



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT - IV

I.A. No.3099 of 2023
IN
C.P. (IB) No. 503/MB/2021

*[Under Section 43 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of:

Mr. Jayanti Lal Jain

Interim Resolution Professional of Windals
Auto Pvt. Ltd.

...Applicant

V/s.

Mr. Abdulla Sahebkhani Dalwai & Ors.

...Respondents

In the matter of:

Ashok Leyland Limited

...Operational Creditor

V/s.

Windals Auto Pvt. Ltd.

...Corporate Debtor

Pronounced: 27.10.2025

CORAM:

ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For Applicant : Adv. Mitali Bhatt i/b. AKR Legal.
For Respondents 1 & 2 : Adv. Jhalak Kaji i/b. Adv. Sarosh
Damania.
For Respondent 3 : Adv. Jugal Anjana Bhatia.



ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1. This I.A. has been filed under Section 43 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code), by Mr. Jayanti Lal Jain, the Interim Resolution Professional (Applicant/IRP) of 'Windals Auto Pvt. Ltd.', the Corporate Debtor (CD) against Mr. Abdulla Sahebkhani Dalwai, Respondent No. 1 and Mr. Asif Dalwai, Respondent No. 2, who are directors of the suspended board of the CD, and also against 'Divyagyan Trading Private Limited', Respondent No. 3, which is one of the unsecured financial creditors of the CD, and also described by the Applicant as the beneficiary entity.

1.2. The Applicant, *inter alia*, seeks the following reliefs:

“(a)

(b) *Direct the Respondent No. 3 to make such contributions to the Corporate Debtor aggregating to sum of Rs. 1,10,00,000/- as stated in this Application with regard to the financial benefit extended by way of preferential treatment to other creditors which falls within the look back period in terms of section 43 of the Code;*

(c) *Pass appropriate directions / orders in terms of Section 44, of the Code including for recovery / restoration of legitimate amounts due to the Corporate Debtor;*

(d) *Impose such fine under sections 71, 72 and 73 of the Code upon the Respondents as the Hon'ble Tribunal may deem fit;*

(e)

1.3. The Corporate Insolvency Resolution Process (CIRP) in respect of the CD was initiated by this Tribunal, *vide* Order dated 28.04.2023, and the Applicant was appointed as the Interim Resolution Professional (IRP). The public



announcement was made on 03.05.2023. Pursuant to receipt of claims, the IRP constituted Committee of Creditors (CoC) of the CD. The list of CoC members along with their voting percentage, as relied upon by the Applicant, is extracted below:

Figures in Rs. Crs

Sr. No.	Name of Creditor	Amount Claimed	Claim Admitted	Voting (%)
1	Union Bank of India	271.36	271.36	87.09%
2	Tata Motors Finance Solutions Ltd	25.84	25.84	8.29%
3	HDFC Bank Limited	12.32	12.32	3.95%
4	Divyagyan Trading Private Limited	1.87	1.87	0.60%
5	Sahima Properties Pvt Ltd.	0.18	0.18	0.06%
	Total	311.58	311.58	100

1.4. The CoC, in its 9th meeting on 09.06.2024, resolved to liquidate the CD, pursuant to which I.A. No. 98 of 2024 was filed before this Tribunal under Section 33 of the Code. Liquidation of the CD was ordered on 09.12.2024 and one Mr. Rajan Garg was appointed as the Liquidator, and the CD is presently under liquidation. This I.A., originally filed by the IRP, is being pursued by the present Liquidator.

2. SUBMISSIONS OF APPLICANT

2.1. The Applicant submits that pursuant to the initiation of CIRP of the CD, and upon perusal of the available records and ledger accounts, he has formed an opinion that a transaction of Rs.1,10,00,000/- undertaken by Respondents 1 & 2 to the benefit of Respondent No. 3, on 24.02.2023, was preferential in nature, and thus stands covered under Section 43 of the IBC. This has been flagged in the Transaction Audit Report dated 15.03.2024 submitted by the Auditor. The CIRP of the CD commenced on 28.04.2023. Hence, the transaction falls within the look-back period of one year, since the same is made by the CD with a party other than a related party. This transaction is made to the unsecured creditor in preference to the secured creditors.



- 2.2. Upon inquiry of the veracity of the payment by the Applicant, Respondent Nos. 1 & 2 informed him that Respondent No.3 had provided an on-call loan to the CD, against which post-dated cheques were issued to Respondent No. 3. Further, Respondent No.3 had threatened to file criminal case against Respondents 1 & 2 under Section 138 of the Negotiable Instruments Act, 1881, in the event any cheque got dishonored. According to Respondent Nos. 1 & 2, this was the reason for making repayment of Rs.1,10,00,000/- to Respondent No. 3 on 24.02.2023.
- 2.3. In response to the inquiry about the source of funds for the payment, Respondent Nos. 1 & 2 mentioned that the CD had received refunds from the Income Tax Department and LIC Key Man Insurance Policy, in the CD's bank account with Kokan Mercantile Co-Op Bank Ltd. The Applicant submits that this bank account was opened by Respondent Nos. 1 & 2, without authorisation from the secured creditor, Union Bank of India, after they had already frozen all the accounts of the CD for the reason of turning NPA.
- 2.4. The Applicant further submits that both the secured financial creditors of the CD, viz., Union Bank of India and HDFC Bank Limited, were not aware of the transaction, and the same has been recorded in the 1st Meeting of the CoC dated 01.06.2023. The Applicant thus contends that this transaction falls under the category of preferential transaction in terms of Section 43 of the IBC. By virtue of the transaction, a beneficial position has been provided to an unsecured creditor (Respondent No. 3) against the secured creditor from the source of funds of the CD. This is in violation of the waterfall mechanism as provided under Section 53 of the Code. Hence, this Application.

3. CONTENTIONS OF RESPONDENT Nos. 1 & 2

- 3.1. The Respondent Nos. 1 & 2, are the former directors of the CD, and have filed a joint Reply dated 29.09.2023. They submit that Respondent No. 3 had provided an on-call loan of Rs.2,00,00,000/- @12% p.a. to the CD in the normal course of business. In their respective capacities as the former directors of the CD, they had made a payment of Rs.1,10,00,000/- to Respondent No. 3, on 24.02.2023,



towards repayment of the on-call loan. The CIRP of the CD was still pending at the time when the transaction was made; however, there was no order passed by the Court prohibiting them from making the transaction.

- 3.2. The CD had funds to make the transaction as it was receiving certain sum from the Income Tax Department and LIC Key Man Insurance Policy in its bank account. Union Bank of India was the only secured financial creditor of the CD, and that the status of HDFC Bank Limited as a secured financial creditor was still disputed as on 01.06.2023 i.e., the date of the 1st Meeting of the CoC.
- 3.3. At the time when Rs.1,10,00,000/- was made to Respondent No. 3, the payment to the secured financial creditor i.e., Union Bank of India was not possible as there was an ongoing dispute with them regarding exorbitant rate of interest charged from the CD. The Respondents have relied on certain correspondence between the CD and Union Bank of India in this regard. Further, the transaction was made by them with Respondent No.3, in due course of business and in the best interest of the CD.

4. CONTENTIONS OF RESPONDENT No. 3

- 4.1. The Respondent No. 3, *vide* its reply dated 21.11.2023, denied the averments of the Applicant and submits that a loan of Rs.2,00,00,000/- with interest @12% per annum was provided to the CD in its normal course of business. However, the CD has made only part-payment of Rs.1,10,00,000/- from out of the total loan provided. The loan amount was paid to the bank account of the CD, to be used for the CD, and not to the personal bank accounts of any of the suspended directors, viz., Respondent Nos. 1 & 2. Further, it is not the responsibility of Respondent No.3 to keep a track on how and where the loan amount was being used by the CD or Respondents 1 & 2.
- 4.2. Pursuant to initiation of CIRP of the CD on 28.04.2023, and filing of its claim with the Applicant/IRP, the CD is indebted to Respondent No.3, for a sum of Rs.1,86,64,197/-. Respondent No. 3 has no legal liability towards the CD to



return any payment. Although the CD had made only part-repayment to Respondent No.3, it cannot be qualified as 'preferential transaction'. Respondent No. 3 has no knowledge of the nature of transaction being termed as 'preferential' and the same is not applicable to it. The CD made part-repayment after continuous follow-ups by Respondent No.3. There is no provision in law that mandates the financial creditor, i.e., the Respondent No. 3, to pay any amount of money back to the CD, for the loan re-payment made by the CD. Further, Respondent No.3 cannot be held liable to the personal acts of Respondent Nos. 1 & 2, the then directors of the CD.

5. ANALYSIS AND FINDINGS

- 5.1. We have perused the available records and heard the Ld. Counsel for the Applicant and the Respondents.
- 5.2. Pursuant to the CIRP commencement of the CD on 28.04.2023, and on perusal of the ledger accounts of the CD, the Applicant/IRP formed an opinion that certain transactions undertaken by Respondent Nos. 1 & 2 were preferential in nature. Hence, M/s Kansal Singla and Associates, Chartered Accountants, were appointed by the Applicant for audit of the books of the CD for the period from 29.04.2021 to 28.04.2023. We have perused the Transactions Review Audit Report (Audit Report) submitted on 15.03.2024, in I.A. (IBC)/2815(MB)/2024, (filed under Section 66 of the IBC), placed on record in C.P.(IB) No.503/(MB)2021. Chapter-IV under the heading 'Main Report' of the Audit Report deals with the issue 'Preferential Transactions'. The Bank Statement of the CD maintained with Kokan Mercantile Co-Op. Bank Ltd., indicates that an amount of Rs.1,10,00,000/- was transferred to Respondent No.3, on 24.02.2023. The CIRP of the CD commenced on 28.04.2023. Since there is nothing to indicate that Respondent No. 3 is a related party to the CD, the relevant period is one year preceding the insolvency commencement date in terms of Section 43(4)(b) of the IBC.



5.3. The Respondents have admitted the transaction in question and also not denied the Audit Report, but taken the position that the transaction is for repayment of the on-call loan taken by the CD from Respondent No. 3, and that the same is in the ordinary course of business. It is, therefore, necessary to examine this transaction to determine whether the same was made in preference to any creditor of the CD in terms of Section 43 of the IBC. Respondent No. 3 states that it gave a loan of Rs.2,00,00,000/- with interest @12% per annum in its normal course of business but the CD made only part-repayment of Rs.1,10,00,000/-. The ledger account of Respondent No.3 in the books of the CD reveals that an amount of Rs.1,10,00,000/- was transferred to Respondent No. 3 from the Kokan Mercantile Co-Op Bank Ltd. of the CD, on 24.02.2023, on which date the application for initiating CIRP of the CD was still pending before the Adjudicating Authority. It is also in evidence that Respondent No. 3 submitted their claim in Form C with the Applicant/IRP for Rs.1,86,64,197/-. The claim of Respondent No. 3 has been admitted as unsecured financial debt by the IRP. However, nothing has been brought out in evidence to suggest that there was any business relationship between the CD and Respondent No. 3 in the immediate past. Hence, payment of Rs.1,10,00,000/- by the CD to Respondent No. 3 cannot be construed as one in the ordinary course of business.

5.4. The Ld. Counsel for Respondent No. 3 argued that since the IRP has already admitted Rs.1,86,64,197/- as unsecured financial debt, Respondent No. 3 has no liability towards the CD. We are not inclined to accept this contention. We hold that submission of a claim by a person with the resolution professional or admission of its claim as unsecured financial creditor by the resolution professional is no defence in an application for preferential transaction under Section 43 of the IBC. In the instant case, the only probable inference that can be arrived at is that the transaction in question is not in the ordinary course of business and that there was no occasion for the CD to make any repayment of loan to Respondent No. 3. The IRP had admitted the claims by Union Bank of India and HDFC Bank Limited as secured financial creditors and Respondent



No. 3 as unsecured financial creditor as on 01.06.2023. We, therefore, come to the inescapable conclusion that the transaction of Rs.1,10,00,000/- made to Respondent No. 3, by the CD is, thus, preferential in nature in that it has the effect of putting Respondent No. 3 in a beneficial position than it would have been in the event of distribution of assets being made to other creditors in accordance with Section 53 of the Code.

5.5. The law is already settled that there is no need to prove any fraudulent intent for a transaction to be considered preferential under the IBC. The Hon'ble Supreme Court in *Anuj Jain (IRP of Jaypee Infratech Limited) Vs. Axis Bank Limited & Anr.* [(2020) ibclaw.in 06 SC], has clarified that a corporate debtor shall be deemed to have given a preference at a relevant time if-

“(i) the transaction is of transfer of property or the interest thereof of the corporate debtor, for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability;

(ii) such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with Section 53; and

(iii) preference is given, either during the period of two years preceding the insolvency commencement date when the beneficiary is a related party (other than an employee), or during the period of one year preceding the insolvency commencement date when the beneficiary is an unrelated party.”

5.6. Since sub-sections (4) and (2) of Section 43 are deeming provisions, in the present matter, the legal fiction would come into play and the transaction entered into by the CD should be regarded as preferential with the attendant consequences under Section 44 of the IBC, irrespective of whether the transaction was in fact intended to be preferential or even anticipated to be so. Applying the principles underlying Section 43 of the Code, it could only be reasonably be concluded that the transaction of Rs.1,10,00,000/- made by the



Respondent Nos. 1 & 2 on behalf of the CD in favour of Respondent No. 3, has the effect of putting Respondent No. 3, in a beneficial position than it would have been in the event of distribution of assets in accordance with Section 53, and therefore, is found to be preferential in nature, which is required to be set aside.

- 5.7. In the result, we direct Respondent No. 3 to deposit a sum of Rs.1,10,00,000/- to the liquidation account of the CD, within a period of 30 days from the date of this Order, so as to enable the Liquidator to distribute the same in accordance with the law.
- 5.8. As regards prayer clause (d) made by the Applicant, he shall be at liberty to refer the matter to the Insolvency and Bankruptcy Board of India (IBBI) or the Central Government for filing necessary complaint under Section 236 of the IBC. The Designated Registrar of this Tribunal is directed to provide an electronic version of this Order to IBBI for information and record.
- 5.9. In terms of the above, the I.A. No. 3099 of 2023 is **partly allowed** and **disposed** of. No order as to costs.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Aditya, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)