

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)
IA-657/ND/2021
IN
Company Petition No. (IB)-2068 (ND) 2019

IN THE MATTER OF:

Century Road Transport Pvt. Ltd.

...Operational Creditor

Versus

Tyson Retail Services Pvt. Ltd.

...Corporate Debtor

IN THE MATTER OF:

Adv. Rajiv Bajaj
Insolvency Professional,
IP Regn No. IBBI/IPA-002/IP-N00276/17-18/10834
4/180, Ground Floor, Backside
Subhash Nagar,
New Delhi - 110027

...Applicant/Resolution Professional

Order Delivered on: 22.12.2022

Under Section: 33(2) of the IBC, 2016.

CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Abhishek Vikram along with RP sh. Rajiv
Bajaj

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ORDER

PER SHRI P.S.N PRASAD, MEMBER (J)

This IA has been filed by Adv. Rajiv Bajaj, the Resolution Professional of Tyson Retail Services Ltd. (**“the Applicant”**) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, seeking the following main reliefs:

- a) *To ratify and pass the liquidation order of the corporate debtor, M/s Tyson Retail service Pvt. Ltd.*
- b) *To appoint the current RP Adv. Rajiv Bajaj as the Liquidator of the Corporate Debtor.*
- c) *To pass any other order in favour of the applicant in light of the facts and circumstances of the case.*

2. Facts of the case in brief are that the Operational Creditor, M/s Century Road Transport Limited had filed an Application bearing No. (IB)-2068/(ND)/2019 under Section 9 of the IBC, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP) against Tyson Retail Services Pvt. Ltd. The said Application was admitted by this Tribunal vide Order dated 04.06.2020 and Shri. Anil Matta was appointed as the Interim Resolution Professional (IRP).

3. That during the first meeting of the CoC, the appointment of Shri. Anil Matta was not confirmed by the CoC, however the expenses incurred by him till the date of the CoC was confirmed. Thereafter in the 2nd CoC meeting dated 22.10.2020, Shri Rajiv Bajaj Insolvency Professional, having IP Registration No: IBBI/IPA-002/IP-N00276/17-18/10834 was appointed as the Insolvency Resolution Professional in place of CA Anil Matta to conduct the CIRP of the corporate debtor. The said replacement of resolution professional was confirmed by this bench vide order dated 26.11.2020.

4. In terms of the Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

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IA 657/ND/2019 in CP No. (IB)-2068(ND) 2019

Century Road Transport Pvt. Ltd. Vs. Tyson Retail Services Pvt. Ltd.

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Regulations, 2016, the Interim Resolution Professional made an expression of interest in Form-G on 04.12.2020, the last date for submission of claim was 02.02.2021. The same was published in Jansatta (Hindi Edition) & Financial Times (English Edition). The said public announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

5. It is stated that only one expression of interest was received from one Mr. Jatin Hallan and a copy of the information memorandum was shared after receiving a confidentiality declaration, but no response has been received from him till date.

6. That during the 4th CoC meeting, the issue of liquidation of the corporate debtor was discussed and it was resolved unanimously by the CoC to accord approval for liquidation of the corporate debtor. Further also resolved to appoint the current RP Advocate Rajiv Bajaj to act as liquidator. The contents of the resolution passed in the 4th Coc Meeting dated 27.01.2021 is reproduced hereinafter:

Resolution:

Resolution passed without any modification:

“UNANIMOUSLY RESOLVED THAT pursuant to Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made there under expenses incurred by resolution profession of Rs.1000/- in addition to the expenses already ratified/approved by the members of CoC in last meeting held on 07.12.2020, are approved and ratified.”

“RESOLVED FURTHER THAT pursuant to Regulation 31(e) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made there under, the expenses presented by the RP at the meeting are ratified/approved and the same may be treated as part of the insolvency resolution process cost.”

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“RESOLVED THAT the assent of the members of CoC be and is hereby accorded for liquidation of the Corporate Debtor as there is no resolution plan expected.

“RESOLVED THAT the RP will continue to perform his functions for smooth conduct of CIRP till Liquidation order is passed.”

“RESOLVED FURTHER THAT the estimated CIRP cost including his fees to be paid to RP for one month or till liquidation order is passed whichever is earlier is

S.No.	Expenses	Amount
1.	RP professional fees of Rs. 1,25,000/- p.m.	1,25,000/-
2.	Advocate fee -Liquidation Application	20,000/-
3.	Advocate fee for making application Under Section 43,45,49,50 and 66	1,25,000/-
4.	Fees for other compliances	15000/-
5.	Fees for Statutory Auditor	10000/-
6.	Miscellaneous expenses	10000/-
	TOTAL	3,05,000/-

“RESOLVED THAT the liquidators fees for the period up to the dissolution of the corporate Debtor shall be Rs. 1,00,000/- (Rupees One Lakh) per month is approved by the COC plus out of pocket expenses and shall be contributed by the financial creditors as per their voting share every month .”

RESOLVED THAT the committee of creditors hereby approves liquidator’s fees of Rs. 1,00,000/- (Rupees One Lakh Only) per month plus all additional costs at actual of appointing legal counsel of the RP, NCLT filing, appointment of senior counsels. E-auctions, publication of Form-B, appointment of other professional etc. if required, Information Technology expenses, industry expert for evaluation if required, Stakeholders Meeting expenses and other out of pocket expenses and applicable taxes, to be paid to the liquidator at the beginning of every month, in advance.”

“RESOLVED THAT RP Mr. Rajiv Bajaj, will continue to be act as as Liquidator, approved by the CoC.”

“RESOLVED FURTHER THAT the liquidator’s fee is hereby approved and be fixed of Rs. 1,00,000/- per month excluding applicable taxes and out of pocket expenses till the order of dissolution of the company.”

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7. That the RP has also filed his 'written communication' / consent to act as Liquidator of the Corporate Debtor as required under Section 34(1) of the IBC, 2016. The consent form to act as the Liquidator in Form AA along with IBBI certificate is placed on record.

8. It is submitted that suspended board of directors had been served repeatedly by the application in terms of the directions of this bench and the service affidavits have been placed on record.

9. In the circumstances, this Bench is inclined to accept the Resolution of the COC and hereby order Liquidation of the Corporate Debtor.

10. In sequel to the above, **the IA is allowed, ordering Liquidation of the Corporate Debtor**, Tyson Retail Services Pvt. Ltd. in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:

- a) Adv Rajiv Bajaj, having IBBI Registration No. IBBI registration Number IBBI/IPA-002/IP-N00276/17-18/10834, is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;
- b) The Liquidator, is directed to issue public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c) The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d) This Order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;

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- e) Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- g) **The Registry is directed to communicate a copy of this Order by email to the Operational Creditor, the Corporate Debtor and Liquidator Adv. Rajiv Bajaj at the earliest but not later than seven days from today.**
- h) A copy of this Order be sent by the Registry and Liquidator to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, ROC shall send compliance report to the Registrar, NCLT within a period of 30 days;
- i) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board (IBBI) of India for their record.

21. IA-657/ND/2021 filed in IB-2068(ND)/2021 is allowed in the aforesaid terms and disposed of.

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(RAHUL BHATNAGAR)

Member (T)

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Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V
IA/826/2021
IN
(IB) 2068 (ND)/2019

IN THE MATTER OF:

CENTURY ROAD TRANSPORT PVT. LTD.

C-103, Twin Arcade, Military Road, Marol
Andheri East, Mumbai – 400059

...Operational Creditor

Versus

TYSON RETAIL SERVICES PVT. LTD.

D-9, 1st Floor, Sector-8, Dwarka

New Delhi- 110077

Represented by:

ADV. RAJIV BAJAJ

Insolvency Professional,

IP Regn No: IBBI/IPA-002/IP-N00276/17-18/10834

4/180, Ground Floor, Backside

Subhash Nagar, New Delhi-110027

...Corporate Debtor

AND

IN THE MATTER OF:

ADV. RAJIV BAJAJ

Insolvency Professional,

IP Regn No: IBBI/IPA-002/IP-N00276/17-18/10834

4/180, Ground Floor, Backside

Subhash Nagar, New Delhi-110027

...Applicant/Resolution Professional

AND

IN THE MATTER OF: -

1. Rittik Sharma, S/o Rajesh Sharma, Plot no.9 Dwarka South, Sector 8 Dwarka, Delhi. 110077.
2. Dharamendra Grewal, S/o Chander Bhan Grewal, 281 Near Sampat Mill, Bijwasan Delhi – 110061.
3. Rakhi Sharma, D/o Sudhir Kumar Chattopadhaya, Flat no, 335, Pocket-16 Adarsh Apartment, Dwarka NSIT Dwarka Delhi-110078.
4. Aritunjay Kumar, S/o Dr Yugeshwar Roy Janta Road, Vir Kunwar Singh Nagar, Phulwari Patna Bihar- 800001

IA/826/2021
IN
(IB) 2068 (ND)/2019

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5. Lakhan Lal, S/o Raghu Nath Sao, B-112, T Dhurwa Ranchi Jharkhand-834004.
6. Dinesh Kumar, S/o Dalal Singh, C-303 Raj Krishna Tower Shanti Nagar, Durbhat Ponda Goa 403401

Order delivered on: 22.12.2022

SECTION: U/s 66 and 67 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the IBC Rules

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT: -

For the Applicant: Adv. Abhishek Vikram

For the Respondents: Adv. Shivankar for R-1, 2 & 3

ORDER

PER- SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

The present Application under Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "the Code") is filed on 08.02.2021 by the Applicant/Resolution Professional Mr. Rajiv Bajaj of the Corporate Debtor i.e. Tyson Retail Services Private Limited, appointed vide order dated 26.11.2020 of this Tribunal, seeking the following reliefs:

- a) To take on record the Transactional Audit Report dated 20.01.2021 reporting fraudulent transactions amounting to Rs. 1,69,46,533/-.
- b) Pass appropriate orders directing the Directors/partners employees/ representatives/ nominees/ agents of CD & all such persons involved in such fraudulent transactions amounting to Rs. 1,69,46,533/- to restore/ make contribution to the assets of the CD;

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IN
(IB) 2068 (ND)/2019

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c) And / or pass any other further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.

2. That a company petition bearing no. Company Petition (IB) No. 2068/ND/2019 titled as Century Road Transport Pvt Ltd Vs. Tyson Retail Services Pvt Ltd was filed before this bench, which was admitted vide order dated 04.06.2020 and CIRP was initiated against the corporate debtor. Thereafter, an application for exclusion for 62 days from CIRP period was filed before this Hon'ble Bench and vide the order dated 07.09.2020, this Bench was pleased to exclude the time period from 04.06.2020 to 04.08.2020, while calculating the CIRP period.

3. Subsequently, a list of Creditors along with amount claimed, claims admitted, security interest, if any in respect of claims were prepared and Committee of Creditors was constituted.

4. The 1st meeting of the CoC, was conducted on 21.09.2020, wherein the IRP appointed by this bench, Shri Anil Matta, was not confirmed by the CoC, however, the expenses incurred by him till the date of the first meeting of the CoC was confirmed to be paid off. Thereafter in the 2nd CoC meeting dated 22.10.2020, Shri Rajiv Bajaj Insolvency Professional, having IP Registration No: IBBI/IPA-002/IP-N00276/17-18/10834 was appointed as the Insolvency Resolution Professional in place of to CA Anil Matta to conduct the CIRP of the corporate debtor. The said replacement of resolution professional was confirmed by this bench vide order dated 26.11.2020.

5. The 3rd CoC meeting was conducted on 07.12.2020 through video conferencing wherein a transaction auditor was appointed to carry out audit for the identification of the transactions falling under Section 43,45,49, 50 & 66 of the IBC. Further, valuers were also appointed for determining the fair value and liquidation value of the assets of the corporate debtor in accordance with Section 35 (2) of the IBBI rules, 2016.

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6. During the CIRP, the transaction Audit report dated 20.01.2021 was submitted by KPCK & Co Chartered Accountants, the auditor appointed for carrying out the transactions audit, pointing out the various financial transactions during the period of 1st April, 2018 to 4th June, 2020 which according to the Auditor amount to fraudulent transaction by the Corporate Debtor. The said transactions to the tune of Rs. 1,62,31,863/- were for the year 2018-19 and Rs. 7,14,670/- for the year 2019-2020. The Transaction Auditor's report was also shared with the CoC for their consideration. Further, the auditor also stated that while examining the records of corporate debtor it has been observed that crores of rupees had been advanced by the CD to several parties which have failed to repay the same till date and no steps to recover the same have been taken. The directors past or present must be held liable and must be held accountable for the said transactions. It is further submitted that large amount of cash transactions have been done to various vendors over and above the limits as defined under the provision of Income Tax Act, 1961. Moreover, no agreement/information/documents were available to verify the authenticity of the amount which is booked as speculation loss by the company.

7. It was also observed that loans have been generally given by the Corporate Debtor to their related/potential related parties. Also, loans have been advanced to the directors by the company which are contrary to law and simply illegal. In this regard, the applicant through email dated 20.01.2021 tried to contact the past director and other beneficiaries to pay back the loan, however, no reply has been received by the applicant till date. Moreover, there are cases wherein certain invoices have not been paid. The corporate debtor is required to receive money from some companies. In this regard, it is submitted that the books of account of the CD show that they are required to receive Rs.36,20,336.55/- from one Pantel Integrated Logistics Limited. The applicant has also sent multiple emails and reminders to Pantel Integrated Logistics Limited, however, till date no reply has been received from them.

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8. It is further stated that an amount of Rs. 22,24,100/- is receivable from Bata India, the applicant has sent them emails dated 21.12.2020 and 31.12.2020 regarding the same, however, they are only accepting their liability of only INR 10,54,510/-, vide reply dated 11.01.2021.

9. The 4th CoC meeting, was conducted on 27.01.2021, wherein the issue of liquidation of the corporate debtor was raised and it was resolved unanimously to accord approval for liquidation of the Corporate Debtor as no resolution plan is expected. Pursuant to this an application for liquidation was filed under Section 33(2) and pending before the adjudicating authority vide IA no- IA/657/2021.

10. It is submitted that from the foregoing transaction audit report dated 20.01.2021 submitted by the Auditor it appears that large scale financial transactions have taken place which are doubtful and fraudulent in nature. Further the Loans & Advances are either written off or assigned to other parties; a Sundry debtor have been written off, Interest income written off reversed and involves many numerous parties who are fraudulent and doubtful in nature. Therefore, in view of the above transaction the CoC in its 4th meeting dated 27.01.2021 also resolved to approach the adjudicating authority for filing of an application for the transactions falling within the ambit of Section 43, 45, 49, 50 and 66 IBC, 2016, to report fraudulent transactions amounting to Rs. 1,69,46,533/-.

11. The Respondent nos. 1, 2 and 3 have raised objections against the prayers of the applicant in their reply dated 22.12.2021 and stated the following:

- i. The Respondent no. 3, Rakhi Sharma had resigned from the Directorship of the Company on 22.05.2020. Thus, only 2 people were directors of the Corporate Debtor on the day of initiation of the CIRP.
- ii. The Answering Respondents and other Directors were not given an opportunity to discuss or deliberate the matters which have led to the

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IN
(IB) 2068 (ND)/2019

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incorrect and illegal findings by the Auditor in its report dated 20.01.2021.

- iii. The respondent have relied upon the case of Hon'ble Supreme Court of India in Civil Appeal Nos. 8512-8527 of 2017 titled *Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank ETC, wherein* vide its order date 26.02.2020, the apex court observed that the allegations under Section 43 of the Code (Preferential Transactions) are different from the transactions which are undervalued and the RP is required to file a separate application for seeking the avoidance of Preferential, Undervalued or extortionate transactions (as the case may be). Accordingly, stated that the present applicant has failed to follow the guidelines laid down by the Apex court in the present matter and has preferred a single application alleging preferential and undervalued transactions and seeking avoidance thereof. Therefore, the respondent seeks dismissal of the present application on this ground to comply with the directions of Hon'ble Supreme Court of India.
- iv. Further stated that considering the observations made in audit report at Page 87, it is clear that no case has been made under Section 43, 45, 49 and 50 of IBC, 2016. The only accusation is with regard to the Section 66 of the code, which burden has not been discharged by the RP. Further also highlighted that on Page 81 of the audit report it has been stated that the company has not provided proper documentation against such cash transactions.
- v. The respondents have stated that no opportunity was granted to them to represent their case. That RP wrote one email on 20.01.2021 asking for comments and inputs within 5 days i.e. 25.01.2021. The amount of documentation involved was voluminous running into thousand pages and there was no time for meaningful deliberations on any of the observations which were made in the Special Transaction Report dated 20.01.2021. The Answering Respondents were not given any audience at the COC meetings to put forth their point of views or provide any documentation whatsoever. It is submitted that at the 4th

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COC meeting held on 27.01.2021, which is annexed at Page 104 of the Application, it is stated that the representative of the Union Bank of India had stated that: *RP shared the draft audited report with the members of CoC and representative of Union Bank of India Mr. Prabhat Singh submitted that the audit report must be elaborated and explained in such manner before filing application with the adjudicating authority to decide the transaction falling under Section-66.*

- vi. Further, it is also submitted that apart from annexing the Special Audit Report in the present Application, there has been no attempt at explaining and elaborating how the present transactions as preferential transactions under Section 43 or undervalued transactions under Section 45 or transactions to defraud creditors under Section 49, or extortionate credit transactions under Section 50 or fraudulent or wrongful trading under Section 66. Further also stated that the Special Audit Report itself noted that there has been no opportunity granted to the answering respondents to make any submission. Further at Page 76 the auditor noted that we have not carried out any due diligence or independent verification or validation to establish the accuracy or sufficiency of financial information provided to us.
- vii. The respondent states that certain documents are being filed by him along with the present reply to demonstrate that the impugned transactions as per the transaction audit report are bonafide and in normal course of business and were not with the intent to defraud the creditors or run the operations of the corporate debtor in an illegal manner.
- viii. Further submitted that the Corporate Debtor was involved in providing transport facilities to other industries under the trucking industry. Various expenses of the corporate debtors were in cash, and various payments which were received from the various clients of the corporate debtors was also in cash. These can be seen from a perusal of the Sales Accounts ledger of the Corporate Debtor for the Financial Year 2018-2019. The total of Rs. 3,18,22,541.68/- has been further

split into Inter Sales-TBB-GST, Sales To-Be-Billed and To Pay Freight. On perusal of the Inter Sales-TBB-GST the turnover of the corporate debtor could have been ascertained. The to Pay Freight shows the income of CD received in cash and accordingly, adjustments were made in the ledger. The respondents have filed the evidence of salaries paid, copy of invoices and amounts paid in cash to vendors have been filed which were the tokens taken from the employees, sub-contractors and drivers for payment of cash.

- ix. As regards the Respondent No. 2, Mr. Dharmendra Grewal, it is stated that he had been appointed to the Board of Directors of the Corporate Debtor on 17.05.2018. During his tenure, he had advanced loans to the Corporate Debtor for meeting its day-to-day expenses and running the business. The Answering Respondent No.2 had loaned an amount of INR 82,39,000/- to the corporate debtor, to keep it as a going concern. Thus, it was under the ordinary course of the business or financial affairs of the corporate debtor. The Special Audit Report @ Page 81 read with the ledger statement would show that there were the repayment of the loan monies which had been invested in the Company.
- x. The Special Audit Report notes that various sundry creditors have been transferred to the ledger with the name of "RDC Logistics (Rakesh Sharma)" to write off their balances. While it is true that various small creditors were transferred to the RDC Logistics but that was for administrative and convenient reasons. It is incorrect to state that any write off took place of the small creditors, as a matter of fact all the small creditors which were transferred to RDC Logistics continue to remain as creditors of the Company. No proof or evidence had been put forwards either the Special Audit Report or in the Application which exhibits that they been written off. On the contrary, the creditor balance of RDC Logistics has increased for any transfer which took place in its ledger as is evidenced by the entry dated 30.09.2018.

IA/826/2021
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- xi. The respondents submit that all GST records of the Corporate Debtor have been filed and are ex-facie correct. The Special Audit Report correctly notes that the GST category of the Corporate Debtor was in the category of ZERO Rated or EXEMPTION category. The Report incorrectly notes that Reverse Charge Mechanism will be applicable under the CGST Rules 2017, as these were not in force and applicable at the time the corresponding invoices were raised by the Corporate Debtor. Further it is stated that there are no reconciliation differences under the GST filings which have been made by the Corporate Debtor. The reasons it may appear so is because the GST filing portal of the Company was disabled sometime in 2019, and thus it could not file the returns post that. However, all the filings in FY 2017-2018 and FY 2018-2019 were duly made in the GST filing portal.
- xii. Also submitted that there has been no intent to defraud the creditors of the Company. It is submitted that as can be seen from a reading of the above, all the transactions and the invoices in the Company were in the ordinary course of business, and at arm's length. No payment which was made was either exorbitant or unconscionable.
- xiii. **With Regards to Preferential Transactions:** It is stated that the Hon'ble Supreme Court in the case of Anuj Jain Vs. Axis Bank Limited & Ors. has noted the parameters to be met for any application. In terms of the same the application filed by RP has failed to demonstrate the allegations to be preferential and has put any of the respondents in beneficial position that it would have been in the event of distribution of assets being made in accordance with the Section 53 of the IBC Code. Further as regards the respondent No. 2, who had loaned the monies in 2018, the RP has failed to clarify which was an antecedent financial debt or operational debt owned by the corporate debtor.
- xiv. The relevant time for computation for related party transactions is two years prior to the CIRP i.e. 04.06.2018 and for non-related party transaction is one year prior i.e. 04.06.2019. Thus, it is submitted that the Special Audit Report which lists out all the transactions from

01.04.2018 to 04.06.2020 does not correctly capture the relevant time period. Thus, the following entries which are noted in the Special Transaction Audit at page 81 are to be disregarded as they fall outside the scope of the relevant time:

- a. 01.04.2018: Lorry Freight - Rs. 5,75,000
- b. 30.04.2018: Loan Account - Dharmendra Garewal - Rs. 5,90,000
- c. 28.05.2018: Loan Account - Dharmendra Garewal - Rs. 5,90,000
- d. 31.05.2018: Lorry Freight - Rs. 5,75,000
- e. 31.05.2018: Loan Account - Dharmendra Garewal - Rs. 5,90,000
- f. 31.03.2019: Jaat Golden Transport - Rs. 7,03,631
- g. 31.03.2019: Truck App - Rs. 3,46,305
- h. 31.03.2019: Conway Trans 14 feet Vehicle - Rs. 1,39,154
- i. 31.03.2019: Kernel Vedor - Joginder Singh - Rs. 10,58,773

- xv. The applicant has failed to demonstrate the relevant period of avoidable or preferential transactions. Further the table head under Loans and Advances (@page 84 of the Application) assigned and/or transferred does not mention any date between 01.04.2018 and 31.03.2020. Thus, it is not possible to determine what the relevant time period is for what kind of parties under the “*Loans and Advances Assigned & Transferred*”. Further also stated that in the entire audit report the applicant has failed to demonstrate which the unrelated party and which are the related party in the transactions. The directors report for the FY 2018-19 stated that company did not have any subsidiary/ associate/joint venture companies. Further there are no related parties in the transaction which took place during this period. Accordingly in terms of the same, it is stated that the whole report is based on an assumption made by the RP as is captured on Page 87 of the report, wherein it is stated as “on this basis we have assumed them as related party as there was no information provided to us.”

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12. The applicant in the rejoinder dated 27.01.2022 has submitted as follows:

- i. The factum of Respondent No. 3 having resigned from the directorship of the Corporate Debtor has no bearing on the issue at hand.
- ii. The Respondents were given enough opportunity by the Applicant to explain their position and the discrepancies in the Special Transaction Audit Report noted by Auditors. The Respondents, in their reply dated 27.01.2021, have verbatim copied the contents of Auditor's Report and provided an evasive reply, that also with respect to only 2 issues, amongst the many raised by the Auditors. However, have failed to provide any proper explanation.
- iii. The Applicant stated that an email dated 30.11.2020 (4 days after his appointment) was sent to the Corporate Debtor asking for exhaustive list of documents & information. The Respondent, in its reply dated 02.12.2020, refused to give the requisite documents & information. Also stated that the Respondents were intimated about the calling of CoC meetings through proper notices, vide emails dated 05.12.2020 and 20.01.2021. However, none of the Respondents attended the meeting of the CoC or took part in any of the proceedings.
- iv. The Applicant has not moved the present Application under Section 43 or Section 45 or Section 49 or Section 50 but only under the provisions of Section 66 of the IBC. The Application is based entirely on the conclusion arrived at by the Special Transaction Auditors in their Report. Accordingly, the dictum laid down by the Hon'ble Supreme Court in Anuj Jain v. Axis Bank ETC is not applicable to the present case.
- v. The Special Transaction Audit Report is prepared on the basis of the documents and data provided to the auditors which are part of record of the Corporate Debtor and made available to the Application as of the date of CIRP. The said documents were prepared by auditors when the Respondents were in control of the Corporate Debtor and running

day-to-day affairs of the Corporate Debtor. There was no need for Special Transaction Auditors to independently verify the documents or conduct any due diligence of their own.

- vi. The Respondents claim that expenses were paid in cash for diesel, toll, surcharges and drivers where the total sales are for Rs. 3,18,22,541. However, as per standard industry practise (transportation industry) and accounting standards only 50% of the total sale amount is attributed towards such expenses. It may be noted that the Corporate Debtor only had 5 trucks at its disposal and it is not possible to incur such high amount of expenses only through 5 trucks.
- vii. The Respondents have annexed a copy of the Sales-To-Be-Billed for the financial Year 2018-19 which reflect the amount to be Rs. 1,80,14,784.50/-. As per accounting standard, "Sales-To-Be-Billed" cannot be presumed for the entire financial year as it is considered only for the last month of the Financial Year.
- viii. The cash transactions claimed by the Respondents does not appear to be of genuine nature. The cash vouchers provided by the Respondents seem forged and fabricated. In a country like India the signatures by all the drivers are in English and none of the drivers have signed the cash voucher in Hindi or put their thumb impression. The salary of the drivers has been shown as Rs. 3000 — 4000 per month. As per standard industry practise, truck drivers are not paid so less and the salary per month is much higher. Further, no revenue stamp has been affixed on any of the cash vouchers. Further, the cash vouchers provided by the Respondents in its reply do not match with the Tally back-up provided by the Corporate Debtor (after receiving several reminders from the Applicant RP), indicating the suggestion that the cash vouchers seem forged and fabricated.
- ix. The Respondents claim that the Respondent No. 2 (Dharmendra Grewal) had provided a loan of Rs. 82,39,000/- to the Corporate Debtor. It is submitted that the said loan amount by the Respondent No. 2 (Dharmendra Grewal) is not reflected anywhere in the books of accounts or the Auditor's Report. Further, none of the documents

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provided by the Corporate Debtor as of the date of the CIRP reflect any unsecured loan provided by the Respondent No. 2. On the contrary the said amount appears to be unsecured loan from one of the Financial Creditor, Minions Ventures Pvt. Ltd. which is well documented and available on record. In the event, it is assumed that Respondent No. 2 had indeed provided loan to the Corporate Debtor then as per the provisions of the Income Tax Act, 200% penalty can be levied on loan given by the Director of a company if the repayment is received in cash [Section 269 of the IT Act].

- x. The last Auditor Report provided by the Corporate Debtor is qualified to the extent that it is mentioned that "*books of accounts and documents have not been provided to the auditors*". This indicates that all the documents provided by the Respondents in their reply was not provided to their auditors and hence the auditors have stated the disclaimer / qualification in their report. It has to be assumed that these documents have been prepared only for the purpose of filing it before the Hon'ble Tribunal.
- xi. The Respondents claim that various sundry creditors were transferred to the RDC Logistics for administrative reason and they continue to remain as creditors of the Corporate Debtor. Any third party (which is not a related party) has taken on the sundry creditors of another entity without any proof of documentation of assignment of debt or any other agreement. It appears that Rakesh Sharma is a related party of the one of the Respondents.
- xii. The Respondents claim that the GST Returns have been filled as NIL Rated which cannot be the case as the category of transportation of goods is charged on a reverse charge mechanism basis or on a forward billing basis which is calculated at 12%. The Corporate Debtor has not specified what type of return has been filed where as it should have specified that it has filed DRC-03. Further, the Return 3B and R1 are not matching.

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- xiii. The Respondents do not fall within the definition of creditors and the Corporate Debtor has not given preference in terms of payment to any of the Respondents.
13. Considering the documents on record and submissions made, when we consider the special audit transaction report dated 20.01.2021, we notice that large scale financial transactions have taken place which is doubtful and fraudulent in nature occurred with the intent to defraud the creditors of the corporate debtor. Further the Loans & Advances are either written off or have been assigned to other parties; Sundry debtor have been written off, Interest income written off, reversed and involves numerous parties who are fraudulent and doubtful in nature. Further as regards the objections raised by the respondents it is stated that at the time of transaction audit report the respondent No. 3 was director of the company and during the period of the said report Respondent No. 2 had already been appointed. Further as regards the objection of the respondent that no opportunity was granted to the respondent to present its case it is stated that the applicant vide various email requested the respondent to provide the details and even inspite of that the CIRP was initiated on 04.06.2020 and the present report has been filed on 20.01.2021 which was enough time for the ex-management to present its case and submit documents which were necessary for ascertaining the nature of the transactions. Further it is the contention of the respondent that the findings are illegal and incorrect. However, the respondents had failed to produce enough proof to show that the findings are incorrect and the explanation provided is also not satisfactory. Hence, assumptions made by the applicant on the basis of documents available on record are not erroneous. We further observe that the other arguments as raised by the respondents have been appropriately answered by the applicant in its rejoinder. Hence the respondent has failed to give reasons and explain why and under what circumstance, such transactions, which are doubtful and fraudulent in nature, were made. Therefore, we are of

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considered view that the respondent/suspended board of directors of the corporate debtor have carried on the business with the intent to defraud the creditors of the corporate debtor or with fraudulent purpose. Accordingly, we direct the respondents to make total contributions of Rs.1,69,46,533/-, as has been pointed out in the transaction audit report dated 20.01.2021, to the assets of the corporate debtor within two months from the date of order.

14. Further, if the respondent fails to comply with the aforementioned order. The RP may approach the relevant authorities to take necessary actions against the respondents in accordance with provisions of law to take appropriate actions.
15. Accordingly, the present application is hereby allowed and disposed of.
16. The registry is directed to provide a copy of this order to the parties.

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(Rahul Bhatnagar)
Member (T)

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(P.S.N. Prasad)
Member (J)