



S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-05-2024 AT 10:30 AM**

CP(IB) No.747/7/HDB/2019

AND

IA (IBC) 231/2022 in CP(IB) No.747/7/HDB/2019

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

AND

Rajvir Industries Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC) 231/2022

Mr K Murali Krishna Prasad, Resolution Professional present through Video Conference.

Learned Counsel Mr S Rajagopalan, for respondent present through Video Conference.

Orders passed. In the result, **IA No.231/2022 is dismissed. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



I.A. No. 231 OF 2022

in

C.P. (IB) No.747/7/HDB/2019

Date of Order: 09.05.2024

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD**

I.A. No. 231 OF 2022

in

C.P. (IB) No.747/7/HDB/2019

Under Section 25(2)(j) read with Sections 43, 44, 50, 51, 66, 67, 69 read with Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 and 13 of NCLT Rules, 2016.

BETWEEN:

Mr. K. Murali Krishna Prasad

Presently The Resolution Professional of M/s. Rajvir Industries Ltd

8-27, Mytripuram Colony, Vyshali Nagar,

Jillelaguda, Hyderabad - 500079

(Mr. TSN Raja)

Erstwhile Resolution Professional of M/s. Rajvir Industries Ltd

Plot No. 16 (11-20-18), Shop cum Flat,

Huda Complex, Kothapet,

Hyderabad, Telangana-500035)

...Applicant

AND

1. Mr. Upender Kumar Agarwal



Suspended Director

R/o. 8-2-293/82/J-3/26,

Road Number 78, Jubilee Hills,

Shaikpet, Hyderabad – 500033.

2. Mr. Ritesh Kumar Agarwal,

Suspended Director

R/o. 8-2-293/82/J-3/26,

Road Number 78, Jubilee Hills,

Shaikpet, Hyderabad – 500033.

...Respondents

Date of Order: 09.05.2024

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Applicant : Smt JVL Bharati for the Resolution Professional

Resolution Professional: Shri.K.M.K.Prasad, Counsel

For Respondent: Shri Rajgopalan, Sr.Counsel



PER BENCH

ORDER

1. This is an Application originally filed by Mr. TSN Raja, Resolution Professional who was later replaced by Mr. K. Murali Krishna Prasad (hereinafter referred as 'Applicant') of 'M/s. Rajvir Industries Ltd' (hereinafter referred as 'Corporate Debtor') under Section 25(2)(j) read with Sections 43, 44, 50, 51, 66, 67, 69 read with Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'IBC') read with Rule 11 and 13 of NCLT Rules, 2016 against the suspended Directors of the Corporate Debtor i.e., Mr. Upender Kumar Agarwal and Mr. Ritesh Kumar Agarwal (Respondents No.1 & 2 respectively) alleging that illegal transactions took place in the Corporate Debtor prior to the initiation of CIRP against Corporate Debtor. Hence, it was prayed to declare these transactions as preferential, extortionate and fraudulent in terms of Sections 43, 50 and 66 respectively of IBC and to direct the Respondents accordingly to contribute the sums under these transactions to the assets of Corporate Debtor.

2. The Corporate Debtor herein was admitted into Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide order dated 26.04.2021 in CP (IB) NO.747/7/HDB/2019. The original Applicant i.e., Mr. TSN Raja was appointed as the Interim Resolution Professional of the Corporate Debtor and was later confirmed by the Committee of Creditors (CoC) of the Corporate Debtor as the Resolution Professional of the Corporate Debtor.

3. Subsequent to the assumption of charge as Resolution Professional, the Applicant herein perused the books of accounts and other records, and came to a prima facie view that there were certain irregular transactions carried out by the Corporate Debtor prior to the initiation of CIRP. The Applicant apprised the CoC



regarding the same and got conducted a Transaction Audit and Forensic Audit of the Corporate Debtor for the period between 01.04.2018 to 31.03.2021 **(Annexure A7)**.

4. On the basis of the report given by the Transaction Auditor and Forensic Auditor, the CoC came to a view that there were irregular transactions entered into by the Corporate Debtor that took place during the relevant period prior to the initiation of CIRP. Hence, the Applicant herein approached this Tribunal seeking the reliefs as prayed.

5. Preferential Transactions

a) Allegations:

5.1. It is the allegation of the Applicant that a warehouse was taken on rent by the Corporate Debtor belonging to M/s. Balaji Enterprises on monthly rent from 01.04.2010 and subsequently, the rent was revised to as Rs.4,80,000/- per month. This M/s. Balaji Enterprises is a Partnership Firm in which Smt. Usha Agarwal (the mother of Respondent No.2 herein) is a partner and thus the transactions made with this Partnership Firm are related party transactions.

5.2. That during the relevant period i.e., during two years prior to the commencement of CIRP of the Corporate Debtor, an amount of Rs.33,69,600 was paid to the M/s. Balaji Enterprises **(Page 13 of the Application)** and that the same falls under preferential transaction.

5.3. That the Corporate Debtor took loans from consortium of five banks during 2014-15 and State Bank of India (SBI) was appointed as the monitoring



institution to this loan. That the Corporate Debtor paid an amount of Rs.50,50,000/- to ICICI Bank during the year 2020-21 towards the Rupee Term Loan, but the Corporate Debtor defaulted in payments to the other member banks of the consortium and thus, this transaction falls under preferential transaction.

b) Reply:

5.4. The Respondents countered these allegations stating that as per the books of accounts of Corporate Debtor, the rental dues of M/s. Balaji Enterprise were not paid from September 2019. That as per the table produced by the Applicant, certain monthly rentals starting from June,2019 to December, 2020 (including the Covid-19 period) were not paid by the Corporate Debtor to M/s. Balaji Enterprises.

5.5. That this act of non-payment shows that the Suspended Directors of the Corporate Debtor were protecting the interests of the Corporate Debtor all the time.

5.6. With respect to the payments made to ICICI Bank, it was stated by the Respondents that the other member banks of the consortium froze the accounts of the Corporate Debtor and hence, no payments were made to these banks. That the payments to vendors, workmen, and statutory dues of Corporate Debtor were made through the current account of Corporate Debtor operated by ICICI Bank and that ICICI Bank had been apportioning the loan instalments from the monies deposited in the bank account. That the payment of Rs.50,50,000/- to ICICI Bank was in the normal course of business and cannot be termed as preferential transaction.



5.7. That the Corporate Debtor made a payment of about Rs.3,00,00,000/- to SBI (the monitoring institution) ***(no particular period of payment was stated by the Respondents pertaining to this transaction)*** and that proceedings under SARFAESI Act were initiated by SBI and IDBI Bank before The Debt Recovery Tribunal-II, Hyderabad during the pendency of C.P. (IB) No.747/7/HDB/2019 before this Tribunal.

6. Extortionate Transactions

a) Allegations:

6.1. The Applicant stated that two warehouses viz. one belonging to M/s. Balaji Enterprises and the other belonging to M/s. Sri Ganesh Industries Ltd located in Mahabubnagar District were taken for rent by the Corporate Debtor. That the rent paid to warehouse belonging to M/s. Balaji Enterprises which is located out of the main town of Mahbubnagar was at Rs.8.83 per sq. ft whereas the rent paid to warehouse of M/s. Sri Ganesh Industries which is located in the main town of Mahbubnagar was at Rs.5.20 per sq. ft.

6.2. It is the contention of the Applicant that the rent towards the warehouse belonging to M/s. Balaji Enterprises was paid at 58% more than the market rate (i.e. more than the rent paid to M/s. Sri Ganesh Industries) and hence, this payment of rent in excess to the market rate to the warehouse of M/s. Balaji Enterprises is an extortionate transaction.

b) Reply:

6.3. The Respondents, in reply, stated that the premises belonging to M/s. Balaji Enterprises also contains residential quarters of the workers of the Corporate



Debtor and that the said premises is very near to the factory of Corporate Debtor, whereas the premises (warehouse) belonging to M/s. Sri Ganesh Industries is at a distance of five kilometres from the factory of Corporate Debtor. Hence, this transaction with M/s. Balaji Enterprises cannot be termed as extortionate.

7. Fraudulent Transactions or Wrongful Trading

a) Allegations:

7.1. The Applicant stated that the credit card expenses of the erstwhile directors were paid by the Corporate Debtor. That these payments made by the Corporate Debtor were shown as business promotion expenses in the books of accounts of Corporate Debtor.

7.2. That an amount of Rs.134.31 lakhs was paid as credit card expenses for the years 20018-19 to 2020-21 and that these transactions fall under fraudulent transactions carried on by the Corporate Debtor.

7.3. That the Corporate Debtor advanced an amount of Rs.41,37,183/- to various persons and the same are outstanding since long time. That the Respondents did not produce any documents for verifying the terms and conditions of these transactions.

7.4. That though the Corporate Debtor was running into losses, during 2017-18 the remuneration of Respondents No. 1 and 2 was increased from Rs.3,50,000/- per month to Rs.5,00,000/- per month (an increase of 43%) by the Corporate Debtor. That the amounts paid to various parties were adjusted against the remuneration payable to erstwhile directors amounting to Rs.164.72 lakhs.



7.5. That an amount of Rs.2,48,43,993/- was adjusted through book entries (Journal Voucher) pertaining to the debtors and creditors payable or receivable by the Corporate Debtor.

7.6. That the stock of 1,50,000 kg was written off by the Corporate Debtor during the year 2018-19, but the Respondents provided no supporting documents for verification of the same.

7.7. That there is no agreement and no relevant documents pertaining to the sales commission agent and a commission of 1.5% on sales was paid to M/s. Shreeji Textiles. The same was increased from 1.5% to 3% during the year 2020-21.

7.8. That M/s. Sree Lakshmi Enterprises (Associate Company) constitutes 30.5% of total creditors owing an amount of Rs.862 lakhs outstanding for 3 years, but there was no payment made by the Corporate Debtor in this regard.

7.9. That transfer of an immovable property as a gift was made by Personal Guarantor i.e., Mrs. Usha Agarwal and Mrs. Arti Agarwal on 14.02.2019 without obtaining any NOC from the lenders.

b) Reply:

7.10. The Respondents replied to these contentions stating that the credit card transactions pertain to corporate card issued in the name of Corporate Debtor and that the said card was used for payment of Mobile Telephone Bills issued to key managerial personnel, grocery bills for temple annadhanam, guest house essentials, providing meals to employees and staff during covid. That these expenses were properly accounted for in the books of accounts of Corporate Debtor.



7.11. The Respondents prayed this Tribunal to direct the Applicant to produce all the relevant bills, journal vouchers for the perusal to adjudicate the issue of fraudulent or wrongful trading against the Respondents herein.

7.12. With respect to the outstanding amounts, it was replied that these advances were given to various companies for purchase of different materials and subsequently because of withdrawals of the plans to purchase and also the Global Recession during the year 2008, the amounts were not returned by the companies. That this issue of outstanding amounts was within the knowledge of CoC and was discussed during the time of Corporate Debt Restructuring.

7.13. That the increase in remuneration of the Respondents was approved by the remuneration committee and shareholders in the Annual General Meeting. That the Respondent No.1 and Respondent No.2 did not even withdraw the salaries since November 2019 and April 2019 respectively. That the Respondents always endeavoured to keep the Corporate Debtor as a going concern.

7.14. With respect to the adjustment of amounts through Journal Vouchers, it was stated that the statutory auditors and bank auditors had verified and audited the transactions and did not find any deviation or irregularity in the said transactions. Hence, these transactions cannot be termed as fraudulent transactions.

7.15. That the stock of 1,50,000 kg was written off as there were rains and massive floods in October, 2018 at Tirupur Town, Tamil Nadu and as a result the stock stored was infected with fungus. That this stock was disposed off as cotton waste incurring heavy expenditure.



7.16. That the sales agent M/s. Shreeji Textiles was to make sale of yarn produced by the Corporate Debtor on cash purchase basis instead of credit basis. That the enhancement of sales commission from 1.5% to 3% is a relevant business practice and cannot be termed as fraudulent or wrongful.

7.17. That due to disputes between the partners of M/s. Sree Lakshmi Enterprises, the amount of Rs.862 lakhs which was due remained unpaid by the Corporate Debtor.

7.18. That the property which was transferred by Mrs. Usha Agarwal and Mrs. Arti Agarwal was acquired by them on 16.03.2013 and that a loan was obtained by them on this property from India Infoline Financial Housing Limited (a Financial Institution). That this property was never offered as a security and that the said transfer was made according to law.

8. In light of the contentions put forth by both the sides herein, the point that emerge for the consideration of this Tribunal is:

POINT:

- **Whether the transactions reflected in the transaction audit report and forensic audit report can be declared as preferential, extortionate, fraudulent transactions in terms of Sections 43, 50, 66 of IBC respectively?**

9. Heard, Ld. Counsel Smt JVL Bharati for the Applicant/Resolution Professional along with the Resolution Professional and Ld. Counsel Mr. Rajgopalan for the Respondents and perused the records.

POINT:



Whether the transactions reflected in the transaction audit report and forensic audit report can be declared as preferential, extortionate, fraudulent transactions in terms of Sections 43, 50, 66 of IBC respectively?

Preferential Transactions:

Submissions:

10. Learned counsel for the applicant submits that a warehouse was taken on rent by the Corporate Debtor belonging to M/s. Balaji Enterprises on monthly rent from 01.04.2010 and subsequently, the rent was revised to as Rs.4,80,000/- per month. This M/s. Balaji Enterprises is a Partnership Firm in which Smt. Usha Agarwal (the mother of Respondent No.2 herein) is a partner and thus the transactions made with this Partnership Firm are related party transactions. Learned counsel further submits that during the relevant period i.e., during two years prior to the commencement of CIRP of the Corporate Debtor, an amount of Rs.33,69,600 was paid to the M/s. Balaji Enterprises and that the same falls under preferential transaction. Learned counsel further contend that the Corporate Debtor took loans from consortium of five banks during 2014-15 and State Bank of India (SBI) was appointed as the monitoring institution to this loan. That the Corporate Debtor paid an amount of Rs.50,50,000/- to ICICI Bank during the year 2020-21 towards the Rupee Term Loan, but the Corporate Debtor defaulted in payments to the other member banks of the consortium and thus, this transaction falls under preferential transaction.

11. Learned counsel for Respondents countered these allegations stating that as per the books of accounts of Corporate Debtor, the rental dues of M/s. Balaji Enterprise were not paid from September 2019. Learned counsel further submits



that even as per the table produced by the Applicant, certain monthly rentals starting from June,2019 to December, 2020 (including the Covid-19 period) were not paid by the Corporate Debtor to M/s. Balaji Enterprises. Thus, learned counsel, contend that even the payment due to M/s. Balaji Enterprises in the ordinary course of business were not paid and Suspended Directors of the Corporate Debtor were always protecting the interests of the Corporate Debtor all the time. Learned counsel, vehemently argued that payment made to M/s. Balaji Enterprises cannot be treated as preferential transaction as per the definition of preferential transaction as per IBC, 2016. Learned counsel further submits that other member banks of the consortium froze the accounts of the Corporate Debtor and hence, no payments could be made to these banks. However, payments to vendors, workmen, and statutory dues of Corporate Debtor were made through the current account of Corporate Debtor operated by ICICI Bank and that ICICI Bank had been apportioning the loan instalments from the monies deposited in the bank account. Thus, the payment of Rs.50,50,000/- to ICICI Bank cannot be termed as preferential transaction as suspended directors have not made any payment in preference to ICICI Bank but since account with ICICI bank was only operative bank account during that period, the bank in the normal course of business adjusted these payments from the account.

Our findings about preferential transaction:

12. We find that applicant has simply made these allegations based on the transaction audit report and forensic audit report pertaining to the affairs of the Corporate Debtor for the period between 01.04.2018 to 31.03.2021 and has not applied his mind before classifying the transactions as preferential transactions. We are unable to understand, how lease rent paid even to related party for a property taken on lease for regular business of the corporate debtor can be classified as preferential transactions. We also agree with the contention of



respondent that since respondents have not made any payment to ICICI bank but the bank has taken it from the account, it cannot be treated as a preferential payment made by respondents. In the above backdrop, we do not find any preferential transaction undertaken by respondents.

Extortionate Transactions:

Submissions

13. Learned counsel for the applicant submits that two warehouses viz. one belonging to M/s. Balaji Enterprises and the other belonging to M/s. Sri Ganesh Industries Ltd located in Mahabubnagar District were taken for rent by the Corporate Debtor. Learned counsel further submits that the rent paid to warehouse belonging to M/s. Balaji Enterprises which is located out of the main town of Mahbubnagar was at Rs.8.83 per sq. ft whereas the rent paid to warehouse of M/s. Sri Ganesh Industries which is located in the main town of Mahbubnagar was at Rs.5.20 per sq. ft. Thus, learned counsel, contented that the rent towards the warehouse belonging to M/s. Balaji Enterprises was paid at 58% more than the market rate (i.e. more than the rent paid to M/s. Sri Ganesh Industries) and hence, this payment of rent in excess to the market rate to the warehouse of M/s. Balaji Enterprises is an extortionate transaction.

15. Learned counsel for the respondents, in reply, argued that the premises belonging to M/s. Balaji Enterprises also contains residential quarters of the workers of the Corporate Debtor and that the said premises is very near to the factory of Corporate Debtor, whereas the premises (warehouse) belonging to M/s. Sri Ganesh Industries is at a distance of five kilometres from the factory of Corporate Debtor. Hence, this transaction with M/s. Balaji Enterprises cannot be termed as extortionate.

Our findings on extortionate transactions:



16. We do not find any merit in the submissions made by applicant that since rent paid for one lessee is more than the other lessee it needs to be treated as an extortionate transaction. Every property has its merits and demerits in terms of location, distance from business place, infrastructure available at site etc and rents can differ in a natural way depending on these factors as well many other factors like negotiation skill of the persons and their pressing needs etc. The applicant could not produce any logic or basis to treat the transaction as extortionate transaction hence, we reject the prayer of the applicant to treat the transaction as extortionate transaction.

Fraudulent or wrongful trading transactions

Submissions

17. Learned counsel for the applicant submits that credit card expenses of the erstwhile directors were paid by the Corporate Debtor and these payments made by the Corporate Debtor were shown as business promotion expenses in the books of accounts of Corporate Debtor. Learned counsel further submits that Corporate Debtor advanced an amount of Rs.41,37,183/- to various persons and these advances are outstanding since long time. Learned counsel further submits that though the Corporate Debtor was running into losses, during 2017-18 the remuneration of Respondents No. 1 and 2 was increased from Rs.3,50,000/- per month to Rs.5,00,000/- per month (an increase of 43%) by the Corporate Debtor. Learned counsel further contended that an amount of Rs.2,48,43,993/- was adjusted through book entries (Journal Voucher) pertaining to the debtors and creditors payable or receivable by the Corporate Debtor. Learned counsel further submits that stock of 1,50,000 kg was written off by the Corporate Debtor during the year 2018-19, but the Respondents provided no supporting documents for verification of the same. Further, learned counsel alleged that there is no agreement and no relevant documents pertaining to the sales commission agent



but a commission of 1.5% on sales was paid to M/s. Shreeji Textiles and the same was increased from 1.5% to 3% during the year 2020-21. Further, learned counsel submits that M/s. Sree Lakshmi Enterprises (Associate Company) constitutes 30.5% of total creditors owing an amount of Rs.862 lakhs outstanding for 3 years, but there was no payment made by the Corporate Debtor in this regard. Learned counsel further submits that transfer of an immovable property as a gift was made by Personal Guarantor i.e., Mrs. Usha Agarwal and Mrs. Arti Agarwal on 14.02.2019 without obtaining any NOC from the lenders.

18. Learned counsel for the respondents vehemently denied all these arguments and clarified on each point. Learned counsel submits that the credit card transactions pertain to corporate card issued in the name of Corporate Debtor and that the said card was used for payment of Mobile Telephone Bills issued to key managerial personnel, grocery bills for temple annadhanam, guest house essentials, providing meals to employees and staff during covid. That these expenses were properly accounted for in the books of accounts of Corporate Debtor. Learned counsel made a request to the Tribunal to direct the Applicant to produce all the relevant bills, journal vouchers for the perusal to adjudicate the issue of fraudulent or wrongful trading against the Respondents herein. Learned counsel further submits that advances were given to various companies for purchase of different materials and subsequently because of withdrawals of the plans to purchase and also the Global Recession during the year 2008, the amounts were not returned by the companies and this issue of outstanding amounts was within the knowledge of CoC and was discussed during the time of Corporate Debt Restructuring. Learned counsel further submits that the increase in remuneration of the Respondents was approved by the remuneration committee and shareholders in the Annual General Meeting but the respondent No.1 and



respondent No.2 did not even withdraw the salaries since November 2019 and April 2019 respectively and respondents always endeavoured to keep the Corporate Debtor as a going concern. With respect to the adjustment of amounts through Journal Vouchers, learned counsel submits that the statutory auditors and bank auditors had verified and audited the transactions and did not find any deviation or irregularity in the said transactions. Hence, these transactions cannot be termed as fraudulent transactions. Learned counsel further submits that the stock of 1,50,000 kg was written off as there were rains and massive floods in October, 2018 at Tirupur Town, Tamil Nadu and as a result the stock stored was infected with fungus. That this stock was disposed off as cotton waste incurring heavy expenditure. Learned counsel further submits that the sales agent M/s. Shreeji Textiles was making sale of yarn produced by the Corporate Debtor on cash purchase basis instead of credit basis and for that reason only the sales commission from 1.5% to 3% was enhanced which is a relevant business practice and cannot be termed as fraudulent or wrongful. Learned counsel contends that due to disputes between the partners of M/s. Sree Lakshmi Enterprises and CD, the amount of Rs.862 lakhs which was due remained unpaid by the Corporate Debtor but how it can be treated as fraudulent transaction. Learned counsel explained that the property which was transferred by Mrs. Usha Agarwal and Mrs. Arti Agarwal was acquired by them on 16.03.2013 and that a loan was obtained by them on this property from India Infoline Financial Housing Limited. Learned counsel submits that this property was never offered as a security, therefore no permission was sought from creditors and learned counsel further submits that the said transfer was made according to law.

Our findings on Fraudulent or wrongful trading transactions:

19. We find merit in the submissions made by the respondents and are satisfied with the explanations given by respondents on all points. We observe that



applicant has just filed this application based on transaction and forensic audit reports and has not gone into the details of the transactions. We take note that apart from these audit reports, no other relevant material was brought on record by the Applicant to support the allegations raised against the Respondents in the present case. By the operation of law, when the Applicant was appointed as the Resolution Professional of the Corporate Debtor, the Applicant is in control of all the records of the Corporate Debtor from the date of admission of the Corporate Debtor into CIRP but we found that he did not make any effort to go through these records. In view of the above facts, we deny to treat these transactions as fraudulent transactions.

20. At this juncture, this Tribunal finds it relevant to quote Regulation 35A of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

35A. Preferential and other transactions.

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.



(3A) The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.

(4) The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.

21. This Regulation provides for the Resolution Professional to form an opinion that whether the Corporate Debtor has been subjected to any transactions covered under Sections 43, 45, 50 or 66 (PUFE Transactions). It is when the Resolution Professional comes to a determination that the Corporate Debtor has been subjected to PUFE Transactions, he can apply to the Adjudicating Authority for appropriate relief. This determination of the Resolution Professional may be formed with the aid of any material like the transaction audit report and forensic audit report in the present case. But it is to be taken note, that the Resolution Professional should make own assessment as to the gravity of these transactions and not just approach this Tribunal solely basing on these reports without any independent assessment.

22. In lieu of these observations, the prayer of the applicant to declare the transactions as mentioned in the petition, as preferential, extortionate, fraudulent transactions in terms of Sections 43, 50, 66 of IBC , cannot be granted and the present application is hereby dismissed, however without costs.

SD/-

Charan Singh
Member Technical

Anil/Pavani

SD/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial