

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

(20) MA-1121/2018 IN CP(IB)-64(MB)/2017

CORAM:

SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **08.04.2019**

NAME OF THE PARTIES:

Bharat Trading Corporation
v/s.
Wind-Ways Packaging Pvt. Ltd.

SECTION: 9 OF INSOLVENCY & BANKRUPTCY CODE, 2016.

ORDER

1. The Representative of the Liquidator is present. The Learned Representative of the Respondent is present.
2. This Miscellaneous Application is submitted on behalf of Respondent No. 2 who is made party in M.A. 577/2018 in C.P. No. 64/2017 wherein vide an Order dated 29.08.2018 it was directed that Respondent Nos. 1 to 4 shall reverse the transaction and remit back the impugned amount of ₹ 41,98,677/-. In brief the background was that the Resolution Professional has informed that on commencement of liquidation it was noticed that there was a related party transaction hence seeking an Order under section 43 of the Insolvency Code. It was informed that certain vehicles have been transferred to the related parties i.e. Directors and Family Members. On due examination of the facts it was ordered that the Respondents shall reverse/remit back the impugned amount to the account of the debtor Company so that the same can be used for the purpose of liquidation. In the said Order dated 29.08.2018 certain other transactions have also been found to be within the clutches of the provisions of section 43 and section 66 of the Insolvency Code, hence it was directed to remit back those amounts as well.

3. Now this Applicant is aggrieved by the said Order and Learned Counsel has vehemently pleaded that the impugned Order of 29.08.2018 was an Ex-parte Order without granting opportunity of hearing to the Respondents, impleaded therein. The Learned R.P. has obtained the said Order at the back of the Respondents without intimating the date of hearing and the proceedings initiated against the Respondents.
4. Heard the Learned counsel of the R.P. on one hand and the Learned Counsel of the Respondents on the other hand. From the side of the Applicant it is pleaded that the Respondents are ready to surrender the vehicles instead of repayment of the alleged amounts. According to the Applicant the value at which the transaction of the vehicles recorded was more than the Market Value. It is clarified that inadvertently the Book Value at which the transaction took place was at that time higher than the Market Value. Therefore, it is unjustifiable to demand reversal of the amount which is not the correct value of the property in question i.e. vehicles.
5. On the other hand the Learned Counsel of the R.P. has pleaded that the Ex-Directors are having the privilege to attend the Committee of Creditors meeting hence it is not an Ex-parte decision. Further on the question of value it is pleaded that the Liquidator should not be directed to settle for an amount less than the amount already recorded in the Books of Accounts.
6. Considering the several provisions of the Insolvency Code the basic intention is to maximise the value of the debtor Company even in a situation when the assets of the debtor Company are to be liquidated. As a consequence the transaction which has already been recorded in the Books of Accounts can be treated and held as the Fair-Market Value at which the consideration had exchanged the hands. There is nothing on record to demonstrate, as alleged, that at the time of transfer of vehicles the Market Value was lower than the Book Value. It is simply a bald statement not corroborated by any evidence, hence turned down. However, liberty is granted to the Liquidator to exercise

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his discretion, as enshrined under the statute of I&B Code to give relaxation in determining the Fair-Market price of the vehicles for the purpose of reversal of the amount. The Liquidator can assess the value and can exercise the option of independent sale of the vehicles in the market if advantageous and deem fit. With this limited relief I find no force in this Miscellaneous Application. The Application is disposed of accordingly.

7. The matter is adjourned to **29.04.2019**.

Sd/-
M.K. SHRAWAT
Member (Judicial)

08.04.2019
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