IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT – VI, NEW DELHI

Item No. 703
I.A/2337/2022 IN IB-1017/ND/2020

IN THE MATTER OF:

A ONE GREENFIELD PVT. LTD.

...PETITIONER

VERSUS

RSJ DEVELOPERS PVT. LTD.

...CORPORATE DEBTOR

AND IN THE MATTER OF-

PUNEET SAKHUJA
(LIQUIDATOR OF RSJ DEVELOPERS PVT. LTD.)

Order under Section 43, IBC,2016

Order delivered on 31.08.2023

CORAM:
SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.
I.A/2337/2022 stands allowed.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 2337/2022

IN

Company Petition No. (IB) – 1017/ND/2020

Under Section 43 r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

A ONE GREENFIELD PVT. LTD.

...PETITIONER

VERSUS

RSJ DEVELOPERS PVT. LTD.
(UNDER LIQUIDATION)

...CORPORATE DEBTOR

AND IN THE MATTER OF-

PUNEET SAKHUJA
(LIQUIDATOR OF RSJ DEVELOPERS PVT. LTD.)
At: 43, 2ND FLOOR, SECTOR-3A,
RACHNA, VAISHALI,
GHAZIABAD, UTTAR PRADESH-201010

...APPLICANT

VERSUS

1. SHIV KUMAR JATIA
(SUSPENDED DIRECTOR OF THE CORPORATE DEBTOR)
B-50, GULMOHAR PARK,
NEW DELHI-110049

...RESPONDENT NO. 1

2. ARCHANA JATIA
(SUSPENDED DIRECTOR OF THE CORPORATE DEBTOR)
B-50, GULMOHAR PARK,
NEV DELHI-110049

...RESPONDENT NO. 2

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri Rahul Bhatnagar, Member (Technical)

For the Applicant: Mr. Milan Singh Negi

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Order Pronounced on: 31.08.2023

1. This application has been filed under Section 43 read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 for issuance of appropriate directions in terms of Section 44 of IBC. The Applicant in the present application has prayed for the following reliefs: -

i. *Direct the Respondent No. 1 & 2 to pay a sum of Rs. 4,93,00,000/- back to the Corporate Debtor, which was preferentially paid/transferred to the Respondents.*

ii. *Pass such other order(s) as may deem fit in the circumstances of the case.*

2. The brief facts for filing the present Application as averred by the Applicant are as follows:

i. That the CIRP in the instant case was initiated vide order dated 01.10.2021 passed by this Tribunal and one Mr. Naresh Munjal was appointed as IRP of the Corporate Debtor. Thereafter, in the first 1st meeting of the CoC held on 02.11.2021, the Applicant herein was appointed as the RP of the Corporate Debtor. The said appointment was confirmed by this Tribunal vide order dated 27.11.2021.

ii. That after taking the control and management of the Corporate Debtor, the Applicant, then Resolution Professional, had gone through the book of accounts and other relevant records of the corporate debtor, when-- it was noted that payments to the tune of Rs.4,93,00,000/- were made by the Corporate Debtor to the Respondent No.1 during the period 10.08.2020 to 24.09.2020. This payment has been made from the bank account of the corporate debtor maintained with South Indian Bank bearing A/c no. 0358073000002944, towards repayment of unsecured loan to the Respondent no.1.

iii. Accordingly, on the basis of the findings, the Applicant formed an opinion, followed by a determination under regulation 35A of CIRP Regulations, 2016, that the Corporate Debtor had been subjected to transaction falling within the ambit of preferential transaction under section 43 of the Code.

3. The Respondents were set ex-parte vide order dated 10.05.2023.

4. Section 43, IBC, 2016 defines Preferential Transaction as under:

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.

Further, Section 43(4) defines the relevant time during which a transaction shall be deemed to be a preference transaction as under:

(4) 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. From the above, it is clear that any transfer of property or interest on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor to a related party during the period of two years preceding the insolvency commencement date that has the effect of putting such party in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53 shall be deemed to be a preferential transaction. The term 'Related Party' is defined under Section 5(24) of the IBC, 2016 and includes a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor.

6. That is clear from the bank statements of the Corporate Debtor that amounts to the tune of Rs. 4,93,00,000/-were transferred from the bank account of the Corporate Debtor to the bank account of Mr. Shiv Jatia, the suspended director of the Corporate Debtor/ Respondent No. 1 herein, during the period 10.08.2020 to 24.09.2020. The Respondent No. 1 being the Ex-Director of the Corporate Debtor comes within the definition of Related Party under Section 5(24) of the IBC, 2016. Therefore, the relevant period as per Section 43(4) will be the period of two years preceding the insolvency commencement date, i.e., 01.10.2021.

7. The ledger account of the Respondent No. 1 in the books of the Corporate Debtor duly reflects that the payments from the accounts of the Corporate Debtor were made towards the repayment of the loan by the Respondent No. 1. Further, the balance sheets of the Corporate Debtor for the F.Y-2019-

20, F.Y 2020-2021 and from 01.04.2021 till 01.10.2021 reflects the unsecured loan of the Respondent No. 1 which makes it evident that the transfers to the Respondent No. 1 were on account of Unsecured Loans.

8. The Corporate Debtor made payments to the Respondent No. 1, which was in preference to the other creditors, only with a view to siphon off such funds away from the reach of other creditors, in the event the CIRP of the corporate debtor was admitted. And in the event the corporate debtor's assets are liquidated and distributed in terms of the waterfall mechanism provided under section 53 of IBC, the Respondent No. 1, is clearly at a better position than the existing creditors/ stakeholders, which creditors otherwise would have been at a better position, if such transaction had not taken place.

9. In light of the above, the transactions entered between the Corporate Debtor and the Respondent No. 1 clearly fall under the ambit of Preferential Transaction, as the conditions laid down under section 43 of IBC are duly fulfilled, therefore, LA. No. 2337 of 2022 stands allowed and the Respondent No. 1 is directed to pay a sum of Rs. 4,93,00.000/- back to the Corporate Debtor. However, since the Applicant has not been able to establish any Preferential Transactions between the Corporate Debtor and the Respondent No. 2 therefore, we are of the view that she was not a party in said preferential transactions.

10. Accordingly, the present application is hereby Allowed.

11. The Learned Registrar is directed to send a copy of the order to the parties concerned.

SD/-	**SD/-**
(RAHUL BHATNAGAR)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**