

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

MA 267 of 2018

In

CP (I&B) 1067/NCLT/MB/2017

Under Sections 43, 49, 60(5), 66 of
the I&B Code, 2016 read with Rule 11
of NCLT Rules, 2016

In the matter of

Mrs Dipti Mehta

Resolution Professional,

Prag Distillery Private Limited

... Applicant

V/s

1. Shivani Amit Dahanukar
2. Amit Arun Dahanukar
3. Ravindra Dinkar Bapat
4. Chanderbhan Verhomal Bijlani
5. Keshab Nandy
6. Tilak Nagar Industries Limited

... Respondents

In the matter of

Standard Chartered Bank

... Financial Creditor

V/s

Prag Distillery Private Limited

... Corporate Debtor

Order Delivered on 21.02.2019

Coram: Hon'ble Mr V.P. Singh, Member (Judicial)

Hon'ble Mr Ravikumar Duraisamy, Member (Technical)

For the Liquidator: Mr Amir Arsiwala, Advocate, Mr. G. Aniruth
Purusothaman, Advocate, Mr G. Aniruth
Purusothaman, Advocate.

For the Respondent: Mr Chetan Kapadia, Advocate, Mr Akshay Pawar,
Advocate, Ms Vidhi Thaker, Advocate, Mr Kunal
Bhanage, Advocate.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

Per V.P. Singh, Member (Judicial)

ORDER

1. The present application being MA 267/2018 filed under section 43, 49, 60(5) and 66 of the Insolvency and Bankruptcy Code, 2016 (I&B Code), was filed by the Resolution Professional and is now being pursued by the Liquidator of the Corporate Debtor appointed vide the order for liquidation of the Corporate Debtor dated 09.08.2018.
2. The application for Corporate Insolvency Resolution Process filed by the Standard Chartered Bank under Section 7 of the IBC was admitted by this Bench by an order dated 27.6.2017 wherein Mrs Dipti Mehta was appointed as the Interim Resolution Professional. The Committee of Creditors consists of two creditors namely Standard Chartered Bank and DCB Bank. In the first meeting of the Committee of Creditors on 28.07.2017, the Interim Resolution Professional was confirmed as the Resolution Professional and then further appointed as liquidator by order of the Adjudicating Authority dated 09.08.2018.
3. The present application has been filed against the 5 directors of the Corporate Debtor (Respondent Numbers 1 to 5) and the Tilaknagar Industries Limited, holding company of the Corporate Debtor (Respondent No. 6).
4. The background of the case as stated by the Liquidator is that Respondent No. 6, the holding company of the Corporate Debtor, is the creditor of the Corporate Debtor to the extent of ₹60,00,01,857/- as on 27.06.2017. It is also stated that the Respondent No. 6 is a corporate guarantor to the loan advanced by the Standard Chartered Bank to the Corporate Debtor.
5. It is stated that the Corporate Debtor had carried out the expansion of capacity and applied for a license for expanded

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

capacity in the year 2010 along with the first instalment of license fees of enhanced capacity. The Corporate Debtor obtained an ECB facility from the Standard Chartered Bank on 07.03.2011 of \$1,10,00,000/- for the said expansion. Due to delay in the licensing process, the Corporate Debtor was unable to run the operations with expanded capacity and was unable to generate sufficient cash flow and profit to serve its debt. It is further stated that though the license was obtained from the Government of Andhra Pradesh for approx ₹20crores, the Corporate Debtor did not have the funds to pay the instalments of license fees. Thereafter, the Corporate Debtor entered into a sub-lease agreement with MS Biotech Private Limited to sublease the production facility and licensed capacity of the Corporate Debtor *vide* sub-lease agreement in April 2017. The creditors such as DCB and SCB raised concern over the execution of the sub lease agreement with MS Biotech Private Limited as it is a breach of their existing facility agreement and had been entered into without prior intimation.

6. Admittedly, Corporate Insolvency Resolution Process(**CIRP**) has been initiated by Order dated 27.6.2017 in CP 1067/2018 filed by one of the Financial Creditor, Standard Chartered Bank. The ASA & Associates was appointed for conducting Forensic Audit of the Corporate Debtor in the second meeting of CoC held on 31.08.2017. The Forensic Auditor submitted its Report dated 04.12.2017 reporting certain shortcoming in the transactions of the Corporate Debtor. Relying upon the report of the forensic auditor, the Resolution Professional has filed this Application U/S43, 49, 60(5) and 66 of the I&B Code read with Rule 11 of the NCLT Rules, 2016.

Preferential Transaction

7. It is alleged that the change in the business model, from manufacturer and seller of Indian, made Foreign Liquor to bottling job worker of Indian made foreign liquor w.e.f., F.Y. 2015-16 onwards, has resulted in the transfer of ₹43.85 crores to Tilaknagar Industries Ltd. during 2015-16 and 2016-17. The Resolution Professional has alleged that these transactions appear to be preferential transactions as it resulted in the transfer of surplus to Tilaknagar Industries Ltd. who is also the creditor of the Corporate Debtor, which caused prejudice to the interest of the other creditors, as it affected the ability of the Corporate Debtor to service its debt.
8. The Resolution Professional has further alleged that this change of business model was not intimated to the creditors for taking their prior approval. Also that this abrupt change has resulted in the transfer of revenues to only one creditor in preference and exclusion to all other creditors and thus it tantamounts to Preferential Transaction.
9. In reply to the above-said allegations, the Respondents have stated that change in the business models was effected from 1.4.2015 and the date of initiation of CIRP against the Corporate Debtor is 27.6.2017. Therefore, the impugned transaction was before two years preceding the initiation of CIRP and not within the look-back period, and hence the purported change in the business model cannot be regarded as a preferential transaction.
10. The Respondent has further submitted that there is no change in the business model as alleged. It is a liquor industry practice for the manufacturer to enter into a tie-up/manufacturing agreement with the bottling unit wherein the unit functions as a

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

bottling plant and bottles the brands/products of the brand owner. The Corporate Debtor did not have any brands of its own since the year 2009 and was functioning as a bottling unit of its holding company. The bottling unit, as per statutory mandate, is required to raise an invoice and therefore the Corporate Debtor had raised invoices and received proceeds in its account for the sale of the brands owned by the holding company that it has processed in its bottling unit. It is submitted that the holding company was entitled to the said proceeds.

11. The Corporate Debtor was acquired by its holding company in the year 2009. The Holding Company was the owner of brands such as Mansion House, Senate Royal, CourierNepoleon, etc. whereas the Corporate Debtor had a unit which could bottle the liquor and possessed requisite staff and licences and approvals from the State Excise & the State Corporation required for the bottling activities. It is pertinent to mention that bottling is also a manufacturing activity given the interpretation of manufacturing in Excise law. Under Excise Rules manufacturer of liquor has to mandatorily raise an invoice for all the products manufactured by it.
12. It is contended by the Respondent that a bottler is the owner/possessor of the unit, which has the essential staff to operate the unit, and has the requisite licenses and approvals from the State Excise department, as are necessary for undertaking the bottling process contract or permanent basis. A Manufacturer, on the other hand, is the person whose name is reflected on the brand labels. It is the manufacturer for and on behalf of whom the bottling process has been undertaken by the Bottler. A bottler does not have a sales and marketing department of its own. The activities of sales and marketing are

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

carried on by the brand owner/manufacturer. In some cases, the manufacturer may have the bottling/manufacturing facilities of its own, or it may obtain it on lease or contract bottling basis.

13. It is submitted that the Corporate Debtor did not have adequate funds for its working capital and that it carried the bottling function for its holding company. Therefore, the holding company used to infuse funds into the Corporate Debtor to keep it afloat and to function. Thus, the Corporate Debtor was utterly dependent on its holding company for support and survival.
14. It is submitted by the Respondents that, as per the industry practice, under the arrangement between the holding company and the Corporate Debtor, the brands of the holding company were bottled and sold by the Corporate Debtor and the holding company was entitled to the sale proceeds. The Corporate Debtor was only entitled to the per case bottling fee or a lump sum consideration instead of facilitating the bottling for the holding company's brands. However, the holding company did not seek immediate transfer of the sale proceeds from the year 2009 to March 2015, considering that the Corporate Debtor was its wholly owned subsidiary, received periodical funds from the holding company.
15. It is submitted by the Respondents that the holding company, by way of bottling agreement, adopted a standard industry practice of transferring the sale proceeds from the account of the Corporate Debtor to holding company with effect from 01.04.2015. Under this Agreement, the Corporate Debtor was required to pay the surplus arising out of the sale of the Brands owned by the holding company, to the holding company account, and in return the holding company was to provide a consideration of ₹65/- per case for all Indian made foreign Liquor

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

products of all pack sizes, of the holding company manufactured by the Corporate Debtor. It is submitted that the agreement was entered in the usual and ordinary course of business of the Corporate Debtor.

16. It is also stated by the respondents in their reply that the holding company continued to fund the Corporate Debtor for meeting obligations like servicing interest obligations, making Statutory payments, funding for working capital, making Vendor payments, etc. on behalf of the Corporate Debtor and also provided advances to Corporate Debtor for its expansion of activities. The Respondents have submitted the following table showing the outstanding quarterly balance of interest-free advances given by the holding company to the Corporate Debtor:

Quarter ended	O/s interest-free advances (₹)
30 th June 2009	12,45,22,186
30 th September 2009	7,51,62,283
31 st December 2009	NIL
31 st March 2010	24,20,64,868
30 ^h June 2010	23,43,97,509
30 th September 2010	39,87,89,695
31 st December 2010	60,70,12,215
31 st March, 2011	50,33,19,899
30 th June 2011	5,90,79,398
30 th September 2011	17,18,12,233
31 st December 2011	23,79,82,422
31 st March 2012	40,21,99,813

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

30 th June 2012	44,46,19,176
30 th September 2012	39,77,80,481
31 st December 2012	46,54,48,695
31 st March 2013	60,37,95,733
30 th June 2013	68,51,34,429
30 th September 2013	68,70,95,335
31 st December 2013	66,64,67,932
31 st March 2014	60,33,13,898
30 th June 2014	69,78,31,654
30 th September 2014	65,28,25,744
31 st December 2014	73,22,55,172
31 st March 2015	66,05,96,396
30 th June 2015	68,29,32,842
30 th September 2015	82,43,71,129
31 st December 2015	88,70,83,490
31 st March 2016	74,95,44,258
30 th June, 2016	81,33,34,777
30 th September 2016	77,73,06,713
31 st December, 2016	78,10,01,260
31 st March 2017	94,30,88,579
30 th June 2017	60,61,97,594

17. On perusal of the above statement, it appears that even before the quarter ending 30.6.2015, the Corporate Debtor had more

than ₹60crores interest-free advances from its holding company. The alleged transactions are between the holding company and its subsidiary and that too before the initiation of the CIRP. When the Corporate Debtor was acquired by its holding company in the year 2009, and since June 2009, the holding company has several times provided financial assistance to the Corporate Debtor.

18. The Respondents have submitted a copy of the account of the Corporate Debtor in the books of the holding company to show that the account is a running account and that the Corporate Debtor has received huge financial support from the holding company, by the bottling arrangement, in usual and ordinary course of business.
19. It is pertinent to note the provision of section 43 of the I&B Code that deals with the Preferential Transaction as reproduced below:

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

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

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.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers—

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.— For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(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.

20. On perusal of the above provision, it is clear that for the applicability of section 43, look back period is two years from the date of commencement of CIRP, for a transaction with a related party and one year from the date of commencement of CIRP, for a transaction with a person other than a related party.
21. Related party, as defined under section 5(24) of the I&B Code includes:
- "...(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;..."***
22. On perusal of the definition of the "Related Party" as given in Section 5(24)(i) of the Code, it is clear that body corporate, which is a holding company, the subsidiary or an Associate Company of Corporate Debtor, or a subsidiary of a holding company to which the Corporate Debtor is also a subsidiary, is covered u/s.5(24)(i) of I&B Code as a related party.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

23. In the present case, the impugned transactions are with the holding company of the Corporate Debtor. Thus, the transaction can be said to be with a related party of the Corporate Debtor. Further, the look-back period as provided u/s.43(4)(a) will be two years **preceding the insolvency commencement date**. In this case, the insolvency commencement date is 27.6.2017. Therefore, only the transaction made between 28.6.2015 to 27.6.2017 will fall within the look-back period, as provided under section 43(4)(a) of the Code.
24. The Applicant has not mentioned the exact date of the alleged transaction, but has only stated that the change in the business model from manufacturer and seller of Indian made foreign liquor to bottling job-work, from the financial year 2015-16 onwards, has resulted in the transfer of ₹43.85 crore to the holding company.
25. The look-back period in the present case, as per the provisions of section 43(4)(a), would start from 28.6.2018. Therefore, the transactions carried on during the period 01.04.2015 to 26.6.2015 will be out of the purview of the Preferential Transactions. The Bottling agreement as entered into between the holding company and the Corporate Debtor is not produced on record by either side. As per the submission of the Applicant, the change in business model took place in F.Y. 2015-16 and without any specific date, it would be an obvious assumption that the transaction of change in business model took effect on 01.04.2015. Therefore, the transaction of change in the business model of the corporate Debtor falls beyond the look-back period and cannot be challenged as a preferential transaction under section 43 of the I&B Code.

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

26. Further, it is not the case of the Applicant that the money transferred under the bottling arrangement is more than what was agreed upon under the bottling arrangement. Since the transaction of entering into bottling arrangement falls out of the look-back period and the quantum of money transferred under that arrangement is not challenged. Thus the challenge of the Applicant as to this transaction being preferential transaction, under section 43 of I&B Code, is not maintainable.
27. Even otherwise, the Corporate Debtor was functioning as a bottling unit of its holding company, and booked the sales of the brands owned by its holding company in its books due to the statutory requirement under Excise Rules, which makes it mandatory for the bottling unit to raise invoice as a manufacturer. Since the Corporate Debtor was wholly owned subsidiary of the Respondent No.6 and the Corporate Debtor was dependent on Respondent No.6 to infuse funds. Thus the holding company, i.e. the Respondent No.6, did not seek immediate transfer of the sales proceeds. It is only from 1.4.2015 onwards, that the holding company, in the ordinary course of its business, adopted the standard industry practice of transferring the sales proceeds from the account of the Corporate Debtor to itself and entered into Bottling Agreement with effect from 1.4.2015. The said bottling agreement is not produced on record by either side.
28. Thus, the change in business model from manufacturer of the Indian made foreign liquor to bottling job-work, and the consequent act of Corporate Debtor in raising invoices in its own name, booking and receiving sales revenue from the sale of brands owned by its holding company, and transfer of surplus under the bottling arrangement are in the ordinary course of business and financial affairs of the corporate debtor and hence

not covered in preference transactions under section 43 of I&B Code.

Undervalued Transaction

29. The Applicant has stated that the Corporate Debtor has indulged in the undervalued transaction to benefit Respondent No. 6. The Applicant has stated that after the change in business model from FY 2015-16, the Corporate Debtor had started acting like a bottling job-worker for its holding company and was charging the Respondent No. 6 ₹65/case of 90 ml, for the F.Y. 2016-17, whereas the other job worker Soaring Spirits Pvt Ltd. was charging much higher to the Respondent No. 6. The Applicant has based his allegation upon the forensic auditor's observation and has cited the following observation of Forensic Auditor in particular:

"The job-work rate paid by TI (Tilaknagar Industries Limited) to PDPL for F.Y. 2016-17 was 15.38% less than the benchmarked rates due to which the revenue of PDPL got reduced by ₹1.12 crores. The job-work charges paid to PDPL for FY 2017-18 was 34% less than the benchmarked rate the potential impact of this could be ₹1.63 crores considering the quantity of FY 2016-17 (actual impact will vary based on the actual quantity for FY 2017-18)."

30. For any transaction to be considered as an undervalued transaction, it shall fall under one of the two sub-clauses of section 45(2) of I&B Code, reproduced below:

45. Avoidance of undervalued transactions -

...

(2) A transaction shall be considered undervalued where the corporate debtor–

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

31. From the above provision, it is clear that any transaction that has taken place in the ordinary course of business of the corporate debtor shall not be considered as an undervalued transaction.
32. In the present case, on perusal of the forensic audit report, we found it written in the report that as per the agreement of the Corporate Debtor with MS Biotech Pvt. Ltd., the operating cost of the Corporate Debtor electricity, labour, security, etc. is to be borne by the MS Biotech Pvt. Ltd. however it is not the actual practice followed and the operating cost is born by the Corporate Debtor itself.
33. The Respondent has contended that the Liquidator has not made any pleading concerning the relief sought regarding the undervalued transaction. The Liquidator has not even identified the transferee/counter party of the alleged undervalued transaction. The Liquidator has not compared the market value with the actual valuation of the alleged transaction. It is further

stated that no opportunity was provided to the Respondent Nos. 1 to 5 to meet with the allegations in this regards.

34. On perusal, The impugned transaction took place in the ordinary course of business of the Corporate Debtor and therefore exempted from being undervalued transaction.

Sub-lease Agreement

35. The Applicant has prayed to declare the sub-lease agreement with MS Biotech Pvt. Ltd. as null and void as it is prejudicial to the interest of the creditors and not approved by the creditors. The Applicant has stated that the change in business model in FY 2017-18, wherein the Corporate Debtor became leasing unit for MS Biotech Pvt. Ltd. by sub-lease agreement, has resulted in the sales to Andhra Pradesh Beverage Corporation Limited being done and collected by MS Biotech Pvt Ltd. This business arrangement, it is stated, has prejudiced the creditors as the receivables from Andhra Pradesh Beverage Corporation which had been given as securities to the creditor will cease to exist, in the hands of the corporate debtor. The Liquidator states that this appears to be an exercise to defraud the creditors as it impacted the profitability of the Corporate Debtor.
36. In reply to these allegations, the Respondents has submitted that MS Biotech Pvt Ltd is not a related party of the Corporate Debtor and the sub-lease agreement was entered into with MS Biotech Pvt Ltd for a monthly consideration of ₹37,00,000/- per month because by the time its application of license for enhanced capacity was allowed, the Corporate Debtor was already in financial difficulty and was unable to utilise its enhanced production facilities as it did not even have sufficient cash flows to meet its expenses, such as license fee. It is stated

that during the year 2017-2018 the Corporate Debtor realised ₹3,50,58,892/- from MS biotech Pvt Ltd as sub-lease fee.

37. The Applicant has stated that the sub-lease agreement is an exercise to defraud the creditors as it adversely impacted the profitability of the Corporate Debtor. The Applicant has also stated that the licensing process for the enhanced capacity of the plant was delayed and as a result, the company was unable to run the operations with expanded capacity and was not able to generate sufficient cash flow and profit to serve its debt as well as its license fee. Therefore, the circumstances under which the company entered into the sub-lease agreement, as stated by the Respondent, are admitted by both sides.
38. In such circumstances, where the company is facing a financial crunch, the management of the company, in their commercial wisdom, would make all possible efforts to generate funds from whatever resources the company possess. The Corporate Debtor had a licence to operate its unit at an enhanced capacity but lacked the required funds to operate and utilise its resource optimally. In such a scenario, if the management of the company decides to sub-lease its extra and idle resource, which the company is neither utilising or can utilise in future due to the paucity of funds, it cannot be said as a transaction to defraud the creditors. It is a transaction in the ordinary course of business of the Corporate Debtor and cannot be held as undervalued, preferential or a transaction defrauding creditors. Therefore, the relief sought by the Applicant against the sub-lease agreement is not maintainable and rejected.

Machinery transferred

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

39. The Applicant has prayed to direct the Respondents to vest the property transferred in connection with the giving of the preference, i.e. the machinery worth ₹11.35 crores which were transferred to Shrirampur unit of Tilaknagar Industries Ltd. be vested in the Corporate Debtor. The Applicant has relied upon the Forensic Audit Report to state that the assets worth ₹11.35 crores were transferred to the Shrirampur unit of the holding company and the same cannot be identified as they were used along with other similar machinery of the holding company. It is contended that the transfer was not mentioned or described anywhere in the board minutes, minutes of Member's meeting, accounts, director's report and not even informed to the creditors. It is submitted that this transfer is preferential transaction as it gave preference to the holding company.
40. In reply to the allegations of the transfer of assets worth ₹11.35 crores to the holding company the Respondents have submitted that due to the delay of more than five years in approval of a license for enhanced capacity, the assets of the Corporate Debtor were lying unutilised and rusted. The transfer of assets to the Holding Company's unit at Shrirampur, Maharashtra was a commercial decision, taken almost five years before the CIRP initiation date, for better utilisation of the assets. It is further stated that the Holding company is ready to surrender the machinery back to the Corporate Debtor.
41. As per the submissions made by the respondents, it is clear that the impugned assets were transferred to the holding company with an intent to protect the value of the assets. However, there is no consideration received by the Corporate Debtor against the said transfer, and the assets were not sold but only transferred to the holding company for its utilisation. Had the assets not

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**MA 267/2018
in
CP 1067 (IB)/MB/2017**

being transferred, there was a risk of them getting wasted and spoiled. It is not disputed that the ownership of the assets is still with the Corporate Debtor and they are part of the liquidation estate of the Corporate Debtor. The respondents have submitted that the holding company agree to transfer the machinery back to the Corporate Debtor. Given the circumstances above, it is directed that the assets of the Corporate Debtor shall be returned and restored to the Corporate Debtor by the holding company within one month from the date of this order.

42. The application is disposed of accordingly.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

SD/-

V.P. SINGH
Member (Judicial)

21st February, 2019