IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.303

IA(IBC) 109 of 2022 in
CP(IB) 62 of 2021

Order under Section 43 IBC

IN THE MATTER OF:

State Bank of India & Ors **.....Applicant**
V/s
Sidharth Bharatbhushan Jain & Ors **.....Respondent**

Order delivered on: 09/11/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, AHMEDABAD

IA(IBC)/109(AHM)/2022
IN
CP(IB)/62(AHM)/2021

(Filed under Section 43 of the Insolvency and Bankruptcy Code,2016)

In the matter of

1. State Bank of India
Having Address at:
Stressed Assets Management Branch
2nd Floor, Paramsiddhi Complex,
Opp. V.S. Hospital, Near Ellisbridge,
Ahmedabad-380006
Phone no. 079-26581081
E-mail id: team2samb.ahm@sbi.co.in,
sbi.04199@sbi.co.in.

2. Siemens Financial Services Pvt. Ltd.
Having Address at:
Birla Aurora Towers,
Level 21, Plot No.1080
Dr. Annie Besant Road, Worli, Mumbai-400030
Email: vaibhav.priyadarshi@siemens.com,
janakiraman.iyer@siemens.com.

3. M/s. Paisalo Digital Limited.
Having Address at:
CSC, Pocket-52, CR Park,
Near Police Station, South Delhi,
New Delhi-110019
Email: 199@paisalo.in,
cs@paisalo.in.

… Applicants

V/s

1. Sidharth Bharatbhushan Jain
Having Address at:
6, Kiran Appartments, Athwagate,
Surat-395001
Email: sidharrtha@gmail.com

2. Saurabh Bharatbhushan Jain
Having Address at:
23, Vasundhara Society, behind
Big Bazar, Vesu, Surat-395007
Email: sidharrtha@gmail.com

3. Bharatbhushan Jain
Having Address at:
23, Vasundhara Society, behind
Big Bazar, Vesu, Surat-395007
Email: sidharrtha@gmail.com

…Respondents

Order Pronounced on ***09 November, 2023***

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Mr. Pratik Thakkar, Advocate a/w Mr. Jaimin Dave, Advocate
For Respondent : Mr. Mohit Gupta, Advocate

O R D E R

Per: **Bench**

1. This is an application filed by the Resolution Professional (RP) of Sysco Industries Ltd. (Corporate Debtor) seeking the following prayers: -

   a. That this Hon'ble Adjudicating Authority may be pleased to allow enhancement of period specified in Section-46 for a period of 5 years since financials

data is only made available until financial year ending March, 2019, in interest of justice.

b. That this Hon'ble Adjudicating Authority may be pleased to pass appropriate orders or directions under Section 43 of the Code against the respondents to contribute an amount of Rs. 7,78,31,555/- being outstanding towards related party, in the interest of justice.

c. That this Hon'ble Adjudicating Authority may be pleased to pass appropriate orders or directions under Section-43 of the Code against the respondents to contribute an amount of Rs. 1,10,95,066/- towards debtor shown outstanding in the books who informs that they have already cleared the account of the Corporate Debtor, in the interest of justice.

d. That this Hon'ble Adjudicating Authority may be pleased to pass any further necessary orders as the Hon'ble Tribunal deems fit in the interest of justice.

2. It is stated that vide order dated 08.09.2021 Corporate Debtor was admitted to CIRP in CP 62 of 2021 and applicant was appointed as IRP and was later confirmed as RP by the COC.

3. It is submitted that draft transaction audit report pointed out numerous unexplained and suspicious transactions conducted by the suspended management. Copy of final transaction audit report place at Annexure C.

4. Upon pointed out to COC, approval was given in COC meeting held on 14.12.2021 for filing the present IA under Section 43.

5. It is stated that suspended management has not given latest financials and the Applicant had filed IA 807 of 2021 under Section 19 of the Code wherein order dated 8.12.2021 was passed directing the suspended management to submit the documents desired by RP within 7 days and in case of failure RP is free to approach local police to give assistance to RP. The RP has already filed Police complaint on E portal having

request no. 20220128. However, despite efforts suspended management failed to provide latest financials of Corporate Debtor.

6. The applicant submits that from the records available to the applicant and according transaction audit report following acts have been committed by the suspended management with an intent to defraud the creditors of the Corporate Debtor: -

I. Outstanding towards related party: -

i) The applicant submits that in the books of the Corporate Debtor for the year ending 31.03.2019 there is outstanding of Rs.7,78,31,555/- from M/s Pratap Associates who is the HUF Firm of Respondent No.3 herein.

ii) The applicant submits that no amount is received from M/s Pratap Associates after 31.03.2019 and that no reply is received from the respondents with regards to the same outstanding. The applicant has annexed communications made to the suspended management and the auditor at ANNEXURE-F-.

iii) It is stated that the said transaction is questionable transaction thus, falls within the ambit of Section-43 of the Code.

II. Transactions with Debtors

i. The applicant submits that apart of Pratap Associates there are three other debtors in the books of Corporate Debtor which were traceable wherein amount receivables was shown outstanding. These outstanding's are as under -

S. No.	Debtor	Amount
1	Suvishrhu Speciality Chemicals Pvt. Ltd.	43,05,706
2	Venkataramana Food Specialities Limited	28,47,697
3	Vibgyor Global Trade Pvt. Ltd.	39,41,663
	Total	1,10,95,066

ii. The applicant submits that thus an amount of Rs.1,10,95,066 is shown falsify outstanding in the books of the Corporate Debtor.

iii. The applicant had contacted the above debtors and was informed that they have

iv. no outstanding with the Corporate Debtor. The applicant has annexed communications between the applicant and the above debtors at ANNEXURE-G.

v. The applicant submits that thus, the above outstanding in the books is nothing but an attempt to defraud the creditors. Thus, the said amount falls within the ambit of the Section-43 of the Code.

7. The applicant submits that the applicant has given ample opportunities to the respondents suspended management to clarify the above actions whereby interest of other creditors is put to prejudice. The applicant submits that the suspended management

miserably failed to provide any valid explanation to the above transactions and hence the present application.

8. Upon notice Respondent No. 1 to 3 have filed a common reply under diary no. 3779 dt. 7.07.2022. The summary of the response is provided below: -

a. Resolution Plan for the Corporate Debtor was approved vide order dated 1.7.2022 in IA 287 of 2022 by this Tribunal and the RP has become functus officio and cannot pursue the present application.

b. No opinion was filed which is mandatory.

c. Data was supplied by the Respondents to the RP.

Transactions with Pratap Associates

d. Respondents admit that Pratap Associates and the Corporate Debtor had business transactions since 2015 and the Corporate Debtor used to supply Jari to said Pratap Associates which was further processed at the works of Pratap Associates. Due to financial difficulties the said Pratap Associates started facing financial

difficulties and could not pay the Corporate Debtor.

e. The transaction was in ordinary course of business and no property was transferred or preference given to Pratap Associates.

f. Hence the transactions were not illegal and are not preferential in nature.

Transactions with Debtors

g. It is stated that the 3 debtors (as named above in Table) are not related parties.

h. The only reason stated is that these debtors failed to pay and have denied any outstanding. The applicant should have called these debtors to produce bank statements evidencing proof of payment and no such inquiry was undertaken.

i. Transactions were in ordinary course of business.

9. It is seen that resolution plan was approved on 01.07.2022, post approval of the resolution plan amendment to memo of parties was filed under diary

no. 5705 dated 21.10.2022 and the same was taken on record vide order dated 31/10/2022.

10. No rejoinder has been filed. A convenience chart was filed under diary no. 4141 dated 20.10.2023.

11. We have heard the counsels and perused the documents filed before us. Post approval of the resolution plan the erstwhile COC as per the directions given in the resolution plan is perusing the present application.

12. As regards M/s Pratap Associates who is stated to be the HUF Firm of Respondent No.3 herein it is stated that application is filed based upon the books of the Corporate Debtor for the year ending 31.03.2019 and that there is outstanding of Rs.7,78,31,555/-.

13. The respondents have admitted that the amount is due and have pleaded financial difficulties as reason for non-payment besides other technical observations; however, the respondents have never denied the relationship of R-3 with the said Pratap Associates. Further no ground was shown to us besides stating

that the transactions were in regular course of business and that the said Pratap Associates is facing financial difficulties.

14. The applicant has placed the transaction audit report along with the application. A perusal of the same on page 59 confirms that Pratap Associates is a related party and the amount due from them is Rs. 7.78 Crores.

15. As regards the amount due from debtors is concerned the applicant has not made the respondents in the present application and no statement of their bank accounts was even asked by the applicants showing payments of the amounts due to corporate debtor from the said parties. Further, no pleadings are made that these debtors are related parties of the Corporate Debtor.

16. Section 43 of the Code is 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 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 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.

17. The said section refers to property which has very wide meaning and in our view includes goods. The respondent has admitted that goods were supplied by the CD and the outstanding of Rs. 7.78 crores are not denied. The Respondents have not denied that M/s Pratap Associates is his HUF which is related party.

18. It is common practice that before commencement of insolvency, the assets of the corporate debtor are stripped many a times by the management. The suspended management conceals the data from the RP during the CIRP process. In the present matter too S. 19 (2) application was filed by the RP.

19. The present case falls squarely within the ambit of S. 43 of the Code so far as transactions with Pratap

Associates is concerned. As such we have no hesitation to hold that transactions are hit by provisions of S. 43 of the Code.

20. In terms of the above observations prayers (a) and (b) are hereby allowed. R-1 to R-3 are directed to deposit the said amount of Rs. 7.78 Crores within a period of 15 days from the date of the order with the Corporate Debtor who in turn should distribute the same to the erstwhile members of COC immediately in their respective share.

21. As regards the transactions with the 3 debtors, the same are transactions in the ordinary course of business of the Corporate Debtor and as the debtors were not made a party before us and without hearing them no orders can be passed and for the reasons stated above we hold that S. 43 is not attracted upon the respondents in the matter. Accordingly, prayer (c) is denied.

22. With the above directions we dispose off the present IA.

No order as to cost.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)