

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 2381 OF 2023**

Under Section 43, 45 & 66 Insolvency &  
Bankruptcy Code, 2016

Mr. Sudip Bhattacharya  
Resolution Professional

...Liquidator

Vs.

Mr. Vikas Jhavar & Others  
Suspended Board of Director

...Respondent

In the matter of

C.P.(IB) No. 4102/MB/2018

Dena Bank

Vs.

M/s. Texorange Corporate Ltd.

***Order delivered on: 27.03.2024***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)  
*Appearances*

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

For the Applicant : Mr. Aniruth Purusothaman, Advocate

For the Respondent no. 1 : Mr. Amey Hadwale, Advocate a/w  
Ms. Geeta Lundwani, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application I.A. 2381/2023 is filed by Mr. Sudip Bhattacharya, the Resolution Professional (“Applicant”) in the, CIRP Process of M/s Texorange Corporation Limited (“Corporate Debtor”) seeking following reliefs:

a. This Tribunal may please to direct the following transactions as avoidable transactions under the provisions of the Code:

Transfer to unsecured creditors	Rs. 26.02 Crores	Section 43 and 66
Sudden Reduction in inventory	Rs.20.24 Crores	Section 45 and 66
Doubtful receivables	Rs.58.87 Crores	Section 66
Total	Rs. 105.13 Crores	

b. This Tribunal may be pleased to pass an order directing the Respondents to refund/repay/restore the aforesaid transactions and any other orders/directions, the Hon'ble Tribunal may direct.

c. This Tribunal may pass appropriate directions / orders in terms of Section 67, 70, 71, 72 and 73 of the Code including for recovery/ restoration of legitimate amounts due to the Corporate Debtor;

d. This Tribunal may permit filing additional information/documents as and when required and/or demanded by this Hon'ble Tribunal and the same be taken on record.

2. An Application under Section 7 of the Code filed by the Financial Creditor Bank of Baroda against the Corporate Debtor was admitted by the Tribunal and CIRP was initiated vide Order dated 11/10/2019. By this order the Applicant was appointed as the Interim Resolution Professional (IRP)

2.1. The applicant RP constituted the CoC in accordance with section 21 of the Code r/w Regulation 13(2)(d) and 17 (1) filed the list of Creditors and a Report certifying the constitution of CoC with the Tribunal on 10/11/2019.

2.2. The Applicant has been confirmed as the Resolution Professional in the first meeting of Committee of Creditors (CoC) dated 14/11/2019 and the management of the affairs of the Corporate Debtor is vested with the Applicant as Resolution Professional.

2.3. The Applicant states that in terms of claims received and as updated upto the seventh meeting of CoC held on 16/09/2020, the following is the summary of details of the Financial Creditors of the Corporate Debtor who constituted the CoC.

Sr. No	Name	Financial Creditors Claims	Admitted Amount	Remarks	Voting
1.	Bank of Baroda	3246,26,061/-	32,46,26,061/-	Secured	76.27%
2.	Bank of India	10,09,77,232/-	10,09,77,532/-	Secured	23.73%
3.	Bajaj Finance Ltd.	9,44,062/-	0.00	Not admitted unsecured	0.00%
4.	IIFL Finance Ltd.	63,28,278/-	0.00	Not admitted unsecured	0.00%
	<b>Total</b>	<b>42,65,47,655</b>	<b>42,56,03,593/-</b>		<b>100.00%</b>

2.4. The Applicant states that in light of non-cooperation and submission of incomplete financial data by the suspended

Management, there has been delay in finalizing Audited Accounts for the FY 17/18 and FY 18/19 by the process of reconstruction of accounting entries, preparation of Information Memorandum and valuation exercise. The Applicant had filed a Miscellaneous Application No.3663 of 2019 with the Hon'ble Tribunal under Section 19 (2) of the Code seeking necessary directions/orders which was withdrawn on 22/11/2021 as the Bench orally observed that since accounts were reconstructed, and Liquidation Application (IA No. 2494/2020) has been filed by the resolution professional, this application cannot service

- 2.5. The Applicant during the course of conduct of his duties and obligations under the Code proposed and appointed M/s Raj Niranjana Associates, as Transactional Auditors, during the sixth CoC meeting held 07/08/2020, to peruse the Preferential, Undervalued, Fraudulent and Extortionate Credit (PUFE) transactions of the Corporate Debtor in terms of section 43, 45, 50 and 66 of IB Code, 2016.
- 2.6. The Applicant further states that M/s. Raj Niranjana Associates submitted their Transactional Audit Report on 06/12/2021 setting forth therein the Preferential, Undervalued, Fraudulent and Extortionate Credit (PUFE) transactions of the Corporate Debtor in terms of section 43, 45, 50 and 66 of IB Code, 2016 and the same was circulated to the CoC members by the Applicant through an e mail on 16/12/2021
- 2.7. The Applicant states that the Transactional Audit Report (TAR) dated 06/12/2021, has identified, inter alia, the following as Preferential, Undervalued, Fraudulent and Extortionate Credit (PUFE) transactions under the provisions of the Code:

Transfer to unsecured creditors	Rs. 26.02 Crores	Section 43 and 66
Sudden Reduction in inventory	Rs.20.24 Crores	Section 45 and 66
Doubtful receivables	Rs.58.87 Crores	Section 66
Total	Rs. 105.13 Crores	

- 2.8. The Applicant states that as per Transactional Audit, the suspended Management (the promoters) has transferred funds to the tune of Rs. 55.05 crores to the unsecured creditors without providing any justifiable evidence causing loss to the secured creditors.
- 2.9. The Applicant further states that out of transfer of funds as aforesaid, Rs.26.02 crores has been routed through the banking system and such a transfer for the benefit of unsecured creditors has put them (the unsecured creditors) 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 IB Code, 2016. The Applicant states that in his opinion, such transfer of Rs.2601.74 lacs to the unsecured creditors is Preferential Transaction covered u/s 43 of the Code.
- 2.10. Transactions u/s 45 and 66 of IB Code Rs.20.24 crores - The Transactional Auditor has observed as under:

*"Inventories as of 31/03/2017 was Rs. 20.24 crores which was reduced to Nil as of 31/03/2018. There is no proper inventory reconciliation made available and no co-operation is received from the Corporate Debtor. Based on available information, it indicates that the inventories have been moved from the premises without sales, though beneficiary of the same is not traceable. The entire reduction in inventories may be treated as undervalued transaction since there were no inventories available at the factory premises as observed by RP team".*

The Applicant states that in his opinion, reduction in inventory by Rs.20.24 crores is undervalued as well as fraudulent transactions covered u/s 45 and 66 of the Code.

2.11. Transactions u/s 66 of IB Code, 2016 Rs.58.87 crores – The Transactional Auditor has observed that:

*"the receivables of Rs. 58.87 crores as on 31/03/2019 is not realisable as of date. The Corporate Debtor was unavailable to offer any explanation for the same".*

2.12. The Applicant states that, in his opinion, these receivables are against the principles of prudent business practice, not genuine and are fraudulent in nature covered u/s 66 of the Code'.

2.13. The Applicant places on record that the Liquidation IA No. 2494/2020 was submitted after 180 days of CIRP and that the Liquidator assigned in the case would have typically submitted the Application for PUFEE Transactions. Unfortunately, because of the Covid Epidemic and the Board's overwhelming workload, adjudication on the Liquidation IA No.2494/2020 delayed due to paucity of time until 22/11/2021.

2.14. The Applicant states that the Suspended Managing Director Mr. Vikhas Jhavar has not signed the reconstructed Audited Financials for the FY 2018-19, making it difficult for the Applicant to comply with the orders issued by the Hon'ble Tribunal on 22/11/2021. Moreover, the CoC also replaced the present Applicant with one Mr. Ritesh Aditya as the new RP/Liquidator in December 2021 and his Replacement IA No. 1003/2022 Is pending adjudication before this Hon'ble Tribunal.

- 2.15. The Applicant states that the transactions identified by the transactional auditor are not only in violation of the Companies Act and the Rules made thereunder, but they are also avoidable transactions under the terms of the Code. As a result, the applicant is requesting orders/ directions for appropriate reliefs/remedies.
3. The Respondent no. 1 to 3 have filed affidavit in reply dated 15.10.2023 there by denying the allegations, contentions, insinuations levelled in the application and stating that the application is ought to be dismissed in view of following:
- 3.1. The application is not maintainable since it is a settled law that the joint application under the provisions of sections 43, 45, and 66 of the day code cannot be filed. The Applicant also relied on the judgment of Anuj Jain, Interim Resolution Professional of Jaypee Infratech Limited (RP) v. Axis Bank Limited Etc. (Civil Appeal Nos. 8512-8527 of 2019).
- 3.2. It is further stated that Section 43 is not applicable to the payment of creditors having been made in Ordinary Course of Business and the said payments are also beyond the look out period specified for parties not related to the Corporate Debtor.
- 3.3. The inventory as stated in the books of accounts was available and the Applicant had taken handover of same, a fact which is duly recorded in the minutes of CoC and SCC meetings.
- 3.4. The Applicant has suppressed critical documents namely, emails dated 30.9.2020 sent by the respondent seeking clarification concerning figures in Financials of two years as the said figures were not in consonance with the tally data; minutes of 1<sup>st</sup> CoC meeting that record the handover of stock to the Resolution Professional as on the Insolvency Commencement

date; email dated 02.4.2020 sent by respondents providing details of debtors; and ledger statement of the debtors.

3.5. The reconstruction of books of accounts was not complete, the applicant was duly co-operated and the Respondents were willing to provide the necessary details in this relation. The Applicant was also told about the incompleteness of the reconstructed books. Accordingly, any inference drawn on this basis can not result into Order u/s 45 or 66 of the Code.

4. Heard Learned Counsel and perused the material on record.

4.1. The Respondents have relied upon decision of Hon'ble Supreme Court in case of Anuj Jain (Supra) to contend that the applicant has made out a case u/s 43 & 45 as well as 66 of the Code and the Hon'ble Supreme Court held that each of these sections has distinct ingredients, accordingly a common application ought not to have been filed by the RP. We note that the Hon'ble Supreme Court in that case had finally held that "Appropriate it would have been to deal with all these aspects separately and distinctly". Accordingly, the observation of Hon'ble Supreme Court was in nature of directions to the RPs to plead the case in case of each section distinctly so as to meet the requirements of each such section. In present case, the Applicant has pleaded specifically in relation to each section, even though a combined application has been filed by him, though he has pleaded in alternate to section 66 in relation to each transaction. However, we are of considered view that if the ingredients of section 66 are found pleaded, an order can still be passed and the Hon'ble Supreme Court in case of Anuj Jain (Supra) does not bar the same.

4.2. The Corporate Debtor was admitted into CIRP on 11.10.2019, accordingly the look back period prescribed for the purpose of section 43 and 45, in case of unrelated parties, runs from

11.10.2018 to 10.10.2019. The Applicant has alleged that a sum of Rs. 26.02 crores was paid through banking channel to various creditors in the financial year 2017-18, which is beyond the look back period specified for the transaction with unrelated parties. None of the creditor party is identified as related party. Accordingly, we are of considered view that no order can be passed u/s 43 of the Code in relation to payment to creditors.

4.3. As regards applicability of section 66 to this transaction is concerned, we find that payment to creditors in priority over other creditors does not fall either within the fraudulent conduct of business or wrongful trading. Further, these payments have not been alleged to have been made in anticipation of Corporate Debtor being admitted into CIRP. Accordingly, we are of considered view no order can be passed u/s 66 of the Code as well.

4.4. As regards the contention of Respondents that stock of goods was handed over to the Applicant, we find from the photographs placed in the reply that there existed some bundles of cloth, however, those bundles could not be said to having value of stock as shown in the books of accounts as on 31.3.2017. We note that vide email dated 04.11.2019, the Respondents had communicated to the Applicant in relation to handing over of peaceful possession of premises and stock and company books of accounts on 2.11.2019. In the 1<sup>st</sup> CoC meeting held on 14.11.2019, it is recorded that “*the corporate debtor provided final accounts pertain to financial year 2015-16 & 2016-17. No accounting data back up/records/information has not been made available*”. The minutes further records that according to the latest audited financial result, the Corporate Debtor had stocks worth Rs. 20,24,19,396/- and Debtors worth Rs. 84,81,73,396/- besides other assets and the Chairman

informed that there was a stock audited conducted by M/s Garg & Associates in February 2018 and reported value of worth of INR 10 crores. We further note that Dena Bank had vide email dated 7.7.2018 asked Mr. Vikas Jhawar to ensure the maintenance & safety of stock lying and also send the document for stock verification informed by the auditor by urgent basis. The Minutes of 1<sup>st</sup> CoC meeting further records that “*IRP informed to the members that some grey cloths are stacked on the floor, could be either raw material or finished goods. The value could not be determined. A team member of the IRP expressed that the estimated value of the stock could be around INR 60 Lakhs and a detail valuation need to be done*”. The minutes further records that “*IRP requested Mr. Vikas Jhawar for providing details of the fixed assets, stock, debtors, cash and cash equivalent and handover physical possession.*”

4.4.1. Further the minutes of meeting of SCC held on 26.6.2023 records that “*The Liquidator assured to share the Photographs and the videos of the condition of the stocks available therein, he also mentioned that looking at the phorographs and the videos, it is very clear that the stock is the material that is unattended and is perishable in nature, it is therefore advisable to sell the stock as soon as possible to a scrap-dealer as it might further deteriorate the value. He also mentioned that the condition of the stock is very bad, it is feared to turn worse in the upcoming rainy season. The Liquidator also inquired that whether this issue was raised at the time of CIRP, to which, both the representatives (financial creditors) nodded in denial.*”

4.4.2. The above facts clearly suggest that there existed some stock. We note that vide email dated 28.5.2023, Mr. Vikas Jhawar had pointed out certain discrepancies in the draft minutes of 8<sup>th</sup> CoC meeting held on 24.5.2023, however,

the pointed discrepancy do not reveal that any cogent information in relation to financial affairs of the Corporate Debtor was intended to be provided, instead he had attempted to bring on record as if he was ready to cooperate in providing the information/documents. At this juncture, it would be worthwhile to note that the Applicant had to file an application u/s 19(2) of the Code seeking cooperation of the suspended board; the books of accounts were not maintained from 1.4.2017 or not provided and the same had to be reconstructed on the basis of available material. The suspended board, except for pointing differences in the actual position and the reconstructed accounts in abstract terms, had failed to bring out specific details, as is correct in their opinion, of individual balances in each accounts shown in reconstructed books of accounts.

4.4.3. The above facts clearly prove that the suspended directors have failed to exercise due diligence in minimising the potential loss to the creditors of the corporate debtor being fully aware that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor. Accordingly, we are satisfied that they are liable to contribute to the assets of the Corporate Debtor for the loss caused on account of missing inventory and depreciation in value thereof. Hence, we order that the Respondents shall be liable to contribute to the assets of the Corporate Debtor for a sum of Rs. 20,24,19,396/- less amount realised by the Liquidator by disposal of such inventory as scrap in terms of decision of SCC in its meeting held on 26.6.2023 within 30 days from the date of this Order.

4.5. As regards doubtful receivable amounting to Rs. 58.87 Crores, the transaction audit report has provided party wise details and the settlement of such debts in FY 2017-18 as follows :

Particulars	Opening Balance	Debit	Credit	Closing Balance
Shubhalaksmi Polysters Limited	1,530.66	-	1,530.66	-
Indo Industries Ltd	433.26	9.18	442.44	-
Richway International Trade Ltd	-	210.04	210.04	-
Entrack Overseas Pvt. Ltd.	180.30	18.65	198.95	-
Moumouni Amadou	107.64	0.80	108.44	-
Landmark General Trading F.Z.E.	371.76	-	107.81	263.96
Count N Denier Exim Ltd	-	88.22	88.22	-
Prem Textiles	950.45	-	30.94	919.51
V B Textiles	810.19	-	24.69	785.50
Sahil Textiles	420.92	-	-	420.92
Krimeg Texfab Private Limited	417.99	-	24.57	393.42
Togani Petro Yarns Pvt. Ltd.	399.74	-	29.82	369.92
Moumouni Amadou (M.A.)	271.60	-	-	271.60
Morell Integrated Ventures	200.21	-	-	200.21
Abdoulaye Issa	-	206.31	63.70	142.61
Astbhuja Suppliers Pvt. Ltd.	130.79	-	-	130.79
Moving Grace Multiservice International	-	105.39	-	105.39
Belmaj Integrated Services Ltd	98.29	-	-	98.29
Abdoul Rachid Nasidi Citigate	95.82	-	-	95.82
Ezeah Brothers International Co. Ltd. (Landmark)	95.61	-	-	95.61
Brightchoice Overseas	82.21	-	-	82.21
Mangalsidhi Merchants Pvt. Ltd.	78.65	-	-	78.65
K.A.Akande Investments Nig Ltd	71.00	-	-	71.00
Mac Resolute Services Ltd	62.51	-	-	62.51
Perfect Vitamins Pvt Ltd	48.11	-	-	48.11
Others (83 Parties)	1,636.29	261.39	644.44	1,253.24
<b>Total</b>	<b>8,494.00</b>	<b>899.98</b>	<b>3,504.72</b>	<b>5,889.26</b>

4.5.1. The above tables shows that either no or only paltry sum was received from these parties in FY 2017-18 and there is no change in these balances even in following years, whereas the Corporate Debtor was admitted into CIRP 11.10.2019 in a petition for admission into CIRP filed in the year 2019. The Transaction Auditor has commented in his report dated 6.12.2021 on five largest parties, constituting outstanding of Rs. 2889.27 lakhs in the report and have observed that none of these firms had active GST numbers. Of these five parties, two are Companies, one of which M/s Krimeg Texfab Private Limited having outstanding of Rs. 393.42 is stated to be in process of striking of and has filed last financial statements for FY

2017-18, and the other is stated to have filed last financial statement for FY 2019-20. The Corporate Debtor had carried forward these balances in the financial accounts for the year ended on 31.3.2017, which clearly suggests that these balances were recoverable. However, non-realisation of any sum or paltry sum in some cases thereafter clearly suggests that the suspended management failed to take any cogent steps to realise these amounts.

4.5.2. The above facts clearly proves that the suspended directors have failed to exercise due diligence in minimising the potential loss to the creditors of the corporate debtor being fully aware that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor. Accordingly, we are satisfied that they are liable to contribute to the assets of the Corporate Debtor for the loss caused on account of non-realisation of these debts. Hence, we order that the Respondents shall be liable to contribute to the assets of the Corporate Debtor for a sum of Rs. 5887.40 lakhs within 30 days from the date of this Order.

5. In view of the above, IA 2381/2023 is partly allowed and disposed of accordingly.

**Sd/-**  
**Prabhat Kumar**  
Member (Technical)

**Sd/-**  
**Justice V.G. Bisht**  
Member (Judicial)