



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

IA No. 189/JPR/2022
In CP No. (IB)-28/9/JPR/2021

UNDER SECTION 9 OF IBC, 2016

IN THE MATTER OF:

MR. AJAY JAIN
(SOLE PROPRIETOR OF M/S RADIUM FIBRES

.... Operational Creditor

VERSUS

M/S BALDVA TEXTILES PRIVATE LIMITED

...Corporate Debtor

IA (IBC) No. 189/JPR/2022

MEMO OF PARTIES

MR. RISHABH CHAND LODHA

R/o E-5, Basant Vihar, Bhilwara,
Rajasthan- 311001

...Applicant

VERSUS

MR. RAJ SINGH

R/o 328, Santosh Colony,
Bhilwara, Rajasthan- 311001

...Respondent No. 1

MR. ANIL BALDVA

IA No. 189/JPR/2022
In CP No. (IB)-28/9/JPR/2021



R/o 4, Keshi Puri, Bhilwara,
Rajasthan- 311001

...Respondent No. 2

For the Applicant : Abhishek Naik, Adv.
Dr. Rishab Chand Lodha, RP

For the Respondent : Prabhansh Sharma, Adv.
Amol Vyas, Adv.
Harshita Gupta, Adv.

Order Pronounced On: -20.04.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Interlocutory Application ('IA') bearing IA No. 189/JRP/2022 is filed by Mr. Rishab Chan Lodha, Resolution Professional ('Applicant/ RP') of M/s Baldva Textiles Private Limited ('Corporate Debtor') under Sections 45 and 46 of the Insolvency and Bankruptcy Code, 2016 ('IBC /Code') read with Regulation 35A of the IBBI (Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulation') praying to deposit the true asset value of the Corporate Debtor by Respondents No. 1 and 2 as the transaction of undervalued and done with the intent to defraud the creditors of the Corporate Debtor. The RP is duty-bound under Section 18 of the Code to take custody and control of all the assets of the Corporate Debtor.
2. The Adjudicating Authority *vide* Order dated 11.11.2021 admitted CP(IB) No. 28/9/JPR/2021 under Section 9 of the IBC against the Corporate Debtor



wherein Mr. Prashant Agarwal was initially appointed as Interim Resolution Professional ('IRP') to conduct the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor. However, in the third Committee of Creditors ('CoC') meeting held on 13.01.2022, the CoC resolved to appoint the Applicant as the Resolution Professional of the Corporate Debtor which was allowed by this Adjudicating Authority *vide* Order dated 28.01.2022.

3. The Applicant has moved the present IA *vide* Diary No. 1239/2022 dated 25.04.2022 on the following set of facts:

- i. One of the financial creditors of the Corporate Debtor *viz.* ICICI Bank ('Financier') gave a loan of Rs. 57,76,414/- (Rupees Fifty-Seven Lakh Seventy-Six Thousand Four Hundred Fourteen Only) for the purchase of a Toyota Fortuner bearing registration number RJ06UC0003 ('loan vehicle') in the name of the Corporate Debtor. A copy of the claim form dated 25.11.2021 of the financier is annexed as Annexure A – 1 of the IA. Resultantly, a charge has been created and registered with the Registrar of Companies ('RoC') on the loan vehicle. Consequently, it submitted its claim of Rs. 3,73,743/- (Rupees Three Lakh Seventy-Three Thousand Seven Hundred Forty-Three Only) which was outstanding on account of the loan vehicle under respective rules and regulations.
- ii. In the fifth CoC meeting held on 08.02.2022, when the CoC enquired about the status of the loaned vehicle, the *suspended* Board of Directors ('Respondent No. 2') informed that the loaned vehicle has been sold by the



Corporate Debtor for a meagre amount of Rs. 3,75,000/- (Rupees Three Lakh Seventy-Five Only) *via* a Sale Agreement dated 05.09.2021 ('Sale Agreement') to Respondent No. 1. A copy of minutes of the fifth CoC meeting is annexed as Annexure A – 3 of the IA. Respondent No. 1 has paid only Rs. 1,11,000/- (Rupees One Lakh Eleven Thousand Only) out of the total sale consideration of Rs. 3,75,000/- (Rupees Three Lakh Seventy-Five Thousand Only) and took over the possession of the loaned vehicle. The loan vehicle has a purchasing value of Rs. 30,00,000/- (Rupees Thirty Lakh Only) that was sold undervalued to Mr. Raj Singh ('Respondent No .1') for the aforementioned sum. A copy of the Sale Agreement is annexed as Annexure A – 2 of the IA.

- iii. Such a sale of the loan vehicle is not only *malafide* but also grossly undervalued. Further, such a sale agreement has been entered into without obtaining a No Objection Certificate ('NOC') from the financier. As per Section 180 of the Companies Act, 2013, the Corporate Debtor is required to pass a board resolution to sell the assets of the Company. However, no board resolution has been passed for the sale of the said loan vehicle. In addition, the registration certificate issued by the Regional Transport Office ('RTO') shows the ownership of the vehicle in the name of the Corporate Debtor.
- iv. Respondent No. 2 received the sale consideration in his personal bank account although the subject vehicle belongs to the Corporate Debtor.



However, the same should have been deposited in the accounts of the Corporate Debtor or paid to the ICICI Bank to set off the remaining loan amount. Subsequently, the Applicant issued a Letter dated 10.02.2022 ('Notify Letter') and a Reminder Letter dated 04.03.2022 ('Reminder Letter') to Respondent No. for handing over the possession of the loan vehicle as the Sale Agreement is *void ab-initio*. A copy Notify and Reminder Letter is annexed as Annexure A – 4 and A – 5 of the IA, respectively.

v. Respondent No. 1 responded *vide* Letter dated 07.03.2022 ('Response Letter') wherein he stated that the purchase of the loan vehicle was by paying full consideration and refused to hand over the possession as he was a *bonafide* buyer. A copy of the Response Letter is annexed as Annexure A – 6 of the IA. The Resolution Professional *vide* Letters dated 06.04.2022 and 07.04.2022 ('Reply to response letter') demanded a penalty of Rs. 1000 (Rupee One Thousand Only) per day for illegally using the loan vehicle and reiterated its earlier stance. A copy of the Reply to the response letter is annexed as Annexures A – 7 and 8 of the IA. Thus, any claim of ownership is illegal and in the wrong possession of the loan vehicle.

4. Respondent No. 2 has filed its reply, *vide* Diary No. 2370/2022 dated 08.08.2022, stating the following:

i. That the loan vehicle was purchased in 2013, where the book value of the asset was Rs. 3,75,000/- (Rupees Three Lakh Seventy-Five Thousand



Only) in the Financial Year 2021 – 22 with Rs. 3,73,743/- (Rupees Three Lakh Seventy-Three Thousand Seven Hundred Forty-Three Only) remaining the total outstanding liability of the financier. A copy of the last audited financial statements is annexed as Annexure – R2 of the Reply to IA. The Corporate Debtor approached the financier for NOC, however in response, it stated that upon clearance of the outstanding debt the financier will issue the NOC to the Corporate Debtor.

- ii. Meanwhile, the CIRP has been initiated against the Corporate Debtor on 11.11.2021 whereas the vehicle has been sold by the Corporate Debtor on 05.09.2021. The loan vehicle has been sold for an admitted amount of Rs. 3,75,000/- (Rupees Three Lakh Seventy-Five Thousand Only) and the said amount has been utilised in paying off the creditors of the Corporate Debtor before the initiation of CIRP. The list of the creditor to whom the aforesaid amount has been paid is annexed as Annexure – R1 of the Reply to IA. Therefore, it cannot be said that the particular transaction is undervalued.
- iii. In the entire application, the Applicant has miserably failed to show how the vehicle has been sold at undervalue as he neither placed on record any valuation report nor he disclosed the amount which according to him could be the market value of the loan vehicle. Thus, he could not establish the case of undervalue transaction while basing the case on the ingredients of Section 66 of the Code, for which the application deserves to be dismissed



with exemplary cost. Furthermore, Section 180 of the Companies Act, 2013 does not apply to the present facts and circumstances of the case.

5. During the course of hearing of the instant matter, this Adjudicating Authority *vides* Order dated 02.02.2023 instructed Respondent No. 1 to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs Only) and Monitoring Committee to issue NOC to Respondent No. 1. Consequently, the same has been complied with *via* an affidavit *vide* Dairy No. 395/2023 dated 14.02.2023, the aforesaid amount has been utilized to pay off the Creditors. A copy of the ledger for the period from 01.04.2021 to 31.03.2022 and the confirmation received from the Creditors of the Corporate Debtor are annexed as Annexures A –1 and A – 2 of the Affidavit, respectively.
6. The Applicant has filed its written submissions *vide* Diary No. 519/2023 dated 28.02.2023 and stated the following:
 - i. Respondent No. 1 *vide* Letter dated 07.01.2023 offered to pay an additional amount of Rs. 3,00,000/- (Rupees Three Lakh Only) towards the payment of the said vehicle on the condition to issue NOC in favour of him. A copy of the Letter dated 07.10.2023 is annexed on Page 3 of the Written Submission.
 - ii. The ledger which has been filed by Respondent No. 2 *via* compliance affidavit is a false statement as it is neither dated nor notarized stating that the entire sale amount of Rs. 3,75,0000/- (Rupees Three Lakh Seventy-



Five Thousand Only) has been deposited in the account of the Corporate Debtor.

iii. In compliance with the Order dated 02.02.2023, Respondent No. 1 has deposited a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) and the NOC has been issued in favour of Respondent No. 1.

7. We observe from the records available, submissions made and evidence lead before us that the RP has filed the compliance report of the Order dated 02.02.2023. We find that Rs. 3,75,000/- is not reflected in the bank account of the Corporate Debtor, although the *suspended* Board of Directors has placed on record the confirmation of accounts of the creditors of the Corporate Debtor. Such confirmation of accounts is neither notarized nor dated nor accompanied by the affidavits of the respective creditor. In addition, the ledger account submitted by the Respondent No. 2 appears to be prepared in the aftermath of the applications filed by the RP, as the RP was not in possession of the cash flow statements, payments made, inflows, closing balance for the relevant period, summary highlighting opening balance as on CIRP commencement date; ledger accounts and tally record for the preceding three years including the date of commencement of CIRP; Financial Statement for Financial Year 2020-21 of late fifth CoC meeting dated 08.02.2023.

8. Nonetheless, as per Section 269 SS of the Income Tax Act, a person is not permitted to accept cash transactions beyond Rs. 20,000/- (Rupees Twenty Thousand Only) or more for any loan, deposit, or any specified sum. Thus,



such transactions are not permissible in corporate governance as these transactions are not in the nature of the transparent business practice, ease of auditing and investigation and purport tax evasions. Accordingly, it cannot be accepted as valid proof for extinguishment of the liability for the Corporate Debtor.

9. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties, and upon the appreciation of the documents placed on record to substantiate the claim, this Adjudicating Authority directs the *suspended* Board of Directors to deposit an amount of Rs. 3,75,000/- (Rupees Three Lakh Seventy-Five Thousand Only) in the bank of the Corporate Debtor within four weeks of this Order.

Accordingly, IA No. 189/JPR/2022 stands disposed of with aforesaid directions.

DEEP
CHANDRA
JOSHI

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by DEEP
CHANDRA JOSHI
Date: 2023.04.20
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DEEP CHANDRA JOSHI
JUDICIAL MEMBER

PRASANTA
KUMAR
MOHANTY

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PRASANTA KUMAR
MOHANTY
Date: 2023.04.20
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PRASANTA KUMAR MOHANTY
TECHNICAL MEMBER