

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH – II, CHENNAI**

**MA/552/2018 in CP/665/IB/CB/2017**

*(filed under section 60(5) and section 66 r/w Section 14 of  
Insolvency and Bankruptcy Code, 2016)*

**Along with**

**MA/628/2019 in CP/665/IB/CB/2017**

*(filed under section 43 r/w section 60(5) of the Insolvency and  
Bankruptcy Code, 2016)*

***In the matter of M/s. SBQ Steels Limited***

**Mr. Ashish Rathi**

Resolution Professional for SBQ Steels Limited  
BDO Restructuring Advisory LLP  
The Ruby-Level 9, NW Wing,  
Senapati Bapat Marg,  
Dadar West, Mumbai-400028

..... Applicant

-Vs-

**1. Joseph Philip**

No. 6/13, North Avenue,  
K.P Puram, Chennai-600028.

**2. Rajiv Rai**

No. 5, Ethiraj Lane,  
Egmore, Chennai-600105.

**3. Ritesh Rai**

No. 5, Ethiraj Lane,  
Egmore, Chennai-600105.

**4. Tulsyan NEC Limited**

1<sup>st</sup> Floor, Apex Plaza,  
3 Nungambakkam High Road,  
Nungambakkam, Chennai-600034.

**5. Tulsyan Smelters Private Limited**

1<sup>st</sup> Floor, Apex Plaza,  
3 Nungambakkam High Road,  
Nungambakkam, Chennai-600034.

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**6. Kumbhat & Co.,**  
29, 5<sup>th</sup> Floor, Kumbhat Complex,  
Rattan Bazaar, George Town,  
Chennai-600003.

**7. T.G Logistics Private Limited**  
No. 2016, Purasawakkam High Road,  
North Point, Flat No.B, 1<sup>st</sup> Floor,  
Purasawakkam, Chennai-600007.

..... Respondents

**Along with**

**IA(IBC)/1088(CHE)/2021 in CP/665/IB/CB/2017**

*(filed under section 60(5) of the Insolvency and Bankruptcy Code,  
2016)*

***In the matter of M/s. SBQ Steels Limited***

**Radha Industries Private Limited**  
Rep. by its Authorized Signatory  
Mr. Yashpal Sharma  
Old No. 18, New No. 39, Sembudoss Street,  
Chennai – 600 001

..... Applicant

-Vs-

**1. Mr. Ashish Rathi**

Resolution Professional for SBQ Steels Limited  
BDO Restructuring Advisory LLP  
The Ruby-Level 9, NW Wing,  
Senapati Bapat Marg,  
Dadar West, Mumbai-400028

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- 5. Tulsyan NEC Limited**  
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3, Nungambakkam High Road,  
Nungambakkam, Chennai-600034.
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3 Nungambakkam High Road,  
Nungambakkam, Chennai-600034.
- 7. T.G Logistics Private Limited**  
No. 2016, Purasawakkam High Road,  
North Point, Flat No.B, 1<sup>st</sup> Floor,  
Purasawakkam, Chennai-600007.
- 8. RKKR Steels Pvt. Ltd.**  
No. 403 – A, TH Road, Tiruvottiyur  
Chennai – 600 019
- 9. Rai Developers Pvt. Ltd.**  
No. 6/13, Block I, North Avenue,  
Kesavaleperumal Puram, Chennai – 600 028
- 10. Cove Holdings Pvt. Ltd.**  
Old No. 5, New No. 9, Ethiraj Lane,  
Egmore, Chennai – 600 006

..... Respondents

Order Pronounced on 11<sup>th</sup> February 2022

CORAM :

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*Counsel for Applicant* : *Srinath Sridevan, Advocate*  
*Bhagavath Krishnan, Advocate*  
*In MA/552/2018 & MA/628/2019*

*Nithyaesh Natraj, Advocate*  
*In IA/1088/2021*

*Counsel for Respondents* : *Arun C Mohan, Advocate*  
*M.S. Shanmugasundaram,*  
*Senior Advocate*

## **COMMON ORDER**

**Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

MA/552/2018 is an Application filed under Section 60(5) r/w Section 66 and Section 14 of the IBC, 2016, seeking relief as follows;

- (i) Direct the Respondent No.1 to 3 to make good of impairments amounting to Rs.8,72,43,918 (Rupees Eighty Crores Seventy-Two Lakhs Forty-Three Thousand Nine Hundred Eighteen) caused on account of the transactions described in paragraph 13 to paragraph 23, which were undertaken without necessary management approvals and independent assessment;
- (ii) Direct the Respondent No.1 to 7 to recover, return and transfer the following payments to the bank account of the Corporate Debtor in accordance with the Code, as specified below:
  - a. For a total amount of Rs.5,25,00,000 (Rupees Five Crore and Twenty-Five Lakh) from Respondent No.4;
  - b. For a total amount of Rs.3,00,00,000/- (Rupees Three Crores) from Respondent No.5;
  - c. For a total amount of Rs.20,73,600/- (Rupees Twenty Lakhs Seventy-Three Thousand Six Hundred) from Respondent No.6;
  - d. For a total amount of Rs.26,70,318/- (Rupees Twenty-Six Lakhs Seventy Thousand Three Hundred Eighteen) from Respondent No.7;
- (iii) Direct the Respondent Nos. 1 to 3 and Respondent No.4 and 5 to make good the losses incurred on account of questionable and fraudulent transactions / wrongful trading with the Corporate Debtor as described in accordance with Section 66 read with Section 14 of the Code;

- (iv) Direct the Board to take cognizance of the offense in relation to for contravening the moratorium period of the Corporate Debtor and file a complaint in the applicable Special Court against the Respondents for an appropriate punishment under Section 74(1) for Respondent No. 1 and 2 and Section 74(2) for Respondents No. 3 to 7 read with Section 236 of the Code;
- (v) To award the costs of these proceedings;
- (vi) Any such other and further reliefs as the nature and circumstances of the case may require.

2. It was brought to the notice that this Adjudicating Authority that on 12.02.2019 based upon the submissions made by the Applicant has dismissed the MA/552/2018 as against R4 to R7 as not pressed. It was also made clear that the proceedings against R1 to R3 is pending. Subsequent to the same, the Liquidator came to a conclusion that the Respondents 4 to 7 received the payments in a preferential manner and proper remedy would be to seek disgorgement and filed a separate MA/628/2019 under Section 43 read with Section 60(5) of IBC, 2016 seeking relief as follows;

To issue directions and declare that transactions dated 02.01.2018, 04.01.2018 and 10.01.2018 with Tulyan NEC Limited and 10.01.2018 with Tulyan Smelters Private Limited, T.G. Logistics Private Limited and M/s. Kumbhat & Co., as wrongful transactions and direct Respondents 4 to 7 jointly and severally to disgorge a sum of Rs.8,72,43,918 (Rupees Eight Crores Seventy-Two Lakhs Forty-Three Thousand Nine Hundred and Eighteen) and to award the cost of these proceedings and thus render justice.

3. Before traversing to the merits of the present case, it is seen that the assets forming part of the Liquidation estate of the Corporate Debtor has already been sold by way of e-auction by the Liquidator for a total sale consideration of Rs.270.39 Crore and that on 10.12.2020 the Liquidator has also issued a Sale Certificate to the successful purchaser under Clause 13 of Schedule I of Liquidation process Regulations, 2016. In furtherance thereof, the Liquidator has also filed an Application under Section 54 of IBC, 2016 seeking dissolution of the Corporate Debtor.

4. Be that as it may, in so far as MA/552/2018 is concerned, the Learned Counsel appearing for the Liquidator submitted that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz. SBQ Steels Limited was initiated by this Tribunal vide order dated 29.12.2017 and the IRP was appointed and subsequently, the Applicant herein was appointed as the Resolution Professional in respect of the Corporate Debtor on 03.04.2018.

5. It was submitted that an Applicant was filed by the 1<sup>st</sup> Respondent wherein it was prayed that the declaration of moratorium and the date of admission of the Company Petition should commence from 16.01.2018 due to non-communication of the admission order to the Corporate Debtor and its erstwhile

directors, which came to be dismissed by this Tribunal and also by Hon'ble NCLAT. Further, it was submitted by the Learned Counsel appeared on behalf of this Applicant/Liquidator that a total sum of Rs. 8,72,43,918/- (Rupees Eight Crores Seventy-Two Lakhs Forty-Three Thousand Nine Hundred Eighteen) was transferred by resigned Director viz. Mr. Rajiv Rai /2nd Respondent, after the commencement of CIRP, to following entities;

S. No.	NAME OF THE PERSON WHO ISSUED PAYMENT (TO EFFECT RTGS)	DATE	AMOUNT (IN RS.)	CHEQUE ISSUED TO
1	Mr. Rajiv Ravi	January 2, 2018	Rs.5,25,00,000 (Rupees Five Crore and Twenty-five Lakh)	Tulsyan NEC Limited
		January 4, 2018		
		January 10, 2018		
		January 10, 2018		
2	Mr. Rajiv Rai	January 10,2018	Rs.3,00,00,000 (Rupees Three Crore)	Tulsyan Smelters Private Limited
3	Mr. Rajiv Rai	January 10, 2018	Rs.20,73,600 (Rupees Twenty Lakhs Seventy-Three Thousand Six Hundred)	Kumbhat & Co.
4	Mr. Rajiv Rai	January 10, 2018	Rs.26,70,318 (Rupees Twenty-Six Lakhs Seventy Thousand Three Hundred Eighteen)	T.G. Logistics Private Limited
<b>Total: Rs.8,72,43,918</b> (Rupees Eight Crores Seventy-Two Lakhs Forty-Three Thousand Nine Hundred Eighteen)				

6. It was submitted that when the Applicant written a letter to these Respondents, to which the Respondents have sent reply stating that these transactions were done in the regular course of business and have already been utilized to repay their bank dues. The Learned Counsel for the Applicant submitted that the said amount has been paid in violation and in contravention to Section 14 of IBC, 2016 and hence it was contended that the same should be recognized as fraudulent and wrongful transaction under Section 66 of IBC, 2016.

**REPLY OF RESPONDENT NOS. 1 TO 3**

7. The Learned Counsel for Respondent Nos. 1 to 3 submitted that the payments effected by the Corporate Debtor to Respondent Nos. 4 to 7 were made between 04.01.2018 and 10.01.2018 were further to the regular business transaction in the ordinary course of business and there was no element of personal enrichment by the Respondents. Further, it was submitted that all the transactions were made prior to 11.01.2018 i.e. the date of uploading the order and the Respondents were genuinely unaware of the order passed by this Tribunal dated 29.12.2017.

8. Further, it was submitted that the RP could not establish an 'element of fraud' on the Respondent Nos. 1 to 3 and as per Section 66(2)(b) of IBC, 2016 there should be cogent evidence



which proves that the Directors of the Corporate Debtor did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor, which the Applicant has failed to establish. It was submitted that the Applicant himself has admitted that the transactions entered into between the Corporate Debtor and the Respondents Nos. 4 to 7 are genuine in nature and cannot be doubted. Hence, it was submitted that the argument placed by the Applicant that there is a violation of Section 66 of IBC, 2016 cannot be sustained and liable to be dismissed.

9. It was also submitted by the Learned Counsel for the Respondent Nos. 1 to 3 that the Applicant himself had no objection when the Respondent Nos. 4 to 7 has pleaded for excluding themselves from the impugned application by taking a stand that the monies received by them were genuine in nature and during the normal course of business. In this connection, it was submitted that having excluded the Respondents Nos. 4 to 7 being entities which had received the sums from the Corporate Debtor, and admitting the fact that they are genuine transactions, which cannot be doubted, the Applicant cannot invoke the provisions of Section 66 or Section 14 of IBC, 2016 against the Respondent Nos. 1 to 3. It was submitted that the Applicant cannot take two different stands as regards the same transaction is concerned and in the present case, on the one hand the Applicant alleges that he

payments made by the Respondent Nos. 1 to 3 to Respondent Nos. 4 to 7 are fraudulent in nature while on the other hand gave up their prayers as against Respondent Nos. 4 to 7 admitting that the transactions are genuine in nature. Hence it was submitted that the Applicant's intention is to cause grave prejudice to the erstwhile directors and the said impugned application has been filed with vexatious and malafide intent.

10. It was submitted that the provisions of Section 66 of IBC, 2016 cannot be invoked at all for the reason that neither was the business of the Corporate Debtor was carried on with intent to defraud the creditors nor the business was carried on for any fraudulent purpose. It was submitted that the Respondent Nos. 4 to 7 had been supplying coal to the Corporate Debtor and the Corporate Debtor has been making payments to the Respondents in the ordinary course of business. Further, it was submitted that the payments made by the Corporate Debtor to the Respondent Nos. 4 to 7 between 04.01.2018 and 10.01.2018 were also made in the ordinary course of business and in no stretch of interpretation such payments could be construed as fraudulent or wrongful trading. Under the said circumstances the Learned Counsel for the Respondent Nos. 1 to 3 has prayed for dismissal of MA/552/2018.

### **REPLY OF RESPONDENT NOS. 4 TO 6**

11. The Learned Counsel for the Respondent Nos. 4 to 6 submitted that the Corporate Debtor and the Respondent No. 4 to 6 have been carrying on business since 2010 and all the transactions were made in the ordinary course of business. Further, it was submitted that the RP has not made any allegation that the transaction commencing from 2010 till admission of the petition was sham and nominal. It was submitted that payments have been made by the Corporate Debtor to Respondents No.4 to 6 periodically and the same is reflected from the account statements filed in the typed set.

12. The Learned Counsel for the Respondent submitted that on 01.06.2017, the 4<sup>th</sup> Respondent and the Corporate Debtor entered into a Letter of Understanding regarding purchase of coal and only for the said transaction, money was transferred to the Respondent by the Corporate Debtor. It was contended that on 29.12.2017, the Tribunal was on vacation and there was no cause list brought out and the advocates were not in attendance. It was submitted that the Respondent Nos. 4 to 6 are not aware of the pendency of the petition or the subsequent passing of the orders on 29.12.2017.



13. The Learned Counsel for the Respondent submitted that the IRP called for the claims to be submitted on or before 24.01.2018 and the Respondents submitted their claim before the IRP. Further, it was submitted that the RP has filed MA/380/2018 before this Tribunal under Section 60(5) of IBC, 2016 for recovery, return and transfer of the payments from Respondents No. 4 to 6 and after hearing the parties, this Tribunal dismissed the said Application as against the Respondents.

14. Subsequently, it was submitted that the RP filed MA/552/2018 before this Tribunal under Section 60(5) of IBC, 2016 read with Section 66 and Section 14 of IBC, 2016 for recovery, return and transfer of payments from Respondent Nos. 4 to 6 and in the said Application, it was submitted that the Applicant has filed a written submission on 12.02.2019 stating that he is not pursuing the relief as against the Respondent No. 4 to 7. Hence this Tribunal vide its order dated Ma/552/2018 dismissed the said Application as not pressed as against Respondent Nos. 4 to 7 and this Tribunal has not granted any liberty to file a fresh application on the same cause of action. While this being the fact, it was submitted that the Applicant has filed MA/628/2019 before this Tribunal under Section 43 of IBC, 2016 to direct Respondent Nos. 4 to 7 jointly and severally to disgorge a sum of Rs.8,72,43,918.



15. The Learned Counsel for the Respondent submitted that Section 43 of IBC, 2016 will not apply to these Respondents since they do not fall under Section 43(3) of IBC, 2016. It was submitted that in order for a transaction to qualify as a preferential transaction, the Applicant ought to have formed an opinion as per Section 43(1) of IBC, 2016, however in the present case the Applicant is claiming that the payments were made between 02.01.2018 to 10.01.2018 which clearly shows that the same was not made within one year preceding the Insolvency commencement date.

16. The Learned Counsel for the Respondent submitted that on earlier occasion, the RP filed MA/380/2018 before this Tribunal for the same relief which came to be withdrawn by the Applicant with liberty. Subsequently, it was submitted that the Applicant filed MA/552/2018 before this Tribunal and the said Application was withdrawn as against Respondent Nos. 4 to 7 without any liberty being granted. Thereafter, it was submitted that MA/628/2019 was filed by the Applicant in and by which the Applicant is re-agitating the same issue and the same is not maintainable under the law. It was submitted that since the Applicant has failed in his attempt to bring the transaction under Section 14 of IBC, 2016 he is now trying to make the said claim to fall upon the category of

'preferential transaction'. Under the said circumstances, the Learned Counsel for Respondent Nos. 4 to 6 prayed for dismissal of MA/628/2019.

**IN RELATION TO IA/1088/2021**

17. The Learned Counsel for the Applicant in IA/1088/2021 submitted that the Applicant Radha Industries Private Limited is a Financial Creditor in respect of the Corporate Debtor and has a claim of Rs. 68,46,90,507/- as against the Corporate Debtor. It was submitted that a sum of Rs.7,66,58,530/- was transferred from NETS of the Applicant to the Respondent Nos. 2 to 4 on 10.01.2018 i.e. after the insolvency commencement date and only from the said sum they have paid to the 5<sup>th</sup> , 6<sup>th</sup> and 7<sup>th</sup> Respondents. It was submitted by the Learned Counsel for the Applicant that the above transactions are bogus transactions with the sole intention of defrauding the Applicant and hoodwinking the creditors including the Applicant herein. Hence, it was contended that the said transactions would amount to preferential transaction and the Respondents are required to disgorge a sum of Rs.7,66,58,530/-.

18. The Respondents have filed counter and the Learned Counsel for the Respondent prima facie contended that the present

Application is not maintainable since the Applicant being part of the Committee of Creditors has invoked the provisions of Section 60(5) of IBC, 2016, however the allegations made in the Application relates to preferential transactions as stipulated under Section 43 of IBC, 2016 and as such the Applicant does not have the locus standi to maintain an Application under Section 43 of IBC, 2016 is indirectly invoking the provisions of Section 60(5) of IBC, 2016. Further, it was submitted that the Applicant has not shown any proof for the transactions which has been alleged in the Application and it was submitted that all the transactions made by the Respondents were legitimate transactions and no malafide intentions can be attributed to the Respondents. It was submitted that the Applicant has indulged in making baseless allegations against the Respondents and there is not an iota of proof to substantiate these allegations. Hence, prayed for dismissal of the present Application.

#### **FINDINGS OF THIS TRIBUNAL**

19. We have heard the submissions made by the Learned Counsel for both the parties. It is seen that already the Liquidator has filed an application for dissolution of the Corporate Debtor vide MA/5/2021 before this Tribunal and the Liquidator has stated that all the assets forming part of the Liquidation estate are sold and

the proceeds from the same are distributed to the stakeholders. However, the Liquidator has not made any provisions to accommodate the proceeds, if any, which are reversed from the transactions which are impugned in the present application. Once an order of dissolution is passed, the Corporate Debtor would be completely dissolved and the Corporate Debtor cannot receive any amount even though it is legitimately due and payable.

20. Be that as it may, coming to the facts of the present case, it is not in doubt that the order initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor was ordered by this Tribunal on 29.12.2017, however we find credence in the contention made by the Learned Counsel for the Respondent that the Court was in vacation during the said period and the parties would not have knowledge about the orders being pronounced on the said date. Further, it is not in dispute that the orders were communicated to the parties only on 11.01.2018 and only after the said communication was made to the IRP, the IRP has caused a public announcement on 12.01.2018.

21. Further, it is required to be noted that the application for initiating CIRP as against the Corporate Debtor in the present case was filed by a Financial Creditor under Section 7 of IBC, 2016 and for all the applications filed under Section 7 of IBC, 2016 it is



mandatory to propose the name of the IRP in Part – III of the Application. In the present case, the name of the IRP has been proposed by the Financial Creditor viz. Union Bank of India and one Mr. Vasudevan was appointed as the IRP. Thus, in the present case, even the IRP has also been not aware of the fact that the orders were pronounced on 29.12.2017 and only after the receipt of the copy from the Registry of this Tribunal the IRP had caused a public announcement. Hence, same is the position with respect to the Respondents in the present case.

22. Further, from the pleadings made in the Application it is quite clear that the Applicant has not made any allegations of fraud as against the Respondents in carrying out the impugned transactions. The only contention is that the impugned transactions have been made after the pronouncement of orders were made. From the facts narrated above, it is made clear that none of the parties are aware of the fact that the orders were pronounced on 29.12.2017 and hence liability cannot be fixed on any of them. The order was communicated to the IRP for the first time on 11.01.2018 and immediately thereafter the IRP had caused the public announcement on 12.01.2018.

23. Also, the Applicant event filed a written submissions before this Tribunal by stating that he is not willing to press his

application as against the Respondents No. 4 to 7 in MA/552/2018. The Respondents have also placed on record sufficient documents to show that the said transactions have been made in the ordinary course of business.

24. In so far as the IA/1088/2021 is concerned, it is seen that the Applicant throughout the Application has averred that the impugned transactions would fall under the category of 'preferential transaction', however a mere perusal of Section 43 of IBC, 2016 would posit the fact that only RP / Liquidator can file an Application under Section 43 of IBC, 2016. It is also required to be noted that the impugned transactions as alleged by the Applicant in IA/1088/2021 is squarely covered in the Application filed by the RP in MA/552/2018 and MA/628/2019 and hence it need not be gone into any further.

25. Hence for the aforesaid reasons, we find no merits in the present Application. Accordingly, MA/552/2018, MA/628/2019 and IA(IBC)/1088(CHE)/2021 stand **dismissed**. No costs.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Raymond*