SL. No.2

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 12.01.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1193/2022 in CP (IB) No.134/7/HDB/2020
NAME OF THE COMPANY	Patidar Exim Pvt Ltd
NAME OF THE PETITIONER(S)	India bulls Consumers Finance Ltd
NAME OF THE RESPONDENT(S)	Patidar Exim Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1193/2022

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Apoorva

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA 1193 of 2022 in
CP (IB) No. 134/7/HDB/2020

U/s. 43, 44 and 236 of IBC, 2016 read with Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of NCLT Rules

In the matter of M/s Patidar Exim Private Limited

Between:

M/s Patidar Exim Private Limited
Rep. by Mr. Sunit Jagdishchandra Shah,
801-802, 8th floor, Abhijeet-1, Mithakali
Six Road, Navrangpura, Ahmedabad- 380009.

… APPLICANT

Vs.

1. **Mr. Mahender Patel**
   6-2-124/A, New Bhoiguda,
   Secunderabad- 500003.

2. **Ms. Aruna Patel**
   6-2-124/A, New Bhoiguda,
   Secunderabad- 500003.

3. **M/s Patidar Timber mart**
   Plot 10 New Bhoiguda
   Secunderabad 500003

… RESPONDENTS

Date of Order: 12.01.2024
Reserved for Order: 22.12.2023

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Parties / Counsels Present:

For the Applicant : Ms. Mano Ranjani & M Rama Rao Advocates

For the Respondent : None (made ex-parte)

[Per: Sanjay Puri]

ORDER

1. This application has been filed under Section 43, 44 and 236 of IBC read with Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of NCLT Rules with prayers as follows:
    i) To pass an appropriate order as the Hon'ble Adjudicating Authority deems fit u/s 43 of Code.
    ii) To pass an appropriate order as the Hon'ble Authority deems fit u/s 236 of Code
    iii) To direct suspended board to restore the position as it existed before such transaction as if the transactions had not been entered into.

2. The present application is filed by Liquidator of Corporate Debtor ("**M/s. Patidhar Exim Private Limited/CD**"). The CD was admitted into CIRP[1] by this adjudicating authority vide order dated 04.02.2022. The present applicant Sunit Jagdish Chandra Shah was appointed as IRP[2] and he was later confirmed as RP[3] by CoC[4], and later continued as Liquidator.

3. It is submitted by the applicant that during the 3rd CoC meeting, a resolution was duly passed and subsequently approved by the CoC, mandating a transactional audit of the CD. This audit specifically targeted transactions falling under sections 43 to 46 and Section 66

[1] Corporate Insolvency Resolution Process
[2] Interim Resolution Professional
[3] Resolution Professional
[4] Committee of Creditors

of the IBC[5], spanning the five-year period preceding the commencement CIRP.

4. In adherence to the said CoC resolution, M/s Dipak Agarwal & Co, Chartered Accountants, were appointed to conduct audit of the transactions carried out by the CD during the period from 01.04.2017, to 05.05.2022, with reference to Sections 43, 45, 50, or 66 of the IBC.

5. A transaction audit report was duly prepared and submitted to the RP on 17.09.2022.

6. Based on the Transaction Audit Report, the Applicant has submitted that in his opinion preferential transactions amounting to Rs 1,02,09,642 were carried out by the CD during the lookback period of two years. It is averred that during the two years preceding the CIRP date of 04.02.2022, the CD had paid and received funds from a related party M/s Patidar Timber Mart (owned by father of Respondent No. 1) and these transactions resulted in an amount of Rs. 1,02,09,642 being paid in excess over the receipts. It is therefore contended that said excess payments were preferential in nature.

7. Based on the Ledger Account[6] of M/s Patidar Timber Mart maintained in the Books of Account of the CD, the applicant has submitted the following summary of receipts and payments by the CD from that party.

Particulars	Opening Balance	Transactions-DEBIT	Transactions-CREDIT	Closing Balance
Patidar Timber Mart	28,50,190.00 Dr	1,16,46,200.32	14,36,558.00	1,30,59,833.44 Dr
Net payment		**1,02,09,642.32**		

[5] Insolvency and Bankruptcy Code, 2016
[6] Ledger statement of M/s Patidar Timber Mart as per books of CD- ***Annexure A04***

8. It is therefore prayed that appropriate orders be passed by this Authority under sections 43 and 44 of IBC

The Decision

9. We have heard the applicant and gone through the records. The Respondent were declared ex-parte in view of continued non-appearance in the matter.

10. Based on the information provided by the Applicant, it is evident that the transactions between the CD and M/s Patidar Timber Mart exhibit characteristics of being preferential in nature. Nevertheless, before subjecting these transactions to the provisions of section 43 of the IBC, it is imperative to assess whether they were conducted within the ordinary course of business.

11. In this context it is useful to refer to the landmark judgment in the case of Anuj Jain[7], where the Hon'ble Supreme Court sought to explain the term "ordinary course of business." The Apex Court of India drew insights from a decision of the Australian High Court[8] quoting about the term 'ordinary course of business' that,

> "*It speaks of the course of business in general. But it does suppose that according to the ordinary and common flow of transactions in affairs of business there is a course, an ordinary course. It means that the transaction must fall into place as part of the undistinguished common flow of business done, that it should form part of the ordinary course of business as carried on, calling for no remark and arising out of no special or particular situation.*"

[7] Anuj Jain Interim Resolution Professional, Jaypee Infratech Ltd. V. Axis Bank Ltd., (2020) 8 SCC 401 (Para 28.6.1)
[8] In the Case of Downs Distributing Co Pyt Ltd v. Associated blue Stores Ply Ltd (in liq): (1948) 76 CLR 463

12. The ledger account, included in the Transactional Audit report, reveals an ongoing series of transactions between the CD and M/s. Patidar Timber Mart dating back to April 2017. Throughout the three-year period preceding the two-year look-back period, there are regular occurrences of sales, receipt, payments, and other financial dealings. The continuous nature of these transactions between M/s. Patidar Timber Mart and the CD, spanning from April 2017 until the commencement of the CIRP, appears to be an 'undistinguished common flow' in the ordinary course of business. Consequently, these transactions do not seem to fall within the purview of a preferential transaction under Section 43(2) of the IBC.

In view of the above observations, we hereby dismiss this application.

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Rohit