

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

MA No. 4119/MB/C-I/2019

In

C.P (IB) No.619/MB/C-I/2018

Filed by

Mr. Devang Sampat
RP of
Nicomet Industries Limited

...Applicant

Versus

Nicomet Industries Limited and Ors

...Respondents

In the matter of

Nico Extrusions Limited

...Operational Creditor

Versus

Nicomet Industries Limited

... Corporate Debtor

Order Pronounced on: 23.04.2024

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

Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Applicant : Mr. Ankit Lohia, Advocate

For the Respondent : Mr. Ayush Rajani, PCA

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Applicant has filed the present Application impugning certain transactions for avoidance under the Insolvency and Bankruptcy Code, 2016 ('Code'). The reliefs sought by the Applicant as are follows:
 - a. Pass Orders in the case of the preferential transactions, amounting to Rs. 3,846.78 lakhs under Section 44 of the Code, including that property transferred in connection with the preference be vested in the Corporate Debtor, require the persons benefitting vide the preference to pay to the Resolution Professional amounts equivalent to the benefits received by him.
 - b. Pass Orders in the cases of the undervalued transactions amounting to Rs. 298.18 lakhs under Section 48 of the Code, by setting aside the undervalued transactions and requiring property transferred as part of the undervalued transaction to vest in the Corporate Debtor, to require the persons benefitting the undervalued transactions to pay sums equivalent to the benefits received to the Resolution Professional, and pay such sums as may be determined to be paid reflecting the true and correct consideration for the undervalued transactions as may be determined by an independent expert who may be appointed by this Hon'ble Tribunal.
 - c. Pass Orders in cases of the fraudulent transactions amounting to Rs. 1177.58 lakhs, under Section 49 of the Code, inter alia requiring

the position existing before the fraudulent transactions to be entered into to be restored as if the fraudulent transaction had not been entered into, protect the interests of all stakeholders including the creditors of the Corporate Debtor.

- d. Punish the suspended directors, promoters, and key managerial personnel with imprisonment and fine under Sections 68 and 69 of the Code or as this Tribunal may deem appropriate.
 - e. Pass such other orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.
2. The Applicant has filed a composite Application in relation to avoidance applications. M/s Mukund M Chitale and Co, Chartered Accountant were appointed to conduct transaction audit. Accordingly, the firm conducted the transaction audit and submitted its transaction audit report dated 02.12.2019. At this juncture, it is imperative to state that the Liquidator Mr. Divyesh Desai is now pursuing the present Application and submitted that he received a copy of the Avoidance Application as a part and parcel of handover of documents including handover of applications pending before this Tribunal. However, the Liquidator was not provided with relevant data, details, documents and information on the basis of which the Resolution Professional had filed the Avoidance Application, which was as per the opinion formed by the Resolution Professional and in consultation with the Auditor.
3. Thereafter, acting out of good faith and in the interest of the all stakeholders, the Liquidator had sought certain clarifications from the Resolution Professional through a chain of e-mail correspondences from January 7, 2021 to February 5,

2021, which were essential for pursuing the Avoidance Application and bring out the necessary details before this Tribunal to effectively adjudicate the Avoidance Application. However, it is submitted that the Liquidator did not receive a positive/proper response from the Resolution Professional which was necessary for the Liquidator to pursue the captioned Avoidance Application.

4. The Liquidator submits that in the absence of a response from the Resolution Professional to the clarifications sought by the Liquidator, the Liquidator is not in a position to ascertain whether the transactions between the Corporate Debtor and other entities, as mentioned in the captioned Avoidance Application, constitute preferential transactions, undervalued transactions, or fraudulent transactions as per the Sections 43, 45, and 49 of the Code, due to a lack of clarity from the Resolution Professional. This bench had vide Order dated 11.12.2023 and 08.01.2024 directed the Liquidator to seek clarity from the auditor in respect of the transaction audit report. Accordingly, the Liquidator addressed various emails seeking clarification from the auditor. We have perused the email addressed by the auditor wherein it is stated that the no clarifications were sought from the erstwhile management of the Corporate Debtor and the report was prepared basis the data available.
5. The Liquidator submits that at the captioned Avoidance Application has legal flaws on the ground of inconclusive findings. It is further submitted that it is not feasible for the Liquidator to pursue the Avoidance Application on merits when the contents of the same is incomprehensible. In the aforesaid circumstances, since the Liquidator has submitted that he is unable to ascertain the transactions

impugned by the erstwhile Resolution Professional and further considering the generic nature of reply being given by the auditor, the impugned transactions need to be examined in accordance with the Transaction Audit Report.

6. The following Preferential Transactions are questioned by the Auditor.

6.1. Advance given to related party i.e. Kaatyaayini Exports, a firm established in 2002 was a related party of the Company since Mr. Atul Agrawal was a director in the Company as well as partner in the firm. The Company primarily used to have purchase and sales transactions of copper cathode, nickel cathode, copper scrap, lead scrap and tin ingots with Kaatyaayini Exports. The relevant extract of the report is reproduced hereinbelow:

“We have scrutinized the ledger of Kaatyaayini Exports (related party of the Company) pertaining to advances given to them, purchases and sales made from/ to them from FY 2014-15 to FY 2018-19. On scrutinizing the above ledgers of Kaatyaayini Exports for the FY 2014-15, it was observed that the Company had purchase and sales transactions with Kaatyaayini Exports and there were also advance payments being made to Kaatyaayini Exports against which purchases were made from them. On scrutinizing the ledger of purchases and advance given to Kaatyaayini Exports during FY 2014-15, it was observed that advance given for purchases was in excess of the purchases made from them. Advance given to Kaatyaayini Exports during the FY 2014-15 was Rs. 1,485.39 lacs against which purchases made were only Rs. 252.97 lacs. The amount outstanding receivable during the FY 2014-15 was Rs. 526.64 lacs. This practice, was however, not carried out

with unrelated parties. However, during FY 2017-18, an amount of Rs. 165 lacs were adjusted against amounts payable to the suspended promoters of the Company; Mr. Rajendra Prasad Agrawal Rs. 105 lacs), Mr. Ankit Agrawal (Rs. 57.50 lacs) and Mr. Atul Agrawal (Rs. 2.50 lacs) for which no supporting document or agreement was available on record with us. Accordingly, amount receivable from Kaatyaayini Exports at the end of FY 2017-18 stood at Rs. 427.01 lacs. Further, during the FY 2018-19, the account of Kaatyaayini exports was settled by adjusting it against amounts payable to Raksha Industries. The amount outstanding receivable from Kaatyaayini Exports in FY 2015-16, FY 2016-17 and FY 2017-18 was Rs. 647.11 lacs, Rs. 592.01 lacs and Rs. 427.01 lacs respectively. Also, there were certain payments made by Kaatyaayini Exports on behalf of the Company for which no supporting document was available with us."

6.2. The second transaction impugned by the auditor is as follows:

"Cupro Tubes Enterprises Private Limited ("CTEPL") has been a related party of the Company from the FY 2017-18. There were no purchases and sales transactions with CTEPL in FY 2017-18. However, in FY 2018-19, the purchases from CTEPL accounted for 25% of the total purchases of the Company and sales to CTEPL accounted for 20% of the total sales of the Company. On verifying the books of accounts of the Company of FY 2017-18 and FY 2018-19, it was observed that the Company had entered into high sea sales and high sea purchase transaction with CTEPL. It was also observed that the products purchased and sold on high seas were not purchased from any party in the last 4 years. Also, stock registers of

products sold and purchased on high seas were not available with us to check the movement of stock. Further, there were certain payments made by CTEPL on behalf of the Company and certain payments were made by the Company on behalf of CTEPL. Also, an amount of Rs. 1,500 lacs were adjusted against amount payable to TIPL. However, no agreement for such transaction was available on record with us. The amount outstanding payable to CTEPL as on 14th December 2018 was Rs. 423.78 lacs and as on 31st March 2019 was Rs. 424.41 lacs. CTEPL's factory/ godown is located adjacent to the Company's factory. During FY 2018-19, the entire dispatches to TIPL were made to CTEPL's factory/ godown. We were informed that TIPL had taken CTEPL's factory/ godown on rent. The dispatches to CTEPL were not accompanied by any lorry receipt and were done generally using only 1 vehicle (GA-08-V-0936). A review of the filings/ inspection undertaken by GIDC revealed that the Company's stock was lying at CTEPL'S factory/ godown in March 2019. The extracts of invoices and GIDC's inspection report are given in Annexure 6. For the 2 years preceding the CIRP date, the total purchases and total sales from / to CTEPL were Rs. 1,735.81 lacs and Rs. 2,184.40 lacs respectively. Out of the total purchases, Rs. 909.74 Lacs pertain to one time purchases which were in the nature of high seas purchases of RM Master Alloys of Copper, RM Intermediate Product of Cobalt Metallurgy, Nickel Hydroxide (Crude) and Cobalt Hydroxide. Further, out of total sales, Rs. 267.81 lacs pertain to one time sales which were in the nature of high seas sales of Cobalt Hydroxide. We have not been provided with any supporting

documents to evidence the movement of stock in case of high seas purchases and sales. If the impact of the above one time purchases and sales (in respect of which movement of stock cannot be evidence) and the adjustment of Rs. 1,500 lacs with TIPL (explained above) are not considered, the average funds advanced to CTEPL for use in the past 2 years in respect of other transactions are Rs. 478.61 lacs.”

6.3. It is further submitted that the Transaction Audit Report observed that preference appeared to have been given to Vienna Metals Trading FZC and observed as follows:

"As per one of the covenants of CDR agreement dated 29th March 2014, the Company had to recover the dues of Rs. 1,700 lacs from its overseas buyer Vienna Metals Trading FZC to meet the working capital limits for the FY 2014-15 and FY 2015-16. The amount outstanding receivable from Vienna Metals Trading FZC as on 1st April 2014 was Rs. 1,963.45 lacs. On verifying the books of accounts of the Company from FY 2014-15 to FY 2018-19, it was observed that the amount received was only Rs. 580.91 lacs and exchange rate fluctuation accounted was Rs. 124.52 lacs for the financial years from FY 2014-15 to FY 2016-17. However, the balance amount receivable of Rs. 1,507.06 lacs was written off in the books of accounts in the FY 2017-18. Since there were no transactions observed between the Company and Vienna Trading Metals Trading FZC for the review period and on management taking the call to write off balance amount receivable from Vienna Metals Trading FZC, it appears that preference was given by the suspended management of the Company to

Vienna Metals Trading FZC by not recovering the amount as promised in the CDR agreement."

6.4. Further, certain journal entries have been flagged by the auditor and observed as follows:

"We have observed that the Company has entered several journal entries in its Books of Account which result in amounts payable to creditors being set off against amounts receivables from some debtors. These journal entries / journal vouchers which reduce the amount payable to creditors with corresponding set off of the amounts receivables from debtors are given below;

<i>Period</i>	<i>Amount (Rs. In lacs)</i>
<i>15th December 2016-31st March 2017</i>	<i>22.18</i>
<i>1st April 2017- 31st March 2018</i>	<i>681.61</i>
<i>1st April 2018-14th December 2018</i>	<i>730.31</i>
<i>Total</i>	<i>1434.10</i>

In the above instances, the amounts payable to the creditor have been adjusted / set off against the amount receivable from some other debtors. We have not been provided with any documents to prove actual payments directly made by such debtor to the creditor. However, in most cases, we have not been provided with the tripartite agreement to substantiate the journal entries passed by the Company. The transactions above indicate the transfer of property by the Company for the benefit of the creditor in

such a way that it has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53 of the Insolvency and Bankruptcy Code. Accordingly, the transactions appear to be preferential in nature.”

7. As far as undervalued transactions are concerned it is submitted that Transaction Audit Report found Undervalued Transactions in respect of various purchase and sale transactions. Transaction Audit Report then proceeds to give a list of undervalued transactions and opines that the transactions were undervalued to the tune of Rs. 61.24 lacs. It is submitted that Cupro Tubes Enterprises Private Limited and Jaico Enterprises LLP are related to each other due to common directorship/ partnership of Mrs. Usha Agrawal Wife of suspended promoter Mr. Rajendra Prasad Agrawal), Mr. Atul Agrawal and Mrs. Swati Agrawal (Wife of suspended promoter Mr. Atul Agrawal). Further, the product/ item - copper scrap was never produced or was a byproduct of any product. Also, stock register of copper scrap was not available on record to check movement of stock. The Transaction Audit Report proceeds to then note that there were atleast two transactions to the tune of Rs. 236.94 lacs where sales appeared to have been made at prices significantly lower than the reference market price.
8. Furthermore, Transaction Audit Report found Undervalued Transactions in respect of Sale and Leaseback transactions with Trafigura India Pvt. Ltd. The relevant paragraphs are as follows:

"The Company incurred Rs. 4,016.15 lacs as expenses towards works in progress from FY 2013-14 till FY 2017-18. During FY 2016-17, the Company transferred

Rs. 2,506.01 lacs from work in progress to an accounting heading called (Assets under development (sale). Correspondingly, this amount was also transferred from 'fixed assets' in the balance sheet to the 'current assets' section. This amount was so transferred though these amounts were never capitalized in the Books of the Company as fixed assets. The Company had entered into a job work agreement with Trafigura India Private Limited (TIFL") for receiving job work material, processing the same and selling finished products to TIFL. During FY 2016-17, the Company entered into a sale and lease back agreement with TIFL. As per the sale and lease back arrangement, the abovementioned Rs. 2,506.01 lacs were transferred to TIFL for a consideration of Rs. 2,756.61 lacs at a profit of Rs. 250.60 lacs. These assets were leased by TIFL to the Company at a monthly lease cost of Rs. 108.04 lacs per month. Total lease charges incurred by the Company towards this transaction during FY2018-19 was Rs. 756.28 lacs. During our visit to the Company's manufacturing premises, we could not observe any assets being specifically marked as owned by TIFL. Further, the manufacturing personnel informed to us that the assets owned by TIFL and leased back to the Company were an integral part of the manufacturing process and thus, it was not possible to segregate and dispose these assets without affecting the manufacturing process. Further, these assets were said to be part of the overall manufacturing process assets even though these assets were never capitalized in the Company's books before being transferred to TIFL. This sale and leaseback transaction is not a transaction undertaken during the ordinary course of business of the Company. Further, this transaction involves a transfer of assets by the Company to another party through a mechanism which will significantly impair the Company's ability to sell the entire manufacturing facility (since parts of it in between are said to be owned by TIFL).

Hence, the transaction appears to be undervalued. A technical assessment from an expert need to be undertaken to assess the Company's ability to carry out the manufacturing activity in case assets owned by TIFL are removed."

9. The auditor has impugned the certain transactions as fraudulent which are detailed herein. The Transaction Audit Report found that Goods in transit account were not settled since 2013-14. The relevant extract of the report is reproduced hereinbelow:

"We have verified the ledger of goods in transit from FY 2013-14 to FY 2018-19. On scrutinizing the ledger of Goods in transit, it was observed that balance of Rs. 757.17 lacs were appearing in the books of the Company since 2013-14. We had enquired about the same with Mrs. Sangeeta (Accounts team at Corporate office) at the time of our visit at corporate office of the Company on 10th October 2019. It was informed to us that she was not able to access the tally due to some connection problem. It was also informed to us that even if she could access the tally, the information which would be provided by her will not be reliable since all the data was lost due to virus and hence the books of accounts may not show correct balance (if any). Further, it was also observed that the stock and book debts statements verified on sample basis did not reflect the above goods in transit amount of Rs. 757.17 lacs. Due to the above constraints, we are unable to verify the genuineness (if any) of the goods in transit balance appearing in the books of accounts of the Company."

10. The Transaction Audit Report also found fraudulent entries with respect to Cash in Hand stating that the same appear to be non-existent.

"On verifying the books of accounts of the Company for FY 2018-19, it was observed

that cash-in-hand lying with the Company as on 14th December 2018 (date of initiation of insolvency resolution process) was Rs. 45.85 lacs. We were informed by the Resolution Professional that the erstwhile company management informed that there was no cash available with the Company as of the date of the initiation of insolvency resolution process. Accordingly, it appears that cash-in-hand appearing in the books of accounts of the Company was non-existent and the Books of account were falsified to that extent."

11. The Transaction Audit Report records overstatement of trading sales and purchase figures noting that certain transactions to the tune of Rs. 194.41 lacs were without supporting documents and the same product was purchased and sold back to the same/ different entity with no margin added.

Submissions advanced by the Respondents:

12. At the outset it is clarified that the Respondent No. 2 and 4 have adopted the submissions advanced by Respondent No.3. Therefore, for the sake of brevity the submissions advanced by Respondent No.3 are summarized hereinbelow in a nutshell.
13. The primary defense raised by the Respondents as far as the preferential transaction qua Kaatyaayni Exports is concerned is that the said transaction is beyond the lookback period on the ground that the Resolution Professional/Auditor has considered accumulated balance as on FY 2017-2018, for the purpose of determining preferential transaction the date of transfer of property or interest thereof is relevant. Secondly, it is stated that these transactions were in the ordinary course of business as it is the admitted position that purchases

were made from them. Further, it is submitted that the it is not in dispute that the Resolution Professional has alleged that amount receivable from Kaatyaayini Exports at the end of FY 2017-18 stood at Rs. 427.01 lacs, therefore, the said transaction cannot be brought within the purview of Section 43 of the Code as the question of payment of antecedent debt does not arise. Per contra, the Corporate Debtor is owed money from Kaatyaayni Exports.

14. The Respondent No. 3 qua the second preferential transaction impugned in relation to Cupro Tubes Enterprises Private Limited, the Respondent submits that the same relates to purchase and sale of products and was carried out in the ordinary course of business, hence, cannot be considered as a preferential transaction. Furthermore, pursuant to adjustment of Rs.1,500 lakh payable to Trafigura India Private Limited (TIPL), the Respondent submits that the Corporate Debtor owed huge amounts to TIPL and therefore, assigned the receivables from Cupro to TIPL.

15. The Respondent submits that as far the write-off of receivable from Vienna Metals is concerned the same is beyond the look back period and a write-off cannot come within the purview of preferential transaction as there no transfer of property or 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. It is submitted that journal entries aggregating to Rs.1434.10 lakhs for setting off balance recoverable from one against amount payable to another were mutual dealings of the Corporate Debtor as the sums dues from one party were set off against sums due to another to arrive at the net amount payable to the Corporate

Debtor.

16. Further, the Respondent No.3 insofar as the undervalued transactions impugned by the Applicant relating to rate of purchase was higher than the rate at which the product was sold resulting in undervaluation. The Respondent submits that the Applicant Resolution Professional has considered reference rate of primary cobalt metal traded on London Metal Exchange, the Corporate Debtor is not an approved London Metal Exchange brand and the reference price is applicable to those brands that are registered on LME. Moreover, it is submitted the material that was traded was sub-standard metal as stated in sale invoice and would never fetch a price equivalent to primary cobalt metal.
17. Respondent No.3 submits that sale and lease back transaction qua TIPL wherein a fixed asset amounting to Rs.2506.01 lakh was sold for Rs. 2756.61 lakh resulting in profit of Rs.250.60 lakh. The Corporate Debtor submits that sale and lease back transactions cannot be deemed be undervalued as the same was evidently sold at a profit of Rs.250.60 lakh. It is submitted that it was mode of raising finance for meeting business requirements and in the ordinary course of business.
18. Further, as regards fraudulent transactions impugned by the auditor under the Code, it is alleged that on scrutinizing the ledger account goods in transit to tune of Rs.757.17 lakhs were appearing the books of the Company since 2013-14. The Respondent No.3 submits that there are no goods in transit appearing in the balance sheet of the company. Further, the second transaction of cash in hand recorded in books of account totaling to Rs.45.85 lakhs as on 14th December 2018. However, no cash was lying with the company.

Findings:

19. We have perused the records and heard submissions advanced by Ld. Counsel for both sides.

20. We proceed to determine preferential transactions impugned by the Applicant herein. The first transaction relates to Kaatyaayni Exports as more particularly detailed hereinabove. We note that that said transaction of amounts paid to suspended board/account being settled by adjusting amounts payable to the suspended promoters of the Company; Mr. Rajendra Prasad Agrawal (Rs. 105 lacs), Mr. Ankit Agrawal (Rs. 57.50 lacs) and Mr. Atul Agrawal (Rs. 2.50 lacs) and Raksha Industries, was in nature of antecedent debt owed by the Corporate Debtor. The receivable from Katyayani Exports has been set off against the amounts payable to other parties, which has put these other parties in preference over other creditors had the payments been made in accordance with section 53 of IBC. Accordingly, we are of considered view that the preference has been given to the suspended promoters of the Company; Mr. Rajendra Prasad Agrawal (Rs. 105 lacs), Mr. Ankit Agrawal (Rs. 57.50 lacs) and Mr. Atul Agrawal (Rs. 2.50 lacs) and Raksha Industries. However, Raksha Industries has not been arrayed as party respondent, hence no order can be passed against it. In so far as the suspended directors are concerned, we hold that the transaction of set-off of amount payable to suspended board aggregating to Rs.165 Lakhs is preferential in nature and the said transaction is not in ordinary course of business. In so far as, the transaction of payable to Raksha Industries being set-off with the receivable from Katyayani Exports is concerned we find that none of them have been arrayed as party

Respondent and therefore, no order can be passed. Suspended board is not liable to make contribution in terms of Section 44 of the Code as no benefit has been received by them. However, it is made clear that balance receivable from Katyaayani Exports after set aside of set-off of amount payable to suspended board shall be recoverable from Katyaayani Exports.

21. Further, qua second preferential transaction impugned relating Cupro Tubes Enterprises Private Limited (“CTEPL”) sale and purchase transactions, no relief is sought in relation to sale purchase transaction with the said party however, the Applicant has tried to demonstrate that if these high sea sale purchase transaction and adjustment of Rs.1500 lakh with TIPL are not considered, the average funds advanced to CTEPL for use in past two years in respect of other transactions will amount to Rs.478.16 lakh. These sale purchase transactions dehors any allegation expect in relation to movement of stock are not preferential transactions as contemplated under Section 43. Applicant has failed to place material on record to suggest that the said transactions were not carried out in the ordinary course of business. The second transaction with CTEPL pertains to set-off of payable to TIPL amounting to Rs.1500 lakhs carried to the account of CTEPL. We note that TIPL had taken CTEPL factory godowns on rent and entire dispatches to TIPL were made through CTEPL factory ground. This indicates the relationship of CTEPL and TIPL, accordingly we are of considered view that set-off was to adjust receivables from CTEPL with payables to TIPL in ordinary course of business. Nonetheless, we note that none of them have been arrayed as party Respondent and therefore, no order can be passed. Suspended board is not liable to make contribution in terms of Section 44 of the Code as no benefit has been received by

them. However, it is made clear that balance receivable from CTEPL shall be recoverable from them.

22. Further, transaction impugned in the report qua write-off of a debt owed by Vienna Metals. It is settled that the write-off does not take away the right to recover from the creditors. Further, the receivables owed to the Corporate Debtor cannot be said to be antecedent debt owed by the Corporate Debtor. Also, no pleading has been made that any payment was made to Vienna Metals, accordingly, this transaction does not meet the basic ingredients of Section 43. However, it is made clear that amount receivable from Vienna Metals shall be recoverable from them notwithstanding the write off of balance in the books of accounts if such recovery is otherwise permissible under law.

23. As regards amounts payable to creditors being set off against amounts receivables from some debtors, these transactions cannot be said to be in ordinary course of business and meets the basic ingredients of Section 43 of the Code. . However, relevant parties has not been arrayed as party respondent, hence no order could be passed against them.

24. Coming to the undervalued transactions impugned by the Applicant with Cupro Tubes Enterprises Private Limited and Jaico Enterprises LLP, it is observed in relation to transaction wherein rate of purchase of products was higher than the rate of sale. The Applicant has relied on London Metal Exchange prices, however, has failed to notice that the Corporate Debtor was not registered with the same. Moreover, the prices of metals keep on fluctuating resulting in variation and the same cannot be impugned as undervalued transaction as cogent material, to

substantiate that the said sale is not carried out in ordinary course of business, is not placed on record. Accordingly, it cannot be said that the transactions were executed at a price significantly lower than the fair market price in the absence of definite fair market price having been determined by the RP. The RP has not averred what is the fair discount/premium commanded over the LME rate of the products dealt with by Cupro Tubes Enterprises Private Limited and Jaico Enterprises LLP, so as to make it comparable with the actual price. Nonetheless, the Applicant has not arrayed these parties also as party Respondents, accordingly, no order can be passed qua them.

25. Further, the Applicant has impugned a sale and lease back transaction entered into between the Corporate Debtor and Trafigura India Private Limited as an undervalued transaction. This sale and lease back transaction enabled the Corporate Debtor to raise additional finance for carrying out business operations in turn of periodical lease rental obligation committed to TIPL. We note that TIPL had regular business relationship with the Corporate Debtor and said transaction was executed by the parties in normal course of business. Further, the Applicant has not brought any comparable price which this transaction could have fetched in absence of which it cannot be concluded that the price at which the transaction was executed was significantly lower than the fair market value. It is the Applicant's own case that the company has earned a profit of Rs.250.60 lakh pursuant to the said sale. Accordingly, the question of undervaluation does not arise.

26. The Applicant has impugned certain transactions are fraudulent being that the

goods in transit amount of Rs.757.17 lakhs, however, we observe that the Transaction Audit Report placed on record by the Applicant explicitly states that they are unable to verify the genuineness of goods in transit balance. These transactions could be to inflate the amount of stock for the purpose of loans taken from banks and appears to be non-existing. Since, the transaction is merely represented by a book entry it cannot be concluded that this transaction has caused any loss to the Corporate Debtor, thereby requiring any order for contribution from the Respondent. Nonetheless, we are of the considered view that this transaction is in the nature of fraud having been perpetrated against the lending institutions by superficially hijacking the value of security. Accordingly, no order can be passed in terms of section 66 in relation to this transaction.

27. Further, the Applicant submits that cash in hand balance was Rs.45.85 lakh as on 14th December 2018, however, the RP was informed that no cash was available with the company as on the date of initiation of insolvency. We further note that the contention of the erstwhile company management that there was no cash available with the company as on the insolvency commencement date is in stark contrast with the audit report wherein the auditors have stated that the books of accounts of the CD for the FY 2018-2019 reflect Rs.45.85 lakh as cash in hand. The Respondent has stated that though the books recorded cash in hand balance but no cash was available physically as such cash was incurred meeting petty expenses. We note that Respondent has not provided any account of petty expenses having been met from this cash balance and accordingly, the books of accounts also does not record any expense having been incurred out of such cash. Accordingly we do not find any substance in the contention of the Respondent

and hence, are of considered view that cash balance amounting to Rs.45.85 lakh reflecting in the books of accounts as on insolvency commencement date ought to be made available to the Corporate Debtor. Accordingly, we direct the suspended board to contribute jointly and severally within 30 days to the Corporate Debtor.

28. Accordingly, we make the following order:

- a) We direct that the amounts received by the suspended board being Mr. Rajendra Prasad Agrawal to the tune Rs. 105 lacs, Mr. Ankit Agrawal amounting to Rs. 57.50 lacs and Mr. Atul Agrawal being Rs. 2.50 lacs relating to Katyaayni Exports be refunded back to the Corporate Debtor.
- b) We direct that the cash in balance amounting to Rs. 45.85 lakh reflecting in the books of account be refunded back to the Corporate Debtor by the Respondents jointly and severally.

29. The amount payable in terms of this order shall be payable within 30 days jointly and severally by the Respondents, in case of failure, the amounting remaining unpaid shall carry interest at the rate of 12% p.a. compounded annually till the amount is paid.

30. MA 4116 of 2019 in CP(IB) No. 619 of 2018 is partly allowed in above terms.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

23.04.2024

Priyal

Sd/-

**JUSTICE V.G. BISHT
MEMBER (JUDICIAL)**