

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA 2175/2021

IN

CP (IB) No.3026/MB-IV/2019

Under Section 43(1) Section 44, 45 and 50 r/w
51 of the I&B Code, 2016

Ms. Anagha Anasingaraju,

...Resolution Professional/Applicant

V/s.

Smt. Ramesh Pokerna and Ors.

... Respondent(s) No.1

In the matter of:

The Janata Sahakari Bank Limited, Pune

... Financial Creditor

V/s.

**M/s Beton Concrete Products Private
Limited**

... Corporate Debtor

Order Dated: 02.08.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Mr. Avinash R. Khanolkar a/w CS
Anagha Anasingaraju Ms. Surekha
Yadav, Advocates.

For the Respondents : None present.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application i.e. IA-2175/2021 is filed by Interim Resolution Professional CS Anagha Anasingaraju (hereinafter as **the Applicant**), of Beton Concrete Products Private Limited (hereinafter referred to as **the Corporate Debtor**) seeking directions of this Tribunal under Section 45 r/w 48 & 49 of the Insolvency and Bankruptcy Code, 2016 (“Code”) against Mr. Ramesh Pokerna (“Respondent No. 1” or “R1”) to make good the two transactions undertaken with the Corporate Debtor.
2. The Applicant was appointed as Interim Resolution Professional in the Corporate Insolvency Resolution Process (“CIRP”) process of Corporate Debtor vide an Order dated 28 April 2020 passed in the CP (IB) 3026/2019. The applicant was subsequently appointed as the Resolution Professional by the Committee of Creditors (hereinafter referred as **the COC**) in its first meeting held on 03 June 2020.

3. The Respondent no. 1 is an erstwhile Director of the Corporate Debtor and is a related party to the Corporate Debtor as per the provisions of the Section 5 (24) of the Code.
4. The Respondents no. 1 to 3 are the Directors (with suspended powers) of the Corporate Debtor and they were in charge of the affairs of the Corporate Debtor before the commencement of the **CIRP**.
5. On 11 May 2020, the Applicant caused the public announcement inviting claims from the Stakeholders of the Corporate Debtor. The Applicant, by virtue of the provisions of the Code, constituted the COC for the Corporate Debtor with the sole Secured Financial Creditor of the Corporate Debtor.
6. Since the Lockdown was on going, the Applicant could not immediately take all the requisite steps as enshrined under the Code. The audited financial statements for the year ended 31 March 2019 were available along with the Tally backup. For the year 2019-20, the tally back up was made available. The Applicant had formed an opinion on the avoidance transactions on the basis of these inputs and informed the CoC in its meeting held on 28 September 2020.
7. Following the formation of opinion, the RP verified the supporting documents for the lookback period, as available to him, and evaluated the transactions carried out by the Corporate Debtor during the period 29 April 2018 to 28 April 2020 for identifying and then classifying the transactions as

Preferential or Undervalued or Transaction defrauding Creditors or Fraudulent Transaction or Extortionate credit transaction or transactions of fraudulent / wrongful trading as the case may be.

8. Based on the initial opinion formed by the Applicant and the findings during the course of the forensic audit conducted by M/s Himanshu Patel & Associates, Chartered Accountants, Pune, the Applicant made a determination of the transactions as required under the Code. During the CIRP period, the Applicant also interacted with the director with suspended powers and requested for information pertaining to the transactions. The director sought further time stating that the accountant was not available or records were not available. The Applicant also held personal meetings in Aurangabad with the director with suspended powers seeking clarification and explanation on various transactions of the corporate debtor. Thereafter, the draft of the report was shared with the director for his comments. However, the director with suspended powers merely denied the contents and again sought further time to submit his explanation. Correspondence exchanged with the director with suspended powers in this regard are forming part of this application.
9. The Applicant submits that on account of the lockdown situation in the state of Maharashtra and more particularly in Aurangabad till the month of October 2020, the Applicant could not travel to the district of Aurangabad

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where the corporate debtor is located till the month of October / November 2020. Because of this, the Applicant was not able to form an opinion on the said transactions within 75 days, and could not make the determination within 115 days and could not file applications within 135 days as required under Regulation 35A of the CIRP Regulations. The Applicant seeks condonation of delay in filing of these applications. Further, the Hon'ble NCLT vide its order dated 11 January 2021 has excluded the period of 122 days from the CIRP period towards the lockdown. As resolved by the COC in its meeting held on 03 December 2020, the CIRP was extended by 90 days.

10. The director with suspended powers had sought time to submit resolution plan and also to submit explanation and supporting documents for the avoidance transactions. Since the CIRP period was expiring, the COC meeting was held on 09 February 2021 and there being no resolution plan received, the COC resolved to liquidate the corporate debtor.

11. The Applicant submits that as determined by the Applicant, the Corporate Debtor has entered into following transactions with Respondent no. 1, which are in nature of Undervalued Fraudulent transactions and violates Section 45 & 49 of the Code.

Sr.No.	Particulars of transaction defrauding creditors	Amount (Rs.)

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1	Payment of personal expenses of director by the corporate debtor	39,590
2	Transfer of net balance to non-Current Assets account	3,37,137
	TOTAL	3,76,727

12. The auditor appointed for the purpose, M/s Himanshu Patel & Associates, Chartered Accountants, Pune, has confirmed these transactions in his report.
13. Under section 45 of the Code, the a transaction is under value transaction, Such transaction has not taken place in the ordinary course of business, and is in nature of either of following transaction:
- a. The corporate debtor has made a gift to a person; or
 - b. The corporate debtor enters into a transaction with a person which involves transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor.
14. In the present case, the transactions were entered within period of two years preceding the CIRP commencement date, hence, this transaction is within the period is specified in Section 46 of the Code.

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15. Under section 49 of the Code, the following undervalued transactions are considered as transaction defrauding creditors, if they are undertaken deliberately :

- a. for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor, or
- b. in order to adversely affect the interests of such a person in relation to the claim.

16. During the look back, period i.e. from 29 April 2018 onwards (since Respondent no.1 herein is a related party), number of entries are passed through this account of Respondent no. 1 in the books of the Corporate Debtor. The ledger account in the books of Corporate Debtor in the name of R1 is as follows:

Particulars	Debit (Rs.)	Credit (Rs.)
Opening balance		2,93,167
Payment towards Mediclaim policy premium of R1	39,590	
Sundry cash payments made by R1	1,490	
Payment made by R1 to Pallavi Industries towards		85,050

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purchase of Furniture and Fixture (Water Tank)		
Transfer of R1 closing credit balance to Concept Enterprises (debtor)	3,37,137	
Payment made by R1 to D Force Solar & Energy Pvt Ltd towards purchase of Invertor		38,350
Total	3,78,217	4,16,567
Closing Balance in R1 account shown as a loan term advance		38350

17. The payment Rs.39,590/- was made towards Mediclaim Insurance Policy in the name of R1, hence, it was a personal expenditure of R1 borne by the Corporate Debtor. Further, the transfer of balance receivable from M/s. Concept Enterprises to R1 to set off the amount payable to the R1 is also claimed to be an undervalued transaction defrauding Creditors.

18. This Bench heard the Counsel and has perused the material on record.

19. This Bench finds that the Applicant has determined above two transactions as under valued transactions defrauding Creditors. This Bench finds that the

payment of Rs.39,590/- on behalf of R1 is duly debited to the account of R1 in the books of Corporate Debtor. Further, the transfer of balance receivable from M/s. Concept Enterprises to R1 to set off the amount payable to the R1 results into recovery of amount receivable from M/s. Concept Enterprises and discharge of liability towards R1. Hence, these transactions are neither in nature of a gift nor are transfer for a consideration less than its value. Accordingly, the said transactions cannot be held to be under valued transactions under Section 45 of the Code. Consequently, these transactions cannot be termed as transactions defrauding creditors under Section 49(1) of the Code, because these transactions are not under valued transactions and Section 49(1) contemplates only an under valued transactions which is deliberately entered into for keeping assets of the Corporate Debtor beyond the reach of the creditors or to adversely affect their interest. On the contrary, the effect of these transaction is to discharge one debt owed to the Corporate Debtor by debt owed by the Corporate Debtor. Hence, it can be said to be in nature of Preferential Transaction, at best.

20. In view of the above, this Bench is of the considered view that an order under Section 48 (1) (a) r/w 49(1) (b) (i) or 48(1)(c) cannot be passed by this Bench. Accordingly, IA-2175/2021 is **dismissed**.
21. It is clarified that the Applicant shall be at liberty to file another application, in relation to transactions alleged to be undervalued transaction defrauding

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creditors, seeking relief under the relevant provisions of the Code, if such application is otherwise permissible under the Code.

Sd/-

PRABHAT KUMAR
Member (Technical)
02.08.2023

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)