

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.138 of 2021**

[Arising out of Order dated 07<sup>th</sup> January, 2021 passed by the Adjudicating Authority, NCLT, Mumbai Bench in IA No. 1108 of 2020 in CP (IB) No. 381 of 2018]

**IN THE MATTER OF:**

**Pandurang Ramchandra Shinde**

Suspended Board of Director  
Ram Bhabya, Radhika Road,  
Near Satara Taluka Police Station,  
At Post Satara – 415001

**...Appellant.**

**Versus**

**Vijendra Kumar Jain**

Resolution Professional  
At Cyclo Transmissions Limited  
1507, B Wing, One BKC, G-Block,  
BandraKurla Complex, Bandra East,  
Mumbai – 400051

**...Respondent.**

**For Appellant:** Mr. Piyush Sanghi and Ms. Khusbu Sahu,  
Advocates.

**For Respondent:** Mr. Aditya Dewan and Udita Singh, RP.

**J U D G M E N T**  
**(20<sup>th</sup> September, 2021)**

**A.I.S. Cheema, J.:** The Appellant-Suspended Board of Director has filed this Appeal against the Impugned Order dated 07<sup>th</sup> January, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in I.A. No. 1108 of 2020 in CP (IB) No. 381 of 2018.

The Company Petition relates to Corporate Insolvency Resolution Process (CIRP in short) initiated under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) filed by IDBI Bank Limited versus Cyclo Transmissions Limited-Corporate Debtor. I.A. No. 1108 of 2020 was filed by Respondent-Vijendra Kumar Jain-Resolution Professional (RP in short) of the Corporate Debtor. The Resolution Professional filed the Application under Sections 43,44 read with Sections 66,67,69 and 70 of IBC. The Application came to be allowed and hence the present Appeal.

**2.** Facts in brief may be referred:- The Application under Section 7 was filed on 06<sup>th</sup> March, 2018 and the Application was admitted on 18<sup>th</sup> December, 2018. When Committee of Creditors (CoC in short) was formed the Appellant was allowed to continue as Chief Executive Officer to facilitate continuing the Corporate Debtor as a Going Concern. In the absence of Resolution Plan of one Mr. Anirudh Ghole going through, M.A. 3560 of 2019 came to be filed for liquidation of the Corporate Debtor on 05<sup>th</sup> November, 2019. The Appellant was removed from acting as Chief Executive Officer on 14<sup>th</sup> November, 2019 in the 10<sup>th</sup>CoC Meeting. The Appeal refers to other disputes with which the present Appeal is not concerned.

**3.** On 24<sup>th</sup> July, 2020, Resolution Professional filed I.A. No. 1108 of 2020 (Annexure A-3, Page 49 of the Appeal) raising two issues:

(i) The Appellant-Pandurang Ramchandra Shinde has sold a car -Hundai Sonata, MH-12 AK-760 on 31<sup>st</sup> December, 2018 which is after initiation of CIRP on 18<sup>th</sup> December, 2018 as can be seen from the Tax Invoice dated 31<sup>st</sup>

December, 2018 (Invoice at Page 79 read with Ledger Account Page 80) at an undervalue without permission of the Resolution Professional.

(ii) The Appellant-Pandurang Ramchandra Shinde had earlier extended unsecured loan to the Corporate Debtor of Rs. 1,14,91,955/-. Also, earlier the Corporate Debtor had provided certain goods/Services to three entities (a) Meltek Infosystems Pvt. Ltd. (b) Micros M Technichems Pvt. Ltd. and (c) Maharashtra Shetkari Sugar and the Corporate Debtor had to receive outstanding amounts from these three entities as on 1<sup>st</sup> April, 2017. Now, the Appellant on 31<sup>st</sup> March 2018 (that is after filing of Application under Section 7 of IBC on 06<sup>th</sup> March, 2018) squared off the unsecured loan which the Appellant had extended to the Corporate Debtor against receivables from the above three entities of Rs. 62,31,924; Rs. 15,41,627/- and Rs. 13,83,627/- respectively. The Resolution Professional alleged that total Rs. 91,56,687/- receivables from the above three entities were written off by the Appellant and adjusted against unsecured loan of Appellant in the books of accounts. Thus the Resolution Professional sought directions under Section 44 of IBC that the squaring off was preferential transaction under Section 43 and Appellant was liable to pay Rs. 91,56,687/- and that the sale of car without approval of the Resolution Professional during CIRP was fraudulent transaction and suitable direction was required to be given against the Appellant under provisions of IBC.

**4.** The Adjudicating Authority heard parties and passed the Impugned Order. The impugned Order mentioned in Paragraphs 6 to 8 as follows:

*“6. Stating the above, the applicant has filed this present application seeking the following reliefs:*

- i. *That this Adjudicating Authority may pass an order under Section 44 of the Code and declare the squaring off loan by the Respondent from receivables and preferential transaction as per Section 43 of the Code and directing the Respondent to pay to the account of the Corporate Debtor an amount of Rs. 91,56,687/-*
- ii. *That this Adjudicating Authority may pass an order under Section 66 declaring the sale of car made without approval of the Applicant, during CIRP of the Corporate Debtor, as fraudulent transaction and the Tribunal may pass appropriate directions as per Section 67, 69 and 70 of the Code.*

7. *The Respondent had appeared before this Tribunal and has submitted a consolidated reply in all the applications pending before this Tribunal in this matter including the reply in this application. Paragraph 9 of the reply deals with this Application and reads as follows:*

*“I state and further submit that Rotomotive filed I.A. No. 1053/2020 and I.A. 1108/2020 under Section 60(5) IBC, I request AA to give direction for circulation of document to CD. Before liquidation order proper attention should be given for any Resolution Plan.”*

8. *We have heard the arguments advanced by the parties and perused all the documents submitted by them and we have observed that the approach of the Respondent is very lenient towards the proceedings before us. Even though there was opportunity given to him to file reply, however, he has chosen not to file a complete reply to this application and only dealt with the contents of this application in a single paragraph not raising any points in his defence. Therefore, basing on the documents submitted by the RP, we are deciding this application.”*

5. The Adjudicating Authority then in Paragraph 9 of the Impugned Order referred to Judgment in the Matter of “Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd. Vs. Axis Bank Ltd.” (Civil Appeal Nos. 8512-8527 of 2019) and contents of Paragraphs 18.1, 18.2, 18.4 and 19.5 in

the context of Section 43 and findings and order recorded in Paragraphs 10 to 14 are as follows:

*“10. In this matter also the ingredients of Section 43 are being fulfilled and does not fall within the exceptions of the provision. The transactions are made in favour of the related party i.e. the director of the Corporate Debtor who is also the respondent herein. Therefore, there remains not doubt that the transactions were preferential. Also, the circumstances stated above makes it ample clear that the impugned preferential transactions are also undervalued transactions and covered under Section 45(1) of the Code. It is also clear that these transactions are under undertaken during the relevant period which is immediately after the initiation of Corporate Insolvency Process as provided under section 46(1) (ii) of the Code.*

*11. The Applicant has made good his case and we believe that this application deserves to be allowed. He has submitted the ledger statements as well as the Audited Balance Sheet from which it is pretty clear that the car is the asset of the company and was sold by the Respondent without any intimation/ approval of the applicant that too during the relevant period. Therefore, this amounts to preferential transaction along with being undervalued and fraudulent in nature.*

*12. Also, the loan that was squared off by the Respondent from receivables is declared as preferential transaction and the Respondent is liable to contribute to the asset of the Corporate Debtor. We have perused the documents submitted by the Applicant to that effect. The circumstances of the matter make it clear that the Respondent has done these transactions with an intention to defraud the Secured Creditors and having complete knowledge of the circumstances of his actions.*

*13. We, by exercising the powers conferred to us under Section 44 of the Code, hereby direct the Respondent to make contribution to the asset of the Corporate Debtor by paying the amount of the said car at which it was sold by him. He is also directed to contribute to the asset of the Corporate Debtor by paying the same amount that was defrauded by him totaling to a tune of Rs. 91,56,687/-.*

*14. With these above observations and directions, this Interlocutory Application bearing No. 1108 of 2020 is allowed. No costs. I.A. 1108 of 2020 is accordingly disposed of.”*

After passing of the Impugned Order the Learned Counsel for the Resolution Professional sent letter dated 13<sup>th</sup> January, 2021 (Annexure A-2 Page 47) and informed the Appellant in the context of the Impugned Order that the Appellant has to pay (i) amount of Rs. 13,85,227 (difference of book value of Rs. 14,27,650/- and the amount of Rs. 42,373/- recovered by him as per Tax Invoice) (ii) Rs. 91,56,687 towards the squared off loan amount with the receivables of the Corporate Debtor. The Appellant was thus called upon to comply the order by depositing the amount of Rs. 1,05,41,964/-.

### **Principles of Natural Justice**

**6.** Now the Appellant in the Appeal has claimed and it is argued by him that while passing the Impugned Order there had been violation of Principles of Natural Justice. Appellant claims that he did not get opportunity of being heard. According to him he had filed a Reply which was not considered and that the Adjudicating Authority wrongly marked presence of Mr. Navin Arora, Advocate as the Advocate appearing for the Appellant in the I.A. No. 1108 of 2020. According to him all the pending applications in the company petition were listed on single date which caused confusion. Appellant claims that Mr. Navin Arora, Advocate /AA Associates was representing the Appellant in M.A. No. 3239 of 2020 which was filed by the Appellant for removal of the Resolution Professional whereas another Advocate Mr. Narendra Kumar Sharma was representing the Appellant in I.A. No. 1108 of 2020. Appellant claims that on the date of the final disposal Mr. Narendra Kumar Sharma,

Advocate did not get Video Conferencing Link while Advocate Mr. Navin Arora, Advocate represented Appellant in M.A. No. 3239 of 2020. Appellant thus claimed that he could not bring to the knowledge of the Adjudicating Authority that he had filed Reply on 04<sup>th</sup> January, 2021.

7. Regarding this grievance of violation of Principles of Natural Justice the Appellant has pointed out Annexure A-4 Page 117 of the Appeal. This is an email which was sent to NCLT, Mumbai, Court No. 3 on 04<sup>th</sup> January, 2021 at 6:35 pm attaching Reply, copy of which is at Page 118. The Appellant who claims to be having separate Advocates for separate M.As pending in same Company Petition and one of his Advocate was arguing before Adjudicating Authority, is complaining for violation of Principles of Natural Justice did not ensure that his Advocate(s) apprised the Adjudicating Authority of sending of such an email. The Resolution Professional has in Reply-Affidavit Paragraph 16 and in oral Submissions pointed out that the argument that his Advocate could not get link has no substance as Video Conferencing Link could easily be shared between different Advocates appearing for the Appellant. The Appellant claims to be having more than one Advocates and thus it is not acceptable that they could not share link. Apart from the above we find that in one matter only because there are different M.As pending, (unless there is permission of the Adjudicating Authority shown), the Appellant cannot have different advocates for his different M.As. He cannot be heard saying violation of principles of natural justice only because he has the luxury of appointing more than one advocates, if one of his Advocate did not appear. The Impugned Order shows that for the Appellant Mr. Navin Arora I/B AA

Associates had appeared. There is nothing on record to show that this Advocate apprised the Adjudicating Authority that he is not instructed in I.A. 1108 of 2020 or that he apprised the Adjudicating Authority that for I.A. 1108 of 2020 for same Appellant (Respondent before Adjudicating Authority) there were different advocates appearing. We reject such approach, which are means of creating grounds to protract matter. There is no material also to show that on 07<sup>th</sup> January, 2021 or soon thereafter any grievance was raised with the Adjudicating Authority in writing that name of wrong advocate is shown for Respondent with regard to the M.A. concerned.

8. The ground that Principles of Natural Justice were violated is rejected.

**Squaring off Receivables against Debt.**

9. Coming to the issue relating to the squaring off, in the I.A. No. 1108 of 2020 the Resolution Professional referred to documents filed with the I.A. No. 1108 of 2020. Copies of the documents from the ledger accounts /general vouchers of the Corporate Debtor are at Page 109 to 114. These documents reflect the facts regarding the undisputed unsecured loan given by the Appellant to the Corporate Debtor and the dues relating to Meltek Infosystems Pvt. Ltd., Micros M Technochems Pvt. Ltd. and Maharashtra Shetkari Sugars. These documents were marked as Annexure-F with the I.A. 1108 of 2020. The Resolution Professional has with the Reply Diary No. 26139 filed Annexure A-9 audit report of the Corporate Debtor. The Document at Annexure 9 Page 53 of Reply relates to Audit for the period of 2017-18. The Auditor recorded opinion and mentioned in 'f' (Reply Page 56) as under:

“f) Company has written off receivables from debtors and adjusted same amount against unsecured loan taken from Mr. Pandurang Shinde as follows:

“1.	Meltek Infosystems Pvt. Ltd.	Rs. 62,31,924/-
2.	Micros M Technochem Pvt. Ltd.	Rs. 15,41,136/-
3.	Maharashtra Shetkari Sugars Ltd.	Rs. 13,83,627/-
	<b>Total debtors written off</b>	<b>Rs. 91,56,687/-</b>

*Ledger Balance confirmation of these parties not found on record. These transactions has created major impact on balances of sundry debtors and loan from Mr. Pandurang Shinde as on 31.03.2018.”*

**10.** The Appellant has relied on his Reply (Which he claims Adjudicating Authority did not consider) and we refer to the same which is at Annexure A-4 Page 117 in Paragraph 10 of the Reply. The Appellant referred to the dues with regard to the Meltek Infosystems Pvt. Ltd., Micros M Technichems Pvt. Ltd. and Maharashtra Shetkari Sugar and it is argued by the Appellant that Maharashtra Shetkari Sugar Ltd. went into CIRP on 30<sup>th</sup> October, 2018 and that Corporate Debtor had filed claim in the said proceedings and received Rs. 31,419/- on 18<sup>th</sup> February, 2020; that, the three entities did not claim to have paid their dues; and that, the Appellant has rather squared his own loan advanced to the Corporate Debtor and thus according to the Appellant he was not liable to pay the amounts.

**11.** We have already reproduced portion from the auditor’s Report. The entries were made by the Appellant who was functioning as Chief Executive Officer which was admittedly done on 31<sup>st</sup> March, 2018 which was after filing of the Application under Section 7 of IBC on 6<sup>th</sup> March, 2018. He has squared off what he had to receive against what was to be received by the

Corporate Debtor from the three entities referred above. What is the deal/understanding between him and the three entities is within the knowledge of the Appellant.

On record fact remains that there is transfer of interest of the Corporate Debtor (which was to receive the amounts from the three entities) for the benefit of the Appellant Chief Executive Officer of Corporate Debtor who had to receive back unsecured loan given to Corporate Debtor, and this would put to detriment the other creditors of the Corporate Debtor. Section 43 sub-section 1,2 & 4 of IBC read as under:

**43. Preferential transactions and relevant time.**-(1) *Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.*

*(2) A corporate debtor shall be deemed to have given a preference, if—*

*(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and*

*(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.*

*(4) A preference shall be deemed to be given at a relevant time, if—*

*(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or*

*(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.*

These provisions make it clear that the act of the Appellant was hit by Section 43 of IBC.

### **Sale of Car in Moratorium**

**12.** As regards sale of car the I.A. No. 1108 of 2020 filed by Resolution Professional before Adjudicating Authority referred to the Invoice (Annexure C Page 28). This is tax invoice of the Car concerned is not in dispute. The tax invoice shows that the vehicle was sold off to one Mr. Santosh Yadav. The Ledger Account entries are at Page 80 of the Appeal. The Resolution Professional filed Auditor's report (Annexure E) with the I.A. No. 1108 of 2020 which is referring to the balance sheet as on 18<sup>th</sup> December, 2018, with which there are notes of financial statement for the year ended 18<sup>th</sup> December, 2018.

**13.** The parties before us have tried to argue and raise disputes with regard to the depreciated value and as to what was value at the time of sale of the car. But however in the present matter we need not go into those details as broad facts on the face of record (which are not in dispute) show that the CIRP was initiated on 18<sup>th</sup> December, 2018 and the Appellant who was continued by the CoC as Chief Executive Officer sold of the car of the Corporate Debtor after initiation of CIRP for which the tax invoice was raised on 31<sup>st</sup> December, 2018. The allegation of the Resolution Professional that

the Appellant committed such act without permissions of the Resolution Professional is not denied. The disputes being raised with regard to what was the depreciation and what was the value and if it was undervalued need not be decided as the act of the Appellant would be clearly hit by Section 14 of IBC and during moratorium the Appellant could not have transferred the car of the Corporate Debtor without the act being one in compliance of provisions of IBC.

**14.** The Resolution Professional has with written-submissions diary no. 27727 at page 4-11 filed documents with regard to such transfer of the car. The Appellant in his written-submissions (diary no. 28616) referred page 7 of these written-submissions of the Resolution Professional where there is tax invoice dated 31<sup>st</sup> December, 2018 to argue that after the car running for 10 years the same was sold for an amount of Rs. 50,000/- on 31<sup>st</sup> December, 2018. The Appellant referred to this tax invoice filed by the Resolution Professional states that the sale proceeds amounting to Rs. 50,000/- came directly to the account of the Corporate Debtor is apparent from the tax invoice. The Appellant is arguing that the Adjudicating Authority did not give finding with regard to the sale price of the car and the Resolution Professional asking for Rs. 13,85,277/- towards sale price of the car was unreasonable. The Appellant claims that the audited balance sheet of the year 2018 shows depreciation of Rs. 12,75,724 as on 31<sup>st</sup> December, 2018 leaving the book value of the car at Rs. 1,51,926/-. Although the Appellant has referred to only Page 7 of the written-submissions of the Resolution Professional, we find from the copy of the RC (Page 6 of the written-submissions diary no. 27727) that the Car stood in the name of the

Corporate Debtor. In fact, the document at page 4 “Motor Sale and Delivery Receipt” filed by the Resolution professional which is in Marathi shows that the car was sold to one Mr. Ravindra Yadav and the transaction was actually for an amount of Rs. 75,000/- of which 25,000 were received as advance and Rs. 50,000 were received on 25<sup>th</sup> December, 2018 by the Appellant who executed the receipt. The Appellant appears to have been quietly going along when the Resolution Professional claimed on the basis of tax invoice entry to claim that the amount was received directly in the account of the Corporate Debtor as if it was a transaction of Rs. 50,000/-.

**15.** From the above what appears to us is that the Appellant is guilty not only with regard to the contravening moratorium and liable for action under Section 74 of IBC but is also liable for misconduct in course of CIRP under section 70 of IBC. It appears that the Resolution Professional and the Adjudicating Authority need to ask the Appellant to explain the amount actually received under the sale of the car and to consider if it is also a case of criminal misappropriation.

**16.** No doubt this is an appeal filed by the Appellant to clear himself of the liability to pay but Resolution Process, not being an adversarial litigation, when we notice violation of the provisions of IBC, under Rule 11 of NCLAT Rules we can make such orders as are necessary for meeting the ends of justice and to prevent abuse of the process of the Tribunal.

**17.** For the above reasons, we uphold the directions given by the Adjudicating Authority directing the Appellant to deposit Rs. 91,56,687/- toward amount which was squared off by the Appellant. With regard to the

car sold by the Appellant during pendency of the CIRP, we hold and direct that the Appellant violated section 14 of IBC and the transaction of sale of car as done by the Appellant with one Mr. Ravindra Yadav shall stand ignored and the car would continue to be property of the Corporate Debtor and liable to be taken possession of by the Resolution Professional. The Resolution Professional after taking possession of the Car will deal with the same in terms of Resolution Plan approved, in case there is provision of contingency with regard to getting the property of the Corporate Debtor available and deal with the same accordingly. In case there is no provision regarding the Car in the Resolution Plan, the Resolution Professional will deal with the asset of the Corporate Debtor in terms of IBC, Rules and Regulations and with directions from the Adjudicating Authority dispose the property and the Appellant would be liable to contribute to the asset of the Corporate Debtor such amounts of loss as Corporate Debtor may have suffered due to such transaction of transfer of Car entered into by the Appellant during pendency of CIRP.

**18.** We further direct the Resolution Professional to take further action on the basis of the car sale and delivery receipt (Annexure 1, Diary No. 27727) with regard to unaccounted Rs. 25, 000/-. Suitable legal action may be taken moving the Adjudication Authority or in appropriate forum.

At the time of closing arguments, it was stated that during pendency of the Appeal Resolution Plan has been approved and now Successful Resolution Applicant is there. It will be open for Resolution Professional to ensure that when benefits under present Orders are realized the same should be applied in terms of Resolution Plan if it has kept provision for the

contingencies. Otherwise the benefits should be realized and applied, taking further Orders from Adjudicating Authority in case of difficulties. For this purpose, matter is remitted back to the Adjudicating Authority.

The Appeal is disposed as above. No order as to costs.

**[Justice A.I.S. Cheema]  
The Officiating Chairperson**

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi**  
Basant