

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

MA/89(CHE)2021

IN

CP/129/IB/2018

(filed under Section 43, 44, 45, 48, 49 & 50 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)

*In the matter of **M/s. NATHELLA SAMPATH JEWELLERY PVT. LTD.***

Shri. S. Palaniappan,
Liquidator of
M/s. Nathella Sampath Jewellery Private Limited,
B5, Patteewraran Park North Block,
Dr. Ramasamy Layout, Velandipalayam,
Coimbatore-641 025

... Applicant


-Vs-

1. Shri. Nathella Prappanna Kumar,
Suspended Director of the Corporate Debtor,
New No. 79, Old No. 245, Kilpauk Garden Road,
Kilpauk, Chennai-600 010

2. Shri. Nathella Prasanna Kumar,
Suspended Director of the Corporate Debtor,
New No. 79, Old No. 245, Kilpauk Garden Road,
Kilpauk, Chennai-600 010

3. Shri. Nathella Ranganatha Gupta,
Suspended Director of the Corporate Debtor,
No. 14, Dr. Vasudevan Street,
Kilpauk, Chennai-600 010

4. Shri. Hemant Mehta,
(Proprietor of M/s. Hemant & Co.)
S/o. Dr. M.J. Mehta,
12, Wallace Garden 2nd Street,
Thousand Lights, Chennai-600 006



5. Smt. Sandhya Mehta,
W/o. Mr. Hemant Mehta,
12, Wallace Garden 2nd Street,
Thousand Lights, Chennai-600 006

... Respondents

6. Mr. Ravindranath Narayana Rao,
IBBI/IPA-001/IP-P00645/2017-2018/11099
#522/C, 2nd Floor, 1st D Cross Road,
3 Stage, 4 Block, W C R,
Basaveshwaranagar,
Bangalore, Karnataka-560 079

7. Mr. Ram Ratan Kanoongo,
IBBI/IPA-001/IP-P00070/2017-2018/10156
708, 7th Floor, Raheja Centre,
Nariman Point, Mumbai City,
Maharashtra-400 021

8. Mr. M. Raguram,
B-9, Abhinayam 1, Sakthi Nagar,
Second Avenue, Nolambur,
Maduravoyal, Thiruvallur,
Tamil Nadu-600 095

...Impleaded Respondents 6 to 8

Order Pronounced on **26th July, 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)


For Applicant : Mr. R. Rajesh, Advocate
For Respondents 4 & 5 : Mr. Pawan Jhabakh, Advocate

ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application has been filed by Shri. S. Palaniappan, Liquidator of **M/s. Nathella Sampath Jewellery Private Limited** under Sections 43, 44, 45, 47, 48, 49 & 50 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

- a) Declare that the sale transactions in respect of 3 flats to the tune of Rs. 45 lakhs are preferential, defrauding creditors, Extortionate under section 43, 44, 45, 48, 49 & 50 of the Code; 
- b) Direct the Respondents No. 4 & 5 to pay Rs. 45 lacs plus interest at 12% p.a. from 12.06.2017 till the date of payment or present market value of the property whichever is higher into the liquidation estate of the CD;
or
Direct the respondents to make contribution to the assets of the Corporate Debtor either jointly or severally
- c) direct the Respondents No.4 to submit revised claim to the Liquidator calculating interest rate at 12% per annum instead of existing interest rate as per the loan agreement which are extortionate;

2. The facts leading to filing of this application are that the Corporate Debtor was admitted to Corporate Insolvency Resolution Process ("**CIRP**") under Section 10 of IBC, 2016 ("**Code**") vide an order dated 23.04.2018. Shri. N. Ravindranath was appointed as Interim Resolution Professional ("**IRP**"). On the approval

Committee of Creditors ("**CoC**"), Sri. Ram Ratan Kanoongo was appointed as Resolution Professional ("**RP**") vide an order dated 21.06.2018. In the 5th CoC meeting held on 19.09.2018, CoC arrived at a conclusion that pursuant to the Enforcement Directorate attachment order dated 31.07.2018 on the properties of the Corporate Debtor and the action taken by the Economic Offence Wing, Chennai Police on the Promoters, it has become difficult to resolve the Corporate Debtor. Therefore, CoC recommended for the liquidation of Corporate Debtor which application was allowed by this Tribunal vide an order dated 03.01.2020. RP Sri. Ram Ratan kanoongo was appointed as the Liquidator.

3. The Liquidator made the public announcement in Form-B calling upon the stakeholders to submit their claims. Last date was fixed as 09.02.2020. In the meantime, pursuant to the reference made by the Tribunal to the Insolvency and Bankruptcy Board of India ("**IBBI**") proposing the name of another Insolvency Professional, this Tribunal vide an order dated 23.01.2020, appointed Sri. M. Raguuram as the Liquidator to carry out the liquidation process of the Corporate Debtor. Since Mr. M. Raguram expressed his inability to act as Liquidator, based on the recommendations of the IBBI, this Tribunal vide an order dated 25.02.2020 appointed the Applicant as the Liquidator.

4. The Liquidator verified the claims and filed the list of stakeholders before the Tribunal. A public announcement was made in the newspapers "**Dinamani**" (Tamil) and "**Financial Express**" (English) in Chennai editions regarding the list of the stakeholders of the Corporate Debtor. In response to the public announcement, 4th Respondent viz., Sri Hemant Mehta raised the claim of Rs.2,75,25,236/- (Rupees Two Crores Seventy Five Lakhs Twenty Five Thousand Two Hundred and Thirty Six only).

5. As per the ledger for the period from 01.04.2016 to 31.03.2017 and from 01.04.2019 to 31.03.2020 of the Corporate Debtor, outstanding principal loan component was Rs.1,35,00,000/- (Loan Amount of Rs.1,50,00,000 less amount repaid Rs.15,00,000/-). It was found that the Respondent No.4 charged exorbitant interest @ 36% per annum besides charging interest of Rs.10,00,000/- on the loan amount of Rs.1,50,00,000/- for the first two months of the loan period from 21.12.2016 to 21.02.2017.

6. The Liquidator admitted the claim of the 4th Respondent to the tune of Rs.1,35,00,000/- being the principal outstanding in the books of Corporate Debtor and communicated his decision vide Statement of Verification dated 21.09.2020. This was subject to furnishing a reply and property documents of the Corporate Debtor sought by the Liquidator vide email dated 07.09.2020.

7. It is stated that the insolvency commencement date of the Corporate Debtor was 23.04.2018, the financial transactions of Respondent No.4 with the Corporate Debtor was on 21.12.2016 i.e. within two years of the insolvency commencement date. Since it was extortionate credit transactions under Section 50 of the Code carrying an interest rate at 3.33% per month, the Liquidator has prayed this Tribunal to modify the interest rate at 12% per annum for the above financial transaction with the Corporate Debtor.

8. It is stated that while carrying out the process as prescribed under Section 35 of the Code, it was noticed that besides other assets, Corporate Debtor has three immovable properties as detailed in para 11 at page-H as per the audited financial statement as on 31.03.2016 and 31.03.2017 and the provisional financial statement as on 15.01.2018. The above assets were accounted in the books of the Corporate Debtor against which the depreciation was claimed. It was found that the above properties were purchased out of the funds of the Corporate Debtor and the gross book value of the properties are Rs.34,86,123/- (Rupees Thirty Four Lakhs Eighty Six Thousand One Hundred and Twenty Three only). It was noticed that the Corporate Debtor had entered into a Sale and Construction Agreement dated 29.01.2010 with M/s. Antony Projects Private Limited for purchase of the above

three flats at Medavakkam. The seller of Medavakkam flats vide separate letters dated 15.12.2011 had addressed to the Corporate Debtor to take possession of the above three flats which were ready for occupation. It was also noticed that these three flats were in possession and control of the Corporate Debtor since December 2011 as reflected in the books of the Corporate Debtor and in the Provisional Financial Statements as on 15.01.2018 and on these assets, the Corporate Debtor had claimed the depreciation.

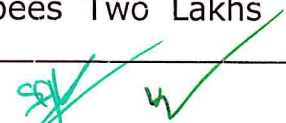
9. It is stated that on enquiry, Respondent No.1 through a mail dated 11.08.2020 informed the Applicant/Liquidator that the above three flats owned by the Corporate Debtor were registered to Shri. Hemant and his family directly from Antony Projects Private Limited vide Sale Deed and the sale consideration for the said flats was paid by Sri. Hemant and his family to the seller i.e. M/s. Antony Projects Private Limited @ Rs.12,00,000/- (Rupees Twelve Lakhs only) each flat. However, no consideration has been shown in the books of the Corporate Debtor towards return of money and these flats continued to be shown as assets of the Corporate Debtor on which the depreciation was claimed.

10. It is stated that the above flats are registered in the name of Shri. Hemant Mehta and Smt. Sandhya Mehta, W/o. Shri. Hemant Mehta by M/s. Antony Projects Private Limited through Sale Deed

dated 12.06.2017 for a consideration of Rs.2,63,940/- (Rupees Two Lakhs Sixty Three Thousand Nine Hundred and Forty only) each who transferred the flats to different parties vide Sale Deeds dated 19.12.2018 and 10.01.2019 respectively.

11. It is alleged that the said transaction is preferential and fraudulent with an intent to defraud the creditors. In a query raised by the Applicant through email dated 07.09.2020, it was replied by Respondent No.4 vide his letter dated 03.10.2020 that the above properties are not in anyway connected with the existing claims or loans given by them through the loan documentation, though in the letter dated 12.06.2017 addressed to the Corporate Debtor, it was stated that the above properties are secured to them for the business loan availed by the Corporate Debtor. It is stated that since no such business loan transaction existed in the books of the Corporate Debtor, clarifications were sought from the 4th Respondent vide mail dated 22.02.2021 which was replied by the 4th Respondent vide reply mail dated 03.03.2021.

12. It is stated that in the email dated 11.08.2020, the sale consideration was reported as Rs.12,00,000/- (Rupees Twelve Lakhs only) each but in the letter dated 12.06.2017 the value of the each flat was reported as Rs.15,00,000/- (Rupees Fifteen Lakhs only). As per the sale deed dated 12.06.2017, the sale consideration mentioned was Rs.2,63,940/- (Rupees Two Lakhs



Sixty Three Thousand Nine Hundred and Forty only) per flat. It is stated that no money was passed on to the Corporate Debtor and the aforesaid transactions are the undervalued transactions.

13. It is stated that primary objectives of the IBC are to preserve and maximize the insolvency estate.

14. It is prayed that the above sale be declared as solely covering under Section 43, 44, 45, 48, 49 and 50 of the Code and Respondent No. 4 & 5 be directed to pay Rs.45,00,000/- plus interest at the rate of 12% per annum from 12.06.2017 till the date of payment over the market value of the three flats to the liquidation account of the Liquidator for liquidation under 53 of the Code.

15. On getting notice of the application, the Respondent No. 4 and 5 filed their reply alleging that the said transactions were entered between a third party i.e. Antony Projects Private Limited and not with the Corporate Debtor. The Respondents have not purchased any asset from or of the Corporate Debtor.

16. It is stated that the above transactions are neither the preferential nor the fraudulent transactions. It is stated that the loan was given under the valid agreement and the prayer as to reduction of rate of interest is not maintainable.



17. Rejoinder is filed by the Liquidator along with the copy of the audited financials/provisional financials, copy of ledger for the above flats wherein the Liquidator denied all the averments made in the reply and reiterated what has been stated in the application. It is stated that Respondent No. 4 & 5 are admittedly one of the creditors of the Corporate Debtor under liquidation. In fact, they have filed their claims before the Liquidator in their capacity as creditors to the Company in liquidation and the Liquidator has partly admitted their claims.

18. We have heard Learned Counsel for the parties and perused the written synopsis filed by the Liquidator.

19. A perusal of ledger of Hemant & Co. for the period from 01.04.2016 to 31.03.2017 at page-3 of the application reflects credit and debit entries of Rs.1,50,00,000/- and 15,00,000/- respectively as on 21.12.2016 and 28.03.2017. The said entries are also reflected in the account maintained by M/s. Nathella Sampath Jewellery Private Limited ("Corporate Debtor"), in the ledger from 01.04.2019 to 31.03.2020 in respect of Hemant & Co. Ledger (all) showing a balance of Rs.1,35,00,000/-. The document at page-5 of the application contains the loan agreement dated 21.12.2016 signed between M/s. Hemant & Co. and M/s. Nathella Sampath Jewellery Private Limited towards advancement of loan of Rs.1,50,00,000/- vide RTGS 000314 dated 21.12.2016. Personal

Guarantee was also given by Mr. Nathella Prappana Kumar as seen from the document at page-9. The document at page-11 contains the statement of accounts of M/s. Hemant & Co. maintained with the HDFC Bank Limited reflecting the receipt from M/s. Nathella Sampath Jewellery Private Limited on 28.03.2017. M/s. Nathella Sampath Jewellery Private Limited had also issued the post-dated cheques for the said amount for the date 20.09.2017 as seen from page-10 of the application. Page-14 to page-18 of the Paper Book contains the summary statement for the total outstanding against M/s. Nathella Sampath Jewellery Private Limited. There is a resolution to the effect at Page-19 of M/s. Nathella Sampath Jewellery Private Limited regarding borrowing of a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) from M/s. Hemanth & Company.

20. The statement of verification/admission/rejection and determination of quantum of claims issued by the Liquidator at Page-20 shows that there was an outstanding amount of Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs only) in the books of the Corporate Debtor against which a claim of Rs.1,35,00,000/- was admitted and it was in the form of an Unsecured debt. The said claim was admitted on 21.09.2020 after collecting all the details from M/s. Hemanth & Company vide letter dated 07.09.2020.

21. Admittedly, there are Sale and Construction Agreements dated 29.01.2020 between M/s. Antony Projects Private Limited and M/s. Nathella Sampath Jewellery Private Limited i.e. Flat Nos.'B1', 'C1' & 'D1' @ GREENLANDS (page-51), but there is no record indicating that complete sale consideration amount is paid by the Corporate Debtor to M/s. Antony Projects Private Limited. In the Sale Agreement, the amount paid as Rs.1,00,000/- as against 2,63,940/- towards purchase of the land has been shown while in the Construction Agreement against the amount of Rs.11,06,238/- (Rupees Eleven Lakhs Six Thousand Two Hundred and Thirty Eight only), a sum of Rs.65,936/- (Rupees Sixty Five Thousand Nine Hundred and Thirty Six only) has been shown as received. Although there is a mail addressed to the Liquidator dated 11.08.2020 containing the transaction details with M/s. Hemant & Co. from Nathella Sampathu Chetty that three apartments owned by Nathella Sampath Jewellery Private Limited were registered to Hemant Family directly from M/s. Antony Builders and the sale consideration for each flat, Hemant & family have received from the buyer as Rs.12,00,000/- (Rupees Twelve Lakhs only) per flat showing as the security value but neither the statement of accounts nor the Balance Sheets reflect any such transactions that the above flats had been put as security with M/s. Hemant & family. These are three separate Sale Deeds dated

12.06.2017 executed by M/s. Antony Projects Private Limited in favour of Mr. Hemant Mehta and Sandhya Mehta but these sale deeds have been executed independently of the sale/construction agreement with Nathella Sampath Jewellery Private Limited and the developer (Antony Projects Private Limited).

22. We find force in the contention of Respondent No. 4 & 5 that they had not purchased any asset from or of the Corporate Debtor and all the transactions were entered with Antony Projects Pvt. Ltd. and not with the Corporate Debtor. There is no document to show that the Corporate Debtor had anytime requested Antony Projects Pvt. Ltd. to transfer the above flats to the Respondent No. 4 & 5 against the debt receivable from the Corporate Debtor. These flats have subsequently been sold by Respondent No. 4 & 5 as seen from the sale deeds executed by them in favour of the third parties. Respondent No. 4 & 5 in their letter dated 03.10.2020 have also clarified that the properties as questioned are not in anyway connected with the existing claims raised or loan given by them to the loan documentation with Hemant & Co.. Though there is a letter addressed by Hemant Mehta to Nathella Sampath Jewellery regarding securitizing three flats in Medavakkam purchased by the Corporate Debtor from Antony Builders and registering the same in their names in lieu of part of business loan availed by it from them of which market value is around 15 lakhs

each and on settlement of business loan, they agreed to pay the stamp charges for transfer back to Nathella Sampath Jewellery Private Limited but on scrutiny of the records we find that the sale deeds are of date 12.06.2017 where independent transactions have been shown without any reference to three flats.

23. The ledger/statement of account maintained by the Corporate Debtor with respect to Hemant & Co. does not show any transactions relating to the said flat. It may be true that the Corporate Debtor had entered into sale agreement and construction agreement with M/s. Antony Builders in respect of three flats but there is no entry or document to the effect that the Corporate Debtor securitized those flats with Hemanth & Company and registered those flats in the name of Hemanth & Family.

24. The loan given by Respondent No. 4 & 5 is independent against which a loan agreement was entered into on 21.12.2016. A sum of Rs. 1,50,00,000/- was transferred to the Corporate Debtor. Part amount of Rs.15,00,000/- was paid by the Corporate Debtor on 28.03.2017 to Hemant & Co.. The Corporate Debtor had issued post-dated cheques for the amount of Rs.1,50,00,000/- on 20.09.2017 which on presentation were dishonoured. Thus, the disbursement amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) by R4 & R5 and receipt of the same as loan by the Corporate Debtor is not at all denied by any party.

25. It is true that the said loan transaction was within the period of two years preceding the Insolvency commencement date but on perusal, we find that these transactions were done in the usual course of business and the same cannot be said to be preferential/avoidance or extortionate credit transactions. It is also true that the transactions carried an exorbitant rate of interest but the same being the business transactions cannot be said to be the extortionate credit transactions. In commercial business, parties are free to make the transactions fixing the rate of interest which do not require the interference of the Tribunal.

26. For the aforesaid discussions, we find no merits in the application filed by the Liquidator as to declaring the sale transactions in respect of three flats as preferential, undervalued, extortionate or fraudulent/wrong trading.

27. The application is accordingly **dismissed** with no orders as to costs.



- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna



- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)