



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI.RAJEEV BHARDWAJ- HON'BLE MEMBER (J)

CORAM: SHRI.SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.01.2024 After Special Bench CH-II**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.912/2019 in CP (IB) No.568/9/HDB/2018
NAME OF THE COMPANY	Vijay Home Appliances Ltd
NAME OF THE PETITIONER(S)	Safexpress Pvt Ltd
NAME OF THE RESPONDENT(S)	Vijay Home Appliances Ltd
UNDER SECTION	9 of IBC

ORDER

IA No.912/2019

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

**I.A. No. 912 of 2019 in
CP (IB) No.568/9/HDB/2018**

Between:

Mr.Rajesh Donkeswar,
Resolution Professional of
M/S. Vijay Home Appliances Limited
Flat No. 307, Venkatadari Nivas,
Rezimental Bazar,
Secunderabad 500 025

.....Applicant

Vs.

Mr.Mallikarjuna Reddy Pacharapalli
(Suspended Board of Director)
1-9-129/17/E, 19
Street Near Eseva, Ram Nagar,
Hyderabad – 500 020.

...Respondent No. 1

Mr. Mandha Bal Reddy
(Suspended Board of Director)
Plot No. 101, G.R. Reddy Nagar,
Near Municipal Park, BJR Colony,
Kapra, Hyderabad – 500 073

...Respondent No. 2

Mr. Rayaprolu Prabhakar Sreenivas,
(Suspended Board of Director)
8-3-670, Flat No. 1 Sri Nagar Apartments,
Yousufguda,
Hyderabad – 500 073

...Respondent No. 3

M/s. Hyderabad Steels
Partnership Firm
Plot No.19, Bhoodevi Nagar Colony,
Venkatapuram,
Secunnderabad - 500 015

...Respondent No. 4



In the matter of:

M/s Safexpress Private Limited

...Petitioner/
Operational Creditor

And

M/s. Vijay Home Appliances Limited

...Respondent/
Corporate Debtor

Date of Order: 05.01.2024

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. G. Kalyan Chakravarthy

For the Respondents (R1 to R3) : Ms. Jhansi Rani

For the Respondent (R4) : Mr. Harinath & Mr. K.V. Raman

Per: Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed by the Resolution Professional (**RP**) against the suspended Board of Directors of M/s Vijay Home Appliances Limited, the Corporate Debtor (**CD**) and a partnership firm M/s Hyderabad Steel. It is alleged that the Corporate Debtor, while under the management of Respondent No(s). 1, 2 & 3 (the suspended Board of Directors), had carried out certain preferential



transactions with Respondent No.4, M/s Hyderabad Steels within one year prior to the initiation of CIRP¹ against the CD.

2. The CD was admitted into CIRP on 24.04.2019 and the applicant was appointed as Resolution Professional (**RP**). After being appointed as RP, the applicant is stated to have visited the premises of the CD and examined its books of account.
3. According to the applicant, on examination of the records, he was of prima facie opinion that certain preferential transactions covered under section 43 of IBC² were carried out by the CD, which he brought to the notice of the Committee of Creditors (**CoC**) on 30th July, 2019.
4. With the approval of the CoC, obtained on 16.08.2019, the applicant RP appointed M/s T Sathya Narayana and Company as Transactions Auditor for the purpose of determination of transactions in accordance with Regulation 35(A)(2) of IBBI (CIRP) Regulations 2016.
5. Findings of the Transactions Auditor have revealed that the CD – which was in the business of manufacturing, distribution, and sales of distribution of Home Appliances and related products in the brand name of “Vijay” – had sold its trade mark “Vijay” and other related trade mark to its sister concern. M/s Vijay Home Appliances India for the consideration of Rs 8.00 crores on 20th June, 2018. The proceeds of the sales were received³ over a period of time from 18th June, to 20th December 2018. Notably, Rs 6.80 crores of the total receipts were obtained by 4th July, while the remaining Rs 1.2

¹ Corporate Insolvency Resolution Proceedings

² Insolvency & Bankruptcy Code, 2016

³ As per the details are on Page 5 and relevant bank statement copy is on Pages 17 to 19 of the Application



crores were received by the CD between 5th July and 27th December 2018, in connection with the sale of the "Vijay" trademark.

6. It is a finding of the transaction auditor that out of the proceeds of Rs 6.8 crores received till 4th July 2018, a sum of Rs 6.13 crores was paid⁴ to M/s Hyderabad Steels i.e, Respondent No.4, who stood as a creditor for Rs 7,91,48,506/- in the books of account of the CD as on 01.04.2018.
7. These payments to Respondent No.4 took place between 19th June and 4th July 2018, clearly showing a nexus between the receipts from sale of trade mark and payment to this particular creditor. All these payments to Respondent No. 4 took place within one year before the date of initiation of CIRP against the CD.
8. Based on these facts, the applicant RP has formed the opinion that the CD at the relevant time had given preference to M/s Hyderabad Steel i.e, Respondent No.4 by paying them Rs.6.13 crores in preference to other creditors and in violation to Section 43 of IBC.
9. The applicant RP has sought directions from this Tribunal to declare the aforesaid payments of Rs 6.13 crores to Respondent No. 4 as preferential transactions and pass consequential orders under Section 44 of (IBC) directing M/s Hyderabad Steel of Responded No.4 to pay back the sum of Rs.6.13 crores with interest.
10. In their counter, Respondents No. 1, 2 & 3, who have filed identical counters, have not given any explanation about the transaction of Rs 6.13 crores carried out with M/s Hyderabad Steel during the period 19th June, 2018 to 4th July 2018. Instead, they have dwelled more on the transaction of receipt of Rs 8.00 crores from M/s Vijaya

⁴ As per the details are on Page 6 and relevant bank statement copy is on Pages 17 to 19 of the Application



Home Appliances India, which is not the subject matter of this application.

11. About the transaction with M/s Hyderabad steel of Rs.6.13 crore only a bland assertion has been made that these were carried out in the ordinary course of business and cannot be challenged as preferential transactions under Section 43 of IBC. Furthermore, it is emphasized that the fact of making payments to Respondent No. 4 alone cannot make the transaction with M/s Hyderabad Steels as preferential transaction.
12. M/s Hyderabad Steels (Respondent No. 4) in its counter, which is also identical to the ones filed by the Respondent No. 1, 2 & 3, has also claimed that transactions with the Corporate Debtor between 19th June and 4th July 2018 as in the ordinary course of business. It is claimed that these payments were made by the CD to reduce the high interest on the dues outstanding and it has benefited substantially by the waiver of interest.

The Decision

13. We have heard the Counsels both sides and gone through the records including the transaction audit report appended to the application.
14. It is uncontested that Respondent No. 4, M/s Hyderabad Steels was a supplier of the Corporate Debtor, providing goods during the period from July 1 to November 30, 2016. There is no evidence of any transaction between the CD and M/s Hyderabad Steels before and after that except between 19th June to 4th July 2018, when the impugned transactions took place.



15. Also unchallenged is the fact that as on as of 1st April 2018, there existed a credit balance of Rs 7,91,48,506/- in the ledger account⁵ of M/s Hyderabad Steels in the CD's books. That the CD disbursed a total of Rs 6.13 crores to M/s Hyderabad Steels in tranches of different amounts⁶ from 19th June to 4th July 2018 is also an undeniable fact. Crucially, all these transactions occurred within the one-year timeframe preceding the initiation of the Company Insolvency Resolution Professional (CIRP) on 24th April 2019, is another undisputed fact. We need look no further, for these transactions were clearly preferential in nature, unless these were carried out in the ordinary course of business.
16. The only consideration now is to ascertain whether the transactions with M/s Hyderabad Steels were in the ordinary course of business. The facts however indicate otherwise. The supplies from M/s Hyderabad Steels occurred in the year 2016, and there is no record of any other transactions between the CD and this party until 19 June 2018, when the CD started payment of Rs 6.13 crores to this particular entity.
17. Notably, the petition under section 9 of IBC against the Corporate Debtor was originally filed⁷ before this Authority on 28 July 2017. This petition was allowed to be withdrawn vide order dated 14 August 2017 with a liberty to file fresh petition for the same cause of action. In due course, a fresh application⁸ was filed on 29 September 2018.
18. It is evident that during the contemplation of petitions under Section 9, the Board of Directors (Respondents No. 1, 2, & 3) of the Corporate Debtor anticipating the imminent initiation of CIRP,

⁵ Page 28 of the Application

⁶ As per the details on Page 6 of the Application

⁷ CP(IB) No. 144/9/HDB/2017

⁸ CP(IB) No. 568/9/HDB/2018



opted to settle the debt owed to M/s Hyderabad Steels, i.e., Respondent No. 4, giving them preferential treatment over other creditors of the company.

19. The payments made to M/s Hyderabad Steels by the CD were not conducted in the ordinary course of business, as they occurred more than 18 months after the initial transaction with that party. In this context, it is pertinent to refer to the landmark judgment in the case of Anuj Jain⁹, where the Hon'ble Supreme Court sought to explain the term "ordinary course of business." The Apex Court of India drew insights from a decision of the Australian High Court¹⁰, quoting approvingly, therefrom about the term 'ordinary course of business' that,

"It speaks of the course of business in general. But it does suppose that according to the ordinary and common flow of transactions in affairs of business there is a course, an ordinary course. *It means that the transaction must fall into place as part of the undistinguished common flow of business done, that it should form part of the ordinary course of business as carried on, calling for no remark and arising out of no special or particular situation.*"

20. The transaction of Rs 6.13 crores, of payment to M/s Hyderabad Steels by the CD, clearly deviated from the 'undistinguished common flow of business.' Instead, it was executed in an extraordinary manner, occurring more than 18 months after initial business dealings with that party, in a particular situation of an impending CIRP. This transaction was not in the ordinary course of business of the CD, and was undoubtedly of a preferential nature answering the description as in Section 43(2) of IBC.

⁹ Anuj Jain Interim Resolution Professional, Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401 (Para 28.6.1)

¹⁰ in the case of Downs Distributing Co Pty Ltd v. Associated Blue Star Stores Pty Ltd (in liq): (1948) 76 CLR 463



21. As a result, this IA No. 912/HDB/2019 is allowed and Respondent no. 4 is Directed to pay back within 15 days the sum of Rs 6,13,00,000 (Rupees Six Crores and Thirteen Lakhs only) to the Corporate Debtor, as represented by the Applicant RP who will take further action as per the provisions of the IBC.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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