

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IA(I.B.C)/563(PB)2022

in

CP(IB)/107(PB)/2019

Order under section 43 of the Insolvency and Bankruptcy Board Code 2016.

IN THE MATTER OF: I.A. (I.B.C)/563(PB)2022

Mr. NARENDER KUMAR SHARMA
(Liquidator of
M/S Vallabh Steel West Pvt. Ltd./Corporate Debtor)

... APPLICANT

VERSUS

M/S Vallabh Steels Limited

...RESPONDENT

IN

IN THE MATTER OF: CP(IB)/107(PB)/2019

Oriental Bank of Commerce

....FINANCIAL CREDITOR

VERSUS

M/S Vallabh Steel West Pvt. Ltd.

....CORPORATE DEBTOR

Order Pronounced On: 11.06.2026

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Liquidator : Mr. Gaurav Joshi, Adv.
For the Respondent : None

This application has been filed by the Liquidator of the Corporate Debtor (**CD**) seeking following reliefs:

- A. *Allow the present application filed by the Applicant/Liquidator and declare transactions mentioned in Para No.8 of this Application as a nullity for being preferential, executed by the suspended management of the Corporate Debtor in favour of Respondent;*
 - B. *Direct the Respondent to pay back/remitt to the CD the advances transferred from the Corporate Debtor's bank accounts amounting to Rs.52,84,000/- (Rupees Fifty-Two Lacs Eighty Four Thousand Only) along with interest till the date of actual payment;*
 - C. *Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*
2. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor commenced vide order dated 03.07.2019. In the absence of any viable resolution plan, the CoC of the CD passed a resolution with 100% voting for liquidation of the CD, and this Adjudicating Authority (**AA**) vide order dated 16.09.2020 ordered for commencement of Liquidation in an application bearing IA No. 3641/2020.

The Applicant has submitted as follows:

3. That vide engagement letter dated 19.09.2019, M/S Kansal Singla & Associates was engaged to conduct the forensic/transaction audit of the CD with reference to Section 43, 45, 47 & 49 of the Insolvency & Bankruptcy Code 2016 (**IBC**).
4. Final Forensic/Transaction Review Report (**FAR**) was prepared and submitted by the forensic auditor on 08.10.2020.
5. As per the FAR, a transaction has occurred between the CD and M/S Vallabh Steel Ltd. (**VSL**), which is a related party of the CD, as Mr. Kapil Kumar Jain, a director of Vallabh Steel Ltd., is the father of Mr. Rahul Jain, an erstwhile director in the CD. Further, it has been submitted that the suspended board with respect to the transaction has failed to disclose the relationship between the parties to the transaction in violation of

applicable provisions of the Companies Act and prescribed accounting standards.

6. Transaction in question is that VSL had advanced unsecured loans to the Corporate Debtor and the erstwhile management of the Corporate Debtor repaid the loan amount to VSL during the period of 31.07.2017 to 03.07.2019 in a preferential manner by bypassing the secured financial creditors who were entitled to be repaid in priority over other creditors.
7. Financial Statement of VSL for period 01.04.2018 to 31.03.2019, shows that VSL had paid Rs.5,26,000/- to the CD. Furthermore, the FRR also stipulates that the account maintained by the Corporate Debtor that of VSL was more like a current account and numerous debit as well as credit journal vouchers had been issued during Financial Year 2016-17 & 2017-18 by the Corporate Debtor. It clearly stipulates that various transactions occurred between the Corporate Debtor and VSL which was never declared as a related party by the erstwhile management of the Corporate Debtor.
8. During the relevant period of 2 years immediately prior to CIRP commencement, i.e., between 31.07.2017 and 03.07.2019, there were total credits worth Rs. 1,94,77,000/- and Debits worth Rs. 2,47,61,000/- in the account of the CD, meaning thereby preferred payments made to VSL by the erstwhile management of the Corporate Debtor during the relevant period was Rs. 52,84,000/- (Rs. 2,47,61,000 – Rs. 1,94,77,000). The said credits made in favor of VSL are not in the ordinary course of the business, but rather have been titled as 'Unsecured Loan' rendering VSL as one of the creditors of the CD. During the relevant period of credit in favor VSL, CD was not involved in business as it had ceased its business operations in November 2017. The said credit has been made in favor of VSL, in preference to other creditors, including secured financial creditor, whose debt remained outstanding.

Respondent has submitted as under:

9. Erstwhile RP namely, Mr. Narender Kumar Sharma had also obtained FAR dated 09.06.2020 and the same was placed before the CoC in the 5th meeting convened on 15.06.2020 whereupon it was concluded that no

action was required to be taken in terms of sections 43, 45, 47, and 49. Relevant portion of the are extracted below:

8. To Consider Forensic Audit Report

The Chairman placed before the CoC, report of the Forensic Auditor, received by the RP on 09-06-2020. The relevant portion of the said report is attached as ANNEXURE- 1, forming part of these minutes, discussed with CoC was as under:

(a) The Auditors were not provided access to purchase of fixed assets, materials / journal vouchers / records / books of accounts by the suspended management, however, hard / soft copies of the documents in IITML / PDF format was provided and their report is based on the documents made available.

(b) Related Party Disclosure:

- (i) Vallabh Steel Limited (VSL) is a related party of CD and in violation of accounting standard AS 18, has not declared sale / purchase with VSL during the financial year ending 31-03-2019.
- (ii) Preferred payment u/s 43(2) of IBC 2016 to VSL during the period 03-07-2017 to 03-07-2019, was Rs. 52.84 lakhs. However, as on 03-07-2019 (date of commencement of CIRP) an amount of Rs. 5.36 Lakhs was payable to VSL;
- (iii) The management failed to provide sale/ purchase invoices in respect of transactions to / from Related Parties and accordingly were unable

to comment on transactions with related parties were carried out at Arm's length or not- "Avoidance of Undervalued Transactions" u/s 45 of the IBC 2016;

(iv) Based on the documents made available, the auditors have not come across any transaction which can conclusively be reported "Under Value Transactions" u/s 47 of IBC 2016;

(v) Based on the documents made available, the auditors have not come across any transaction which can conclusively be reported "Transactions Defrauding Creditors" u/s 49 of IBC 2016;

c) The Company availed Term Loan from OBC & SBI and amount sanctioned for payment to Equipment Suppliers were transferred to Related Party- Vardhman Industries Limited.

(d) Equity / Debt / Contribution by Promoters:

Equity Shares were allotted to Promoters. Against amounts transferred from Related Parties – Vallabh Steel East Limited, Vardhman Industries Limited and the funds so received were transferred to Related Parties- Vardhman Industries Limited, Vallabh Steel East Limited, Vallabh Steel Limited, on the date of receipt of funds or within one / two days.

(e) Purchase of fixed assets from Vardhman Industries Limited:

During the year 2015-16, CD purchased fixed assets namely DG Sets, Air-conditioner, Generator etc. for Rs. 1312.37 Lakhs, from Vardhman Industries Limited (VIL) Holding Company of CD, at an exorbitant price as the written down value of these items in the books of VIL was Rs. 93.00 Lakhs. An amount of Rs. 678.36 Lakhs was payable to VIL as on 03-07-2019. Hence no payment is treated as Preferred Payment u/s 43(2) of IBC 2016.

(f) During the year 2018-19, the CD passed journal entries by debiting salaries, labour and electricity expenses, payable to Vallabh Steel East Limited and the amount was shown as unsecured loan. **TRUE COPY**

The CoC observed that as per the Forensic Auditors Report, no action is required to be taken u/s 43, 45, 47 & 49 of IBC 2016 and decided that RP may file a Report to the Hon'ble NCLT along with copy of the Forensic Audit Report."

10. The Applicant has not determined the alleged antecedent debt and also has not placed any ledger maintained by CD with the Respondent reflecting alleged credits and debits. No bank statements have been produced which would reflect dates of alleged transaction.
11. Further, the Applicant, despite having a transaction report obtained by the erstwhile RP, decided to appoint a new forensic auditor, which casts a doubt on the professional conduct of the Applicant, the present Liquidator. Further fact of accepting the delayed report from the newly appointed transaction auditor adds to misconduct of the Applicant, as the report was supposed to be submitted in October 2019; however, the same was submitted only in October 2020. The Applicant has not given reasons for not resorting to transaction audit report obtained by the erstwhile RP.
12. Further, CD was in financial crunch and was in need of running capital / liquidity to keep the CD a running concern and VSL at multiple occasions endorsed unsecured loans to the CD but that does not mean they were not in the ordinary course of business and in fact the Applicant itself has admitted in paragraph 9 of the Application that VSL advances borrowings to the CD for conduct of business on regular basis.
13. The Application is thus liable to be dismissed for the want of evidence.

In response to the above, **Applicant has submitted as follows:**

14. The Respondent must disclose the source for obtaining minutes of the CoC meetings.
15. CD was doing minimal operations during the relevant period and the same is summarized below:

Financial Year	2015-16	2016-17	2017-18	2018-19	2019-20
Turnover (in Rs.)	NIL	NIL	53710275	234680	105922

Transaction with the Respondent was thus not in the ordinary course of business.

Findings and Analysis:

16. It is pertinent to peruse relevant portion of Forensic Audit Report which is extracted below:

4.1.1 SECTION 43 "PREFERENTIAL TRANSACTIONS":

During the course of the Audit, we observed that the following transactions of the Company attract the provisions of Section 43(2) of the IBC, 2016:

S. NO.	NAME OF THE PARTY	TRANSACTIONS	AMOUNT	REFERENCE TO PARA NO.
1	M/s Vallabh Steel Limited	Repayment of Unsecured Loan	52.84	Para no. 4.7.2.7
	Total		52.84	

The Maximum credit balance outstanding during the period 03.07.2017 to 03.07.2019 was Rs. 58.20 lakhs on 30.07.2017 and the balance as on 03.07.2019 was Rs 5.36 lakhs. Further, it is observed that during the period 31.07.2017 to 03.07.2019, there were total Credits in the Account worth Rs. 194.77 lacs and Debits in the account worth Rs. 247.61 lacs. This implies that the Preferred payments made to M/s Vallabh Steel Limited during this period was Rs. 52.84 lakhs (Rs. 247.61 lakhs – Rs. 194.77 lakhs) which attracts the provisions of Section 43(2) of the IBC, 2016.

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4.2.1 TERM LOAN:

A) ORIENTAL BANK OF COMMERCE:

The Company was sanctioned Term loan of Rs 20.00 Crores vide Sanction Letter No. RO/LDH/LOANS/2015-16 dated 30.09.2015. The date wise disbursements and its utilization is given vide Para 4.2.1 of the Report.

The Company availed Term Loan facility for making payments to various suppliers. However, we have observed that in Disbursement request letter dt 30.03.2016 submitted to the Bank, it was mentioned that Term Loan amounting to Rs 215.77 lacs to be utilized for making payment to the Equipment suppliers namely Authorized Dealers of ABB/ Siemens/ DIGI Drivers Pvt Ltd. , Local Contractors and Local Suppliers whereas out of the total amount, Rs. 150.00 lacs was transferred to M/s Vardhman Industries Limited (Associate Concern). Copy of the request letter dt 30.03.2016 is enclosed as Appendix B to the Report.

We requested the Suspended management to provide us the Invoices and other supporting documents related to the purchase of Fixed assets in order to verify the genuineness of the Assets purchased. In spite of our repeated requests, we have not been provided with the same till the

finalization of this Report.

B) STATE BANK OF INDIA:

The Company availed Term Loan of Rs. 11.50 Crores from State Bank of India vide Sanction Letter No. RM-1/15-16/246 dated 28.10.2015. The date wise disbursements and its utilization is given vide Para 4.2.1 of the Report.

The Company availed Term Loan facility for making payments to various suppliers. We have observed that in two disbursement request letters dated 19.03.2016 & 24.06.2016 submitted to the Bank, it was mentioned that Term Loan amounting to Rs 36.00 lacs and Rs 170.00 lacs to be utilized for making payment to the Equipment suppliers namely Zhengh Zhou Kehua Industrial Equipment Ltd and MAS Equipments respectively whereas these amounts were transferred to M/s Vardhman Industries Limited (Associate Concern). Copies of these request letters are enclosed as Appendix C and D to the Report.

Further, we requested the Suspended management to provide us the purchase invoices and other supporting documents related to purchase of Fixed assets to verify the genuineness of the same. In spite of our repeated requests and reminders, we have not been provided with the same till the finalization of the Report.

4.2.2 CASH CREDIT:

The Company availed Cash Credit limit of Rs. 2.43 Crores from State Bank of India (SBI CC Account No. -00000035663233454) and maintained Current A/cs with OBC (Account No- 6051131001859) and State Bank of India (Account No- 35326202330).

The summary of Receipts and Payments made, in excess of Rs 10.00 lacs each from above mentioned Accounts, except interbank transfers, is discussed vide Para 4.2.2 of the Report.

While analyzing the Receipts and payments made in excess of Rs 10.00 lacs each from Cash Credit and Current Accounts, we have observed that following amounts were received/paid from/to the Related Parties namely, M/s Vallabh Steel Limited, M/s Vardhman Industries Limited, M/s Vallabh Steel East Limited, Mr. Rahul Jain, Ms. Lata Jain and Ms. Megha Jain. The year wise summary of the same is given hereunder:

(RS. IN LACS)

SR. NO.	PARTICULARS	OBC CA				SBI Cash Credit				Total	
		FY 2015-16		FY 2016-17		FY 2017-18		FY 2017-18		RECEIPT	PAYMENT
		RECEIPT	PAYMENT	RECEIPT	PAYMENT	RECEIPT	PAYMENT	RECEIPT	PAYMENT		
1	M/s Vallabh Steel Limited	12.00	-	151.47	135.85	30.87	-	22.36	85.97	216.70	221.82
2	M/s Vardhman Industries Limited	173.46	977.66	175.51	508.90	10.90	-	-	-	359.87	1,486.56
3	M/s Vallabh Steel East Limited	97.54	-	111.00	210.65	-	-	-	-	208.54	210.65
4	Mr. Rahul Jain	581.95	-	49.40	17.45	-	-	-	-	631.35	17.45
5	Ms. Lata Jain	92.94	-	88.70	-	-	-	-	-	181.64	-
6	Ms. Megha Jain	80.99	-	174.80	-	-	-	-	-	255.79	-
	TOTAL	1,038.88	977.66	750.88	872.85	41.77	-	22.36	85.97	1,853.89	1,936.48

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PROFITS

The Plant was installed and operationalized on 22.07.2017 but because of increase in the gas price it became non-viable and was shut down in January 2018.

During the period covered by our Audit, the Company made sales of Rs. 537.10 lacs and Rs. 1.44 lacs during the FYs 2017-18 and 2018-19 respectively.

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4.7 CONCENTRATING TRANSACTIONS – SOLE CUSTOMER, SOLE SUPPLIER, MAJOR TRANSACTIONS WITH RELATED PARTIES/ GROUP COMPANIES. ANALYSIS OF RELATIONSHIP IN TWO WAY DEALS WITH SAME PARTY OR INDIRECT PAYMENTS MADE BY CUSTOMERS OF THE BORROWER TO THE VENDORS OF THE BORROWER.

4.7.1 CONCENTRATION OF TRANSACTIONS- SOLE CUSTOMER:

Though there was no sole customer, the sales were concentrated to selected customers as the top 4 customers contributed 93.00 % of the total sales.

4.7.2 MAJOR TRANSACTIONS WITH ASSOCIATE COMPANIES/ RELATED PARTIES:

As per the Audited Balance Sheet as on 31.03.2019, the Company had two Related Parties and four Associate Concerns:

- a. Mr. Rahul Jain
- b. Mr. Shambhu Sharma
- c. M/s Vallabh Steel East Limited
- d. M/s Vardhman Industries Limited
- e. M/s JSW Vallabh Tinplate Pvt Ltd
- f. M/s Associated Leasing Limited
- g. M/s Vallabh Steel Limited:
- h. M/s Vallabh Arr Ess Tectex Private Limited:
- i. M/s AVP Motor Works Private Limited:
- j. M/s Checkmate Vallabh Geosynthetics Private Limited
- k. M/s Adhinath Investments Private Limited.

MAJOR TRANSACTIONS WITH RELATED PARTIES ARE AS UNDER:

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4.7.2.7 M/S VALLABH STEEL LIMITED

The Company maintained three Statement of Accounts of this party i.e. VSL Vendor A/c , VSL (Unit – 3) and VSL (Customer Account) but we have been provided with only two ledger accounts i.e. VSL (Unit –3) and VSL Vendor A/c. The Year wise summary of both the accounts is given vide Para 4.7.2.7 of the Report.

We have observed the account of this Company was more like a current account through which various receipts and payments were made. Further, numerous Debit as well as Credit JVs have been passed during the FYs 2016-17 and 2017-18 by the Company. We have checked some of the Journal Vouchers namely payment made by Related Party on behalf of the Company along with supporting documents provided by the Suspended Management.

Further as on 31.03.2017, the amount outstanding of Rs 148.85 lacs (Rs 134.21 lacs and Rs 14.64 Lacs) was classified under “Unsecured Loans”.

Again, during the FYs 2018-19 and 2019-20, the Company passed various JVs for expenses.

The Maximum credit balance outstanding during the period 03.07.2017 to 03.07.2019 was Rs. 58.20 lakhs on 30.07.2017 and the balance as on 03.07.2019 was Rs 5.36 lakhs. Further, it is observed that during the period 31.07.2017 to 03.07.2019, there were total Credits in the Account worth Rs. 194.77 lacs and Debits in the account worth Rs. 247.61 lacs. This implies that the Preferred payments made to M/s

Vallabh Steel Limited during this period was Rs. 52.84 lakhs (Rs. 247.61 lakhs – Rs. 194.77 lakhs) which attracts the provisions of Section 43(2) of the IBC, 2016.

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CONCLUSION

1. The Promoters contributed Share capital of Rs 1600.00 lacs and availed Term loans of Rs 3150.00 lacs from Banks to implement the Project. As explained vide Paras 4.3.1 and 4.3.2 of the Report, the Share capital was infused by the Promoters by way of rotation of funds between the Promoters, the Company and their Associate concerns viz VIL, VSL, VSEL. Thus the Equity capital was not genuinely contributed but it was merely by way of ROTATION and ROUND TRIPPING of funds between these accounts.

2. During FY 2015-16, the Company purchased old fixed assets, having WDV of only Rs 93.00 lacs, from Vardhman Industries Ltd for Rs 1312.26 lacs.

The Company paid Rs 314.66 lacs and Rs 294.47 lacs to VIL during FYs 2015-16 and 2016-17. During FY 2016-17 the entry for purchase of these old fixed assets was reversed. The debit balance arising due to reversal of this entry was adjusted by passing credit entries through JVs.

3. We requested the Suspended management to provide us the Invoices and other supporting documents related to the purchase of Fixed assets in order to verify the genuineness of the Assets purchased. In spite of our repeated requests, we have not been provided with the same till the finalization of this Report.

1.5 PARTICULARS OF HOLDING/ SUBSIDIARY AND ASSOCIATE CONCERNS:

As per the Audited Balance Sheet as on 31.03.2019, the Company has shown following Holding/Associate Concerns:

Sr. NO	NAME OF THE COMPANY	CIN	HOLDING/ SUBSIDIARY/ ASSOCIATE	REASONS FOR CONSIDERING COMPANIES AS ASSOCIATE
1.	M/s Vallabh Steel East Limited	U67190PB1991PLC011129	Holding	This company holds 81.18% Equity of the Company.
2.	M/s Vardhman Industries Limited	L74899DL1984PLC019492	Associate	This company holds 7.43% Equity of the Company and Mr. Rahul Jain is director of this company.
3.	M/s JSW Vallabh Tinsplate Pvt Ltd	U28112DL1995PTC204971	Associate	Disclosed as Related Party in the ABS of FY 2016-17. Mr. Rahul Jain and Mr. Shambhu Sharma were the Past Directors of the Company.

However, as per Section 2(76) of the Companies Act 2013, the Company also has the following Related Parties:

Sr. No.	NAME OF THE COMPANY	CIN	HOLDING/ SUBSIDIARY/ ASSOCIATE	REASONS FOR CONSIDERING COMPANIES AS ASSOCIATE
1	M/s Vallabh Steel Limited	L27109PB1980PLC004327	Related	Mr. Kapil Kumar Jain (relative of Mr. Rahul Jain) is director of this company
2	M/s Vallabh Arr Ess Techtex Private Limited	U17210DL2011PTC223944	Related	Mr. Vikram Jain (relative of Mr. Rahul Jain) is director of this company
3	M/s AVP Motor Works Private Limited	U51909PB2007PTC031426	Related	Mr. Vikram Jain (relative of Mr. Rahul Jain) is director of this company
4	M/s Checkmate Vallabh Geosynthetics Private Limited.	U17290PB2011PTC035587	Related	Mr. Vikram Jain (relative of Mr. Rahul Jain) is director of this company.
5	M/s Adhinath Investments Private Limited.	U74899DL1980PTC011053	Related	Mr. Kapil Kumar Jain (relative of Mr. Rahul Jain) is director of this company
6.	M/s Associated Leasing Limited	U74899DL1983PLC016526	Associate	Mr Shambhu Sharma Sharma is director of the company.

1.7 BANKING ARRANGEMENTS:

The Company availed Fund Based & Non-Fund Based working capital facilities and Term Loans from OBC and SBI in Multiple Banking Arrangement (MBA). Due to increase in cost of gas and other technical issues, the operations of the plant became unviable and the Company closed its manufacturing operations in January 2018. As the Company could not meet its repayment obligations to the Banks, its Accounts were classified as NPA in December, 2017 by both the Banks.

The Status of the Accounts with the Banks as on 31.03.2019 was as under:

					(Rs in Lakhs)
SR. NO	BANK NAME	FACILITY	LIMIT	DATE OF NPA	OUTSTANDING AS ON 31.03.2019
1	Oriental Bank Of Commerce	Term Loan	2,000.00	31.12.2017	2,380.07*
2	State Bank Of India	Term Loan	1,150.00	31.12.2017	1,149.54
		Cash Credit	243.00	31.12.2017	242.94

SR. NO	BANK NAME	FACILITY	LIMIT	DATE OF NPA	OUTSTANDING AS ON 31.03.2019
		Bank Guarantee	100.00		
		TOTAL	3493.00		3772.55

including interest upto 31.03.2019

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1.8.1.2 SECURED LOANS FROM BANKS:

As per the Audited Financial Statements, the Secured Borrowings outstanding at the end of each year during the Audit period were as under:

(Rs in Lacs)

SR. NO	PARTICULARS	AS ON 31.03.2016	AS ON 31.03.2017	AS ON 31.03.2018	AS ON 31.03.2019	AS ON 03.07.2019
1	OBC Term Loan*	1,577.13	2,019.02	2,134.27	2,380.07	2,445.64
2	SBI Term Loan	606.28	1,160.86	1,187.11	1,149.54	1,149.54
	Sub – Total	2,183.41	3,179.88	3,321.38	3,529.61	3,595.18

*Including interest upto 31.0.2019.

1.8.1.3 UNSECURED LOANS:

As per the Audited Financial Statements, Unsecured loans outstanding at the end of each year during the Audit period were as under:

(Rs in Lacs)

SR. NO.	PARTICULARS	As on 31.03.2016	As on 31.03.2017	As on 31.03.2018	As on 31.03.2019
1	Vardhman Industries Ltd	-	-	687.87	687.87
2	Vallabh Steels Limited	-	148.87	-	4.66
3	Vallabh Steel East Limited	-	-	-	6.43
	Total	-	148.87	687.87	698.96

The Movement and Sources of the same are discussed in detail in Para 4.8 of the Report.

4.2.2 CASH CREDIT:

The Company availed Cash Credit limits of Rs. 2.43 Crores from State Bank of India (SBI CC Account No. -00000035663233454).

The summary of Receipts and Payments made, in excess of Rs 10.00 lacs each, from the above mentioned Cash Credit Account, except interbank transfers, are as under:

(Rs in Lakhs)

DATE	PARTICULARS	RECEIPT	PAYMENT	PURPOSE
06.07.2017	Vallabh Steel Limited	11.95		Amount received from Related Party
05.09.2017	Aarti Steels Limited	17.06		Amount received from Debtor
13.09.2017	Vardhman Special Steels Limited	22.87		Amount received from Debtor
15.09.2017	Upper India Steel Manufacturing Engineering	28.50		Amount received from Debtor
16.09.2017	Unitech Industries		10.00	Payment made to Creditor
03.10.2017	Vardhman Special Steels Limited	11.08		Amount received from Debtor
04.10.2017	Vardhman Special Steels Limited	32.22		Amount received from Debtor
06.10.2017	Vallabh Steel Limited		15.00	Payment made to Related Party
11.10.2017	Upper India Steel Manufacturing Engineering	13.16		Amount received from Debtor
16.10.2017	Vardhman Special Steels Limited	48.59		Amount received from Debtor
16.10.2017	Green India Enterprise Limited	18.81		Amount received from Debtor
16.10.2017	Vallabh Steel Limited		20.97	Payment made to Related Party
23.10.2017	Electricity Expenses		13.92	Electricity Expenses paid
23.10.2017	Upper India Steel Manufacturing Engineering	12.31		Amount received from Debtor
24.10.2017	Vardhman Special Steels Limited	16.01		Amount received from Debtor
25.10.2017	Green India Enterprise Limited	51.50		Amount received from Debtor
25.10.2017	Vallabh Steel Limited		25.00	Payment made to Related Party
25.10.2017	Vallabh Steel Limited		25.00	Payment made to Related Party

DATE	PARTICULARS	RECEIPT	PAYMENT	PURPOSE
30.10.2017	Upper India Steel Manufacturing Engineering	22.05		Amount received from Debtor
01.11.2017	Vardhman Special Steels Limited	11.92		Amount received from Debtor
03.11.2017	Green India Enterprise Limited	34.96		Amount received from Debtor
07.11.2017	Upper India Steel Manufacturing Engineering	14.53		Amount received from Debtor
11.11.2017	Green India Enterprise Limited	12.42		Amount received from Debtor
15.11.2017	Vardhman Special Steels Limited	37.06		Amount received from Debtor
15.11.2017	Upper India Steel Manufacturing Engineering	13.24		Amount received from Debtor
17.11.2017	Electricity Expenses		14.72	Electricity Expenses paid
18.11.2017	Green India Enterprise Limited	11.85		Amount received from Debtor
18.11.2017	Continental Thermal Engineers Pvt Ltd		12.00	Payment made to Creditor
22.11.2017	Vardhman Special Steels Limited	20.14		Amount received from Debtor
23.11.2017	Upper India Steel Manufacturing Engineering	13.68		Amount received from Debtor
02.12.2017	Upper India Steel Manufacturing Engineering	14.23		Amount received from Debtor
15.12.2017	Vallabh Steel Limited	10.41		Amount received from Related Party
	TOTAL	500.55	136.61	

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B. STATE BANK OF INDIA (A/C NO. 35326202330)

We observed that during the audit period no payments were made by the Company from this account in excess of Rs. 10.00 lacs except interbank transfers.

SUMMARY OF RELATED PARTIES PAYMENTS:

While analyzing the Receipts and payments made in excess of Rs 10.00 lacs each from Cash Credit and Current Account, we have observed that following amounts were received/paid from/to its Related Parties namely, M/s Vallabh Steel Limited, M/s Vardhman Industries Limited, M/s Vallabh Steel East Limited, Mr. Rahul Jain, Ms. Lata Jain and Ms. Megha Jain. The year wise summary of the same is given hereunder:

(RS. IN LACS)											
SR. NO.	PARTICULARS	OBC CA				SBI Cash Credit				Total	
		FY 2015-16		FY 2016-17		FY 2017-18		FY 2017-18			
		RECEIPT	PAYMENT	RECEIPT	PAYMENT	RECEIPT	PAYMENT	RECEIPT	PAYMENT	RECEIPT	PAYMENT
1	M/s Vallabh Steel Limited	12.00	-	151.47	135.85	30.87	-	22.36	85.97	216.70	221.82
2	M/s Vardhman Industries Limited	173.46	977.66	175.51	508.90	10.90	-	-	-	359.87	1,486.56
3	M/s Vallabh Steel East Limited	97.54	-	111.00	210.65	-	-	-	-	208.54	210.65
4	Mr. Rahul Jain	581.95	-	49.40	17.45	-	-	-	-	631.35	17.45
5	Ms. Lata Jain	92.94	-	88.70	-	-	-	-	-	181.64	-
6	Ms. Megha Jain	80.99	-	174.80	-	-	-	-	-	255.79	-
	TOTAL	1,038.88	977.66	750.88	872.85	41.77	-	22.36	85.97	1,853.89	1,936.48

4.7.2.7 M/S VALLABH STEEL LIMITED

I. COMPANY OVERVIEW:

CIN	L27109PB1980PLC004327
Date of Incorporation	25.11.1980
Authorized Capital (Rs.)	5,00,00,000.00
Paid up Capital (Rs.)	4,95,00,000.00
Registered Address	G.T. Road Village Pawa Sanhnewal Ludhiana Punjab PB 141120 IN.
Line of Business	Manufacture of Basic Iron & Steel

II. LIST OF DIRECTORS:

SR. NO	NAME OF DIRECTORS	DIN
1	Mr. Kapil Kumar Jain	00755228
2	Ms. Sunita Maggu	07556766
3	Ms. Suman Jain	07841463
4	Mr. Vinay Kumar Jain	01007456

III. TRANSACTIONS WITH VSL:

The Company maintained three Statement of Accounts of this party i.e. VSL Vendor A/c , VSL (Unit – 3) and VSL (Customer Account) but we have been provided with only two ledger accounts i.e. VSL (Unit –3) and VSL Vendor A/c. The Year wise summary of both the accounts are as under:

A) VSL (UNIT – III):

PARTICULARS	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	01.04.2019 TO 03.07.2019
Opening Balance	-	-	(14.64)	-	-
Sales	-	-	-	-	-
Purchase					
General Purchase	-	(15.61)	(0.71)	-	-
Raw Material	-	-	-	-	-
Amount Received	-	-	-	-	-
Payment made	-	-	-	-	-
Debit Note	-	0.97		-	-
Adjustments					
Debit	-	-	15.35	-	-
Credit	-	-	-	-	-
Closing Balance	-	(14.64)	(0.00)	-	-

B) VSL VENDOR LEDGER:

(Rs in Lacs)					
PARTICULARS	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	01.04.2019 TO 03.07.2019
Opening Balance	-	(15.92)	(134.21)	-	(4.66)
Purchases made					
General Purchase	(5.13)	(6.39)	(39.99)		-
Raw Material			(1.55)		-
Sub- Total	(5.13)	(6.39)	(41.54)	-	-
Amounts Received	(12.00)	(400.41)	(339.28)		
Payments made		161.56	120.57		-
Debit Note	1.21		0.42		-
Adjustments					
Debit		222.15	494.98	0.60	-
Credit		(95.20)	(100.94)	(5.26)	(0.70)
Closing Balance	(15.92)	(134.21)	-	(4.66)	(5.36)

We have observed the account of this Company was more like a current account through which various receipts and payments were made. Further, numerous Debit as well as Credit JVs have been passed by the Company during the FYs 2016-17 and 2017-18. We have checked some of the Journal Vouchers namely payment made by Related Party on behalf of the Company along with supporting documents provided by the Suspended Management.

Further on 31.03.2017, the amounts outstanding of Rs 148.85 lacs (Rs 134.21 lacs and Rs 14.64 Lacs) was classified under "Unsecured Loans".

Again, during the FYs 2018-19 and 2019-20, the Company passed various JVs for expenses.

The Maximum credit balance outstanding during the period 03.07.2017 to 03.07.2019 was Rs. 58.20 lakhs on 30.07.2017 and the balance as on 03.07.2019 was Rs 5.36 lakhs. Further, it is observed that during the period 31.07.2017 to 03.07.2019, there were total Credits in the Account worth Rs. 194.77 lacs and Debits in the account worth Rs. 247.61 lacs. This implies that the Preferred payments made to M/s Vallabh Steel Limited during this period was Rs. 52.84 lakhs (Rs. 247.61 lakhs – Rs. 194.77 lakhs) which attracts the provisions of Section 43(2) of the IBC, 2016.

4.8 MOVEMENT IN UNSECURED LOANS DURING THE SPECIFIED PERIOD.

As per the Audited Financial Statements, Unsecured Loans outstanding at the end of each year during Audit period are given below:

SR. NO	PARTICULARS	As on 31.03.2016	As on 31.03.2017	As on 31.03.2018	As on 31.03.2019
1	Vardhman Industries Limited	-	-	687.87	687.87
2	Vallabh Steels Limited	-	148.87	-	4.66
3	Vallabh Steel East Limited	-	-	-	6.43
	Total	-	148.87	687.87	698.96

17. It has not been disputed that the VSL is related party to the CD and thus relevant period to look back is 2 years from commencement of CIRP vide order dated 03.07.2019. The table above under clause 4.8 of the FAR, shows that as on 31.03.2018, an unsecured loan of VSL substantially stood discharged, which prima facie reflects that some part of liability of CD was discharged in favor of VSL during the lookback period.
18. Further from the perusal of the relevant extract of above transaction report / FAR, a fact derived undisputedly is that the CD has transferred a sum to the tune of INR 247.61 Lacs to VSL, during the lookback period.
19. At this stage, it is relevant to note Section 43 of the IBC, which reads as follows:

Section 43: Preferential transactions and relevant time.

43. (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 transfer —

(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.

20. There is no need to prove any fraudulent intent for a preferential transaction. When we look into the scheme of Section 43 of the Code, sub-section (2), a clear statutory provision is that a corporate debtor shall be deemed to have given a preference if conditions as mentioned in paragraph 'a' and 'b' are fulfilled. When a provision provides for deeming fiction, deeming fiction comes into play on fulfilment of the requirements even if in fact it may not be so. When the deeming provisions come into existence the transaction entered into between the corporate debtor would be regarded as preferential transaction with attendant consequences irrespective whether the transaction was in fact intended or even anticipated to be so.
21. The transfer of sum to related party, VSL, as shown in FAR is prima facie in preference to the other secured creditors (Banks) and thus falls in breach of ranking prescribed under section 53 of the IBC. Such payment to VSL, as established from the records, post VSL in a position better than what it would have been in case distribution as per ranking order prescribed under section 53.
22. Respondent has failed to show that any record which would suggest that the payments in question were part of the ordinary course of business.
23. The Hon'ble NCLAT in the judgment of **GVR Consulting Services Pvt. Ltd. v. Pooja Bahry**, Company Appeal (AT) (Insolvency) No. 405 with 369 and 412 of 2022 had held as follows:

37. *Taking financial assistance from related and non-related parties which transactions are subject of enquiry in the present Appeal can not be held to be ordinary course of business of the Corporate Debtor. The expression “ordinary course of business” or “financial affairs of the Corporate Debtor” has to be read “ejusdem generis”. The expression “financial affairs of the Corporate Debtor” cannot be given an extended meaning as contended by Learned Counsel for the Appellants that all financial transactions done by the Corporate Debtor is covered within expression “financial affairs’ hence the loan taken by the corporate debtor from different related and non-related parties is part of the financial affairs cannot be accepted. The Judgement of the Hon’ble Supreme Court in “Anuj Jain” (Supra), the emphasis has been given that transaction must fall into place as part of the undistinguished common flow of the business done. Undistinguished common flow of the business of the Corporate Debtor does not contemplate any such or particular situation where the Corporate Debtor’s claim that its financial position became unstable due to market condition and had started arranging money from their relatives and other parties. **Money arranged from relative and other parties by the Corporate Debtor thus cannot be held to be part of ordinary course of business or part of financial affairs.***

24. In view of the same, we are of the view that payments made to related party VSL, cannot be considered in ordinary course of business and thus we are inclined to allow this Application.

25. Section 44 of the IBC reads as follows:

44. *The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:*

(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation I.—For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference,—

(i) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(ii) is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II.—A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

26. In view of the power vested with this AA under section 44, we hereby direct Respondent to repay the preferentially paid amount Rs. 52,84,000/- (Rupees Fifty-Two Lacs Eighty Four Thousand Only) along with the interest at 10% p.a. to be calculated since the date of preferential payment till actual realization, to the liquidation estate of the CD.
27. In view of the above, the Application bearing **IA-563/2022** is **Allowed.**

Sd/-
(**BACHU VENKAT BALARAM DAS**)
MEMBER (JUDICIAL)

Sd/-
(**RAVINDRA CHATURVEDI**)
MEMBER (TECHNICAL)