

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**
***(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)***

IA No. 67 of 2020
C.P. (IB)No.17/BB/2019
U/s.43 of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of:

Velayudham Jayavel

Liquidator of IDEB Projects Private Limited
F1, Windsor Meenakshi,
5th Street, Pai Layout, Hulimavu
Bengaluru-560076

- Applicant

Versus

1.Harkirat Singh Bedi

1-77, Diamond District
Old Airport Road, Kodihalli
Bengaluru- 560008

- Respondent No.1

2. Avneet Bedi

1-77, Diamond District
Old Airport Road, Kodihalli
Bengaluru- 560008

- Respondent No.2

3. M/s. Furnituratti (earlier known as BNK Furniture)

No.2, 2nd Cross, Nandidurg Road,
Jayamahall Extension,
Bengaluru – 560046

- Respondent No.3

4. M/s. Design Craft (earlier known as M/s. Good Lines)

No. 766, HAL 2nd Stage,
100ft Road, Indiranagar,
Bengaluru – 560 038

- Respondent No.4

Order Delivered on : 09.06.2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri. Aakash Sherwal, Adv
For R1 and R2 : Shri. Srihari, Adv

ORDER**Per: Manoj Kumar Dubey, Member (Technical)**

1. The Liquidator of the Corporate Debtor M/s IDEB Projects Private Limited filed the instant IA on 22.01.2020 against the Respondents under Section 43 and r/w. 66 of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:

- a) *“Declare that the aforesaid Lease transactions with Respondents No.3 and 4 from which Respondent No.1 has derived personal benefit of Rs. 12,04,560/- and Rs. 36,13,670/- constitute preferential Transactions under section 43 of the IBC;*
- b) *Pass an order directing Mr.H.S.Bedi to transfer the amounts of Rs.12,04,560/- and Rs.36,13,670/- received by him pursuant to the lease agreements executed by the Corporate Debtor with the Respondent No.3 & 4 respectively to the Applicant for the benefit of the corporate debtor.”*

2. The facts of the case are mentioned below:

- a) It is submitted that, the Applicant had appointed M/s. M M Reddy & Co. Chartered Accountants to carry out the review of financial transactions for the last two financial years prior to the date of initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor. The CA's report pointed out to the transactions which were covered under section 43 & 66 of the IBC, 2016 requiring the attention of the Resolution Professional/Liquidator.
- b) It is stated that the corporate debtor owns a parcel of land totally admeasuring 43,147 sq.ft and a shed construed there

upon admeasuring about 7,500 sq.ft. Situated at 8B, Kadugodi Industrial Area, Bangalore ("Factory Property").

- c) The corporate debtor represented by the Respondent No.1 & 2 entered into an agreement for lease dated 27.09.2012 with the Respondent No.3 pursuant to which the corporate debtor has granted a lease of a portion of the Factory Property admeasuring 5841 sq.ft. together with an area admeasuring 2017 sq.ft. in the shed for a period of 9 years to the Respondent No.3 ("**BNK Lease Agreement**").
- d) A perusal of the BNK Lease Agreement shows that out of the total lease rent of Rs.37,5000/- per month payable to the corporate debtor an amount of Rs.25,000/- is paid to the corporate debtor and balance 12,500/- is paid to Mr.H.S.Bedi in his personal capacity. Mr.H.S Bedi has derived a monetary advantage of Rs. 12,04,560/- from the commencement of the lease till end of September 2019.
- e) It is submitted that pursuant to agreement for lease dated 27.09.2012, the corporate debtor represented by the Respondent No.1 & 2 has leased another portion of the Factory Property admeasuring 10,000 sq.ft and the shed area admeasuring 5000 sq.ft. to the Respondent No.4 for a period of 9 years. A perusal of the Good Lines Lease Agreement shows that out of the total monthly rent of Rs.1,12,500/- an amount of Rs.75,000/- is being paid to the corporate debtor and the balance amount of Rs.37,500/- is being paid directly to Mr.H.S.Bedi in his personal capacity. As per the Good Lines Lease Agreement H.S Bedi has derived a monetary advantage of Rs. 36,13,670 till end of September 2019.
- f) It is submitted that the name of Respondent No.3 was changed name to M/s. Furnituratti (earlier known as BNK Furniture) and

the name of respondent No.4 was changed to M/s. Design Craft (earlier known as M/s. Good Lines). This was intimated to the corporate debtor by a letter dated July 14, 2016.

- g) It is submitted that the response received by the Applicant from the 1st Respondent does not adequately justify the action of taking a portion of the rent to his personal account who was holding an office a director at the time of entering into the aforesaid lease agreements. The Respondent No.1 holding the post of director has misused his fiduciary position and has benefited himself at the cost of the corporate debtor and its creditors.
- h) The CIRP commenced on 29.03.2019 and the benefit 1st Respondent took continued during the two year look back period specified u/s.43 of the code. Thus the transaction qualifies to be set aside under section 43 read with section 66 of the code, as the 1st respondent a related party of the corporate debtor has personally benefitted himself by leasing out the property belonging to the corporate debtor to the 3rd and 4th respondents. By entering into the transactions, the directors have benefitted themselves in preference to others and thereby reached the arrangement contemplated u/s.43 of the IBC. After due consideration, the applicant is of the opinion that the above transactions are preferential and fraudulent transactions that have to be set aside.
3. On 04.09.2020, vide diary no 2576, common objection has been filed on behalf of the Respondent Nos 1 and 2, opposing the IA and given para wise objection;

(1) It is submitted that the transaction audit report covered under section 43, 45, 49 and 50 of the IBC whereas the application is filed under section 43 & 66 of the code and the subject matter of this

application is covered under section 45 and 49 in the report. Further, stated that the applicant has not formed his own opinion but delegated his function to the third party without obtaining suitable order from the Tribunal. The Respondent has produced all documents to the applicant and it was rejected for no valid reasons.

(2) It is submitted that the corporate debtor owns lands measuring 43,147 sq.ft situated at kadugodi Industrial Area, Bengaluru. However respondent had carried out improvements on the factory by constructing quarters. It is submitted that the lease agreement is not duly stamped document and it cannot be looked into in accordance with section 34 of Karnataka Stamp Act, 1957. In this regard, the respondent is filing a separate application for seeking impounding.

(3) Further, for the services rendered at the factory property to the tenants, respondent 1 has received a sum of Rs.16,752 per month from the date of execution of the lease agreements up to March 31,2019 only. The Applicant's attempt is to recover sums beyond the period of limitation. Moreover, the consideration received by the respondent from the Respondents No.3 & 4 for the services rendered to them has nothing to do with this entity.

(4) Further, it is stated that it is not case of secured creditors that they were not aware of the existence of a tenant in the factory premises as it was public knowledge and in fact in the proceedings initiated under section13(2) of the SARFAESI Act notices were pasted on the premises.

4. The applicant thereafter filed rejoinder vide diary no 2328 dated 17.08.2020 to the original reply filed on behalf of Respondent No. 1 & 2 and also the para wise comments while reiterating the basic contention made in the overall rejoinder, as under:

a) At the outset, it is pertinent to highlight the opinion of the independent auditor made in the financial statements for the year 2017-18 with respect to the conduct of the affairs of the Corporate

Debtor at which time the respondents 1 and 2 were still the Directors of the Corporate Debtor.

b) The independent auditor in its report has stated as follows:

"In our opinion, the Company has not established its internal financial control over finance reporting on criteria based on or considering the essential components of internal control stated in the Guidance Note issued by the Institute of Chartered Accountants of India". This disclaimer issued by the independent auditor shows that the numbers as has been stated in the financial statements of the Corporate Debtor at the time they were being managed by the respondents 1 and 2 are not necessarily accurate.

c) It is submitted that the contention that the liquidator has delegated his statutory duty to a third party and overlooked the records produced by the respondent no. 1 are legally baseless. Further, submitted that there were no record of the nature of improvement carried out on the factory property. Moreover, the rental amounts received by the respondent no.1 are related party transactions and it is not reflected in the financial statement of the corporate debtor.

d) It is submitted that they were not aware of the existence of a tenant in the factory premises as it was public knowledge and in fact in the proceedings initiated under section 13(2) of the SARFAESI Act notices were pasted on the premises is not relevant for the purposes of adjudicating this application. Further stated that there is no stipulation provided under section 43 or 66 of IBC whereby the auditor has to file an affidavit in support of the audit report, including the disclaimers issued by the auditor.

5. Heard the learned counsel for the Petitioner and Respondents and perused the records available. This Tribunal on 24.01.2023 directed the applicant's counsel to file four page note along with copies of judgments on which they are placing reliance within one week & on

12.10.2022 this Tribunal had directed the respondent to file synopsis along with copies of judgments on which they are placing reliance, within two weeks. However, the synopsis as asked for was not filed by both parties. On 29.03.2023, the applicant's counsel submitted that he is filing written submissions along with citations in the registry on that day itself. The respondent's counsel was also permitted to file his written submissions within one week. Subject to these observations, the matter was reserved for orders on 29.03.2023. However, the compliance to the above directions was not made even after one month time having passed from the date of reserving the order. Therefore, this order is being passed based on the pleadings available on record as on 29.03.2023.

6. We have considered the rival submissions and perused the material on record. The Applicant appointed M/s. M M Reddy & Co. CA to carry out the review of financial transactions for the last two years, which showed that certain transactions carried by the Corporate Debtor fell within the meaning of deemed Preferential Transactions. *The Audit Findings for preferential transaction in the Transaction Audit Report is as under:*

The company has entered a lease agreement with M/s. BNK Furniture for renting its property at measuring 5841.88 sft with shed of 2075 sft situated at 8B, Kadugodi Industrial Area, Bangalore with the following terms and conditions:

a. Date of Lease agreement : 27.09.2012

*b. Lease rentals per month: IDEB Projects (P) Ltd : Rs. 25,000/-
Mr.H.S. Bedi :Rs.12,500/-*

c. Yearly increase @ 5%p.a.

As per the above agreement Mr.H.S. Bedi has taken a monetary advantage of Rs. 12,04,560 till end of August 2019. The detailed calculation is given below:

Period	Rent per month	For 12 months
Oct 2012 to Sep 2013	12,500	1,50,000
Oct 2012 to Sep 2014	13,125	1,57,500
Oct 2012 to Sep 2015	13,781	1,65,372
Oct 2012 to Sep 2016	14,470	1,73,640
Oct 2012 to Sep 2017	15,194	1,82,328
Oct 2012 to Sep 2018	15,954	1,91,448
Oct 2012 to Sep 2019	16,752	1,84,272
TOTAL		12,04,560

The company has entered a lease agreement with M/s. Good Lines for renting its property at measuring 10,000 sft with shed of 5000 sft situated at 8B, Kadugodi Industrial Area, Bangalore with the following terms and conditions:

a. Date of Lease agreement : 27.09.2012

b. Lease rentals per month: IDEB Projects (P) Ltd : Rs. 75,000/-
Mr.H.S. Bedi :Rs.37,500/-

c. Yearly increase @ 5%p.a.

As per the above agreement Mr.H.S. Bedi has taken a monetary advantage of Rs. 36,13,670 till end of August 2019. The detailed calculation is given below:

Period	Rent per month	For 12 months
Oct 2012 to Sep 2013	37,500	4,50,000
Oct 2012 to Sep 2014	39,375	4,72,500
Oct 2012 to Sep 2015	41,344	4,96,128
Oct 2012 to Sep 2016	43,411	5,20,932
Oct 2012 to Sep 2017	45,582	5,46,984
Oct 2012 to Sep 2018	47,861	5,74,332
Oct 2012 to Sep 2019	50,254	5,52,794
TOTAL		36,13,670

7. It is seen that the respondents have failed to dispute the Transaction Audit Report. Hence the amount referred above falls under the ambit of preferential transaction in accordance with the deeming provisions. Therefore, the respondents are liable to transfer the same to the Corporate Debtor.

10. It is not in dispute that the amounts finalised against the Respondents was after due deliberations and discussions and the respondents stated in the objections there were the dues payable to Respondent.

11. In so far as the objection of the Respondents regarding delay in filing petition under section 43 is concerned, the Hon'ble NCLAT in the matter of *Jagdish Kumar Parulkar vs Vinod Agarwal & Ors. Company Appeal (AT) (Insolvency) No. 483 of 2022, dated 16.02.2023, observed as under:*

"we are of the considered opinion that CIRP Regulations 35-A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135th day of the ICD is only directory. Moreover, since Regulation 35-A must be read along with the statutory construct of IBC which by itself does not prescribe any time period for determination of opinion. Hence merely on account of delay in determination

of opinion cannot by itself become a ground for non-maintainability of the petition.”

12. In the circumstances and for the aforesaid reasons, we are of the considered opinion that the instant I.A is to be allowed as under:

- I. The payment of Rs.12,04,560 and Rs. 36,13,670 to the Respondent No.3 and 4 *from which Respondent No.1 has derived personal benefit of Rs. 12,04,560/- and Rs. 36,13,670/- constitute preferential Transactions under section 43 of the IBC;*
- II. The respondent No.1 is directed to transfer an amount of Rs.12,04,560/- and Rs. 36,13,670/- received by him pursuant to the lease agreements executed by the Corporate debtor with Respondent No.3 and 4 to the Applicant for the benefit of the Corporate Debtor within 30 days from the date of receipt of this order.

12. Accordingly, **IA No.67 OF 2020** is disposed of.

-Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd/-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**