date of sale	Instrument	Consideration (Rs.)	Buyer
1	Industrial Shed constructed on land admn. 264 sq. metrs. At survey- no. 261/1-A (23-A),	08-10-2021	Deed of Sale	24,63,380	Divyani Ajaykumar Patel &



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-2116(MB)/2022 in CP(IB)-2146(MB)/2019

	Supreme Industrial Area Bhimapore, Daman				Bhartiben Kiritkumar Desai
2	RCL 96/1107 and RCL 96/1108, type quarters respectively admin. Approx. 425.00 square feet carpet area each in the Vapi Notified Industrial Area within the village limits of Chanod, Taluka, Vapi, District: Valsad. Property was original allotted to the Company by GIDC by way of Indenture of Allotment dated 29.10.1988	31-12-2021	Deed of Assignment	9,00,000	East India Drums & Barrels Mfg. Pvt. Ltd. (related party)
3	RDL 1/5, type quarter admn. Approx. 600 sq. ft. carpet area in Vapi notified industrial area within the village limits of Gunjan, Vapi, District: Valsad.	31-12-2021	Deed of Assignment	6,00,000	East India Drums & Barrels Mfg. Pvt. Ltd.
	Total			39,93,380	

b. Utilisation of proceeds from loan receivable from YCL: On review of Annual Report of the Corporate Debtor for FY 2016-17, it was understood that 13,33,400 shares of Vas Infrastructure Ltd., held by the CD were pledged to SICOM Ltd. against the loan taken by associate concern, Yashraj Containers Ltd. These shares were liquidated by SICOM on 23-02-2012 (7,50,000 Shares) & 12-03-2015 (5,83,400 shares) consequent to invocation of the pledge. To recover the same, it was reported that an amount calculated by SEBI Guideline was booked and disclosed as loans and advances to Yashraj Containeurs Limited. Majority part of the amount received and/or receivable from YCL has been utilized by the CD in the following manner:



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-2116(MB)/2022 in CP(IB)-2146(MB)/2019

Payment made to	Amount (Rs. In Cr.)
Pushpanjali Drums Private Limited	0.22
VAS Educomp Private Limited	0.93
Set-off with Loan payable to Vas Educomp Pvt. Ltd.	0.90
Total	2.05

2.2.4 The Applicant humbly submits that provisions of Section 43 of the Code squarely apply to the loan repayment transactions of ₹2,43,40,707/- for the reasons given below:

- a) The loan repayment transactions are for the benefit of the said Creditors;
- b) transfer is for or on account of an antecedent financial debt which can be established from the ledger statements of the Corporate Debtor;
- c) Such transfer has the effect of putting such creditors in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53 because there were outstanding dues of SASF, Secured Creditor and the CD has not obtained any consent/NOC from the Secured Creditor for such transactions;
- d) The said transactions are neither in the ordinary course of business or financial affairs of the Corporate Debtor nor the said transactions are in the nature of creating new security as provided under u/s 43(3) of the Code.



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-2116(MB)/2022 in CP(IB)-2146(MB)/2019

2.3 The Respondent has submitted that during the BIFR Proceedings, no Rehabilitation Scheme was approved and as such, the CD entered into One Time Settlement (OTS) with its four creditors out of the funds received from preferential issue of shares to promoter and promoter group company; borrowings from the promoter group Company; and sale of Vapi Unit. The chart representing financial creditors settled during the BIFR proceedings is given below:

Sr. No.	Name of the Lender	Details of settlement		Source of Funds
		Date of no due certificate as per OTS	Amount of settlement (Rs.in Lakhs)	
1	Dev Credit bank	09-10-2007	135.45	Out of the preferential issue of shares on 15-04-2006
2	Standard Chartered Bank	29-10-2009	60.00	Out of the preferential issue of shares on 15-04-2006
3	Sicom Limited (Central Bank of India, prior to assignment)	15-10-2010	185.00	Takeover of loan by Vas Infrastructure Limited
4	GSFC	19-10-2018	486.92	Loan from Vas Infrastructure Limited and other related parties and funds received from sale of Vapi Unit
	Total		867.37	

2.3.1 Having settled all the creditors as stated above, the CD was left with only one Secured Financial Creditor viz. Stressed Assets Stabilisation Fund (SASF) having security interest on the following assets as on the insolvency commencement date:

- (a) Land Adm. 2100 Sq. Meters situated at S No. 260/3, Village Bhimpore, Dist. Daman;
- (b) Factory building situated at S No. 61/B, on plot of land adm, 578 Sq. Meters, Silver Industrial Estate, Village Bhimpore, Dist Daman; and



(c) First charge on whole of the movable properties of the Company, both present and future save and except book debts,

2.3.2 As the Corporate Debtor is not in operation since more than a decade, the CD was dependent on the funds borrowed from the Promoter Group Companies to settle the liabilities and to meet the minimum statutory expenses and therefore, the Corporate Debtor has, from time to time, borrowed funds from the Promoter Group Companies on temporary basis with a view to meet mandatory and necessary corporate expenses as well as settle the liabilities of creditors to the extent possible and feasible.

2.3.3 I humbly submit that the funds borrowed from the Respondent no. 4 to 6 were utilized for the following purpose:

- i. Funds borrowed from Pushpanjali Drums Pvt. Ltd (R4) were utilized to settle the dues of SASF, the sole Secured Financial Creditor as on date. Bank Statement of the CD of the relevant period and ledger statement is enclosed as Annexure-B;
- ii. Funds borrowed from RV Lifestyle Ltd. (R5) were utilized for day-to-day essential expenses.
- iii. Funds borrowed from Vas Educomp Pvt. Ltd. (R6) were utilized to repay the outstanding loan of Vas Infrastructure Limited ("VIL"). The loan from VIL was taken to repay liabilities of Gujarat State Financial Corporation ("GSFC") as per the OTS approved during BIFR Proceedings. Copy of the ledger statement and bank statements are annexed to the reply.



2.3.4 I say that SASF, the only secured financial creditor, which could have been adversely affected due to the alleged preferential transactions, do not have any charge on the assets from which the payments are made. Summary of sources funds, complete details of which are given in the Application, is given below:

Source of Funds	Amount Rs.
Sale of Assets	38,50,000
Payment received from Yashraj Containeurs Limited ("YCL")	1,15,17,707
Total	1,53,67,707

As regards balance of ₹89,73,000/-, it is merely a book entry in the books of accounts.

2.3.5 As can be seen from above, majority of the source of funds is from YCL, which is a promoter group company. Even receivable from YCL was not on account of any money advanced by the CD but only on account of receivables booked in the account of the CD due to invocation of pledge of shares given in favour of SICOM.

2.3.6 Limited as stated in application at para VII (7.2) of the Application. It may be noted that SASF had no lien, charge or any type of security interest on the said amount booked as receivable from YCL as a consequence of the invocation of pledge of shares by SICOM.

2.3.7 It is humbly submitted that since SASF, the only secured financial creditor, does not have any security interest qua the assets from which the payments were made, SASF has not been put into any disadvantageous position.



Therefore, the alleged preferred creditors cannot be said to have gained beneficial position than they would have been in the event of distribution of assets being made in accordance with Section 53 of the Code.

2.3.8 From the above facts, it become clear that the aforesaid transactions are in the nature of ordinary course of financial affairs of the CD because right from the beginning all the creditors were settled from the funds borrowed/investment made by the promoter/promoter group companies since the CD has been non- operational for more than a decade.

3. We heard both Counsel and perused the material available in the record.

3.1 It is noticed that the Corporate Debtor was holding investments which were pledged to secure the loan taken by its associate company i.e. M/s. Yashraj Containeurs Ltd. On default of associate company in repayment of loan taken from SICOM, the investments held by the Corporate Debtor were liquidated by the lender and amount was adjusted against the loan taken by its associate company. Consequent to that, its associate company owed an amount, equivalent to value of its investment, to the Corporate Debtor and this amount was paid back to the Corporate Debtor on various dates. The Corporate Debtor repaid loans availed from three associate companies amounting to ₹2,43,40,707/-.

3.2 Apart from this, Corporate Debtor received a sum of ₹39,93,380/- against sale of assets of the Corporate Debtor. The Applicant has submitted that the transactions of repayment took place within the period of two years and is in the nature of preferential transactions as such repayments have resulted



into a preference to the related party for an antecedent debt which has the effect of putting such related party in a beneficial position then it would have been in the event of distribution u/s 13 of the Code.

3.3 The Respondent has filed reply dated 12.02.2022 and submitted that Corporate Debtor had received a sum of ₹38,50,000/- from sale of assets and ₹1,15,17,707/- received from Yashraj Containeurs Ltd. totaling to ₹1,53,67,707/- and balance of ₹89,73,000/- represents merely a book entry. However, the respondent has not clarified what was the effect of this book entry. It is further submitted that Corporate Debtor paid total sum of ₹867.37 lakhs in terms of OTS with four creditors and given the source of repayment of such payment. It is also stated that one of the sources was amount received from sale of assets of the Corporate Debtor.

3.4 We find that a sum of ₹1,15,17,707/- received from Yashraj Containeurs Ltd. was against the liquidation of investments by the lenders of Yashraj Containeurs. Though, the Respondents have submitted that this money was raised from the associate companies by the Corporate Debtor to pay towards the OTS entered into with other creditors, the facts emerging from the records show that such repayment of loan received from M/s Yashraj Containeurs Limited compensated the Corporate Debtor for its Investments liquidated by the lender of M/s Yashraj Containeurs Limited. Accordingly, this amount received from Yashraj Containeurs is in the nature of reimbursement of value of investment held by the Corporate Debtor and not refund of money raised for payment of OTS dues.



3.5 Section 43 of the Code provides that a repayment of loan to a related party within two years towards antecedent debt in preference to other similarly placed lender(s) is a preferential transaction if such repayment has the effect of putting such related party in an advantageous position than what it would have received in terms of provisions of section 53 of the Code. In the present case, there are other creditors of the Corporate Debtor, including SASF, who are unsecured and similarly placed as the related parties of the Corporate Debtor, to whom the alleged payments have been made in preference to other creditors; such payments are towards antecedent debt and has the effect of putting related party in an advantageous position than the other similarly placed creditors; and such related party have received an amount more than what they would have received in accordance with the provisions of section 53 of the Code; and such repayment of loan to related party is not a transaction in its ordinary course of business.

3.6 In view thereof, we agree with the contention of Applicant that the sum of ₹1,15,17,707/- is preferential transaction u/s 43 of the Code and the Respondents are liable to refund this money to the Corporate Debtor u/s 44(1) of the Code. As regards amount realized from sales of assets, it is held similarly as the Applicant has identified this transaction with the repayment made to the related party. At last, the book entry has effect of setting of one receivable from the related party with the liability of another related party results into transfer of property in form of its Debtors and its makes the other party (debtor) of the Corporate Debtor as creditor of such related party (creditor) and the same is also in nature of preferential transaction, even though the same is represented by the book entry.



Section 44 of the Code provides that -

“(1) The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:
(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
.....;”

3.7 In view of provisions contained in section 44(1) of the Code, we direct the Respondent(s) named in column (2) to pay the amounts stated in Column (3) of table below to the Corporate Debtor within 30 days of date of this order –

Sr. #	Name of Company	Amt Rs.
1.	Pushpanjali Drums Pvt. Ltd.	28,48,057
2.	RV Lifestyle Ltd.	2,81,650
3.	Vas Educomp Pvt. Ltd.	2,12,11,000
	Grand Total	2,43,40,707

3.8 In view of the above findings, this Application (IA-2116/2022) is **allowed** and disposed of accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

21.03.2023 / pvs