Case Citation: (2026) ibclaw.in 4025 NCLT

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

IA(IBC) No. 403/JPR/2021
In CP No. (IB)- 258/9/JPR/2019

IN THE MATTER OF:

SHRI MAHAVIR AGARWAL

...Operational Creditor / Petitioner

Versus

KHETAN APPAREL PRIVATE LIMITED

...Respondent / Corporate Debtor

MEMO OF PARTIES

IA(IBC) No. 403/JPR/2021

Khetan Apparel Pvt. Ltd.,
Through Liquidator Mr. Sourabh Malpani
Guru Kripa Plot No-93, Neelkanth Colony,
Queens Road, Jaipur-302021, Rajasthan

..... Applicant/ Liquidator

Versus

Mr. Deepak Khetan S/o Sh. Arun Khetan
R/o Khetan Udyog Industrial Area
Sikar, Rajasthan, 332201

... Respondent No. 1

Sh. Arun Kumar Khetan S/o Sh. Tara Chand Khetan,
R/o Khetan Udyog Industrial Area
Sikar, Rajasthan, 332201

...Respondent No. 2

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For the Liquidator	:	Prateek Kedawat, Adv. Ritesh Singh Shekhawat, Adv.
For the Respondent	:	Amol Vyas, Adv. Abhishek Purohit, Adv.

Order Pronounced On: 12.10.2026

ORDER

Per: Ms. Kavita Bhatnagar, Technical Member

1. The present Interlocutory Application has been filed by *Mr. Sourabh Malpani* ('Applicant'), Liquidator of *Khetan Apparel Private Limited* ('Corporate Debtor'), in *CP(IB)-258/9/JPR/2019*. The Application is stated to be under Section 45 of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs: -

   i) May direct the respondent to repay the amounts of Rs. 12.85 lakhs of balance of tangible assets of Corporate Debtor.
   ii) Any other relief which the Hon'ble Tribunal deems fit.

2. The Corporate Debtor was admitted into CIRP pursuant to an application under Section 9 of the Code vide order dated 12.02.2020, whereby *Mr. Sourabh Malpani* was appointed as Interim Resolution Professional. The Applicant has pleaded that since no resolution plan was received and the Committee of Creditors formed the view that it would not be viable to continue the business of the Corporate Debtor, an application for liquidation was filed.

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3. This Adjudicating Authority thereafter passed an order dated 02.03.2021 directing liquidation of the Corporate Debtor. Subsequently, the Liquidator appointed *G. Chaudhary & Co., Chartered Accountants*, as forensic auditor to examine transactions allegedly falling under Sections 43, 45, 49 and 66 of the Code. The present Application has been filed on the basis of observations made in the forensic audit report.

4. The Applicant states that, pursuant to the appointment of the forensic auditor, certain transactions were reported as falling within the scope of Sections 43, 45, 49 and 66 of the Code. According to the Applicant, the transactions noticed in the forensic audit report were liable to be examined under the avoidance provisions of the Code.

5. It is submitted that as per the audited balance sheet, the Corporate Debtor granted substantial discounts during FY 2018-19 and FY 2019-20. A comparison reveals that while the average discount given during FY 2012-13 to FY 2017-18 stood at Rs. 31.65 lakh, the average discount escalated significantly to Rs. 66.11 lakh during FY 2018-19 and FY 2019-20. On this basis Applicant contends that increase in discounts indicated an attempt by the Corporate Debtor to clear its stock during the years.

6. The Applicant further states that the balance of tangible assets reduced from Rs. 18.52 lakhs in FY 2018-19 to Rs. 5.67 lakh in FY 2019-20. It is alleged that certain assets were transferred to franchise holders against security

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deposits which the Corporate Debtor was unable to repay and the certain other assets were disposed of for cash to local parties.

7. It is stated that the Corporate Debtor entered into an agreement dated 05.11.2019 for the sale of the trademark i.e. *"Mr. Button"* against outstanding dues payable by the company, which stood at Rs. 116.90 lakh as on that date. The Applicant points out that no valuation from a registered valuer was obtained prior to executing the settlement agreement. It is alleged that the brand was intentionally undervalued and transferred for inadequate consideration outside the normal course of business, causing a loss of approximately Rs. 20 lakhs to the Corporate Debtor.

8. The Liquidator further states that an email dated 05.02.2021 was issued to the Respondents seeking clarification, justification, and explanation under the provisions of the Code, to which the Respondents submitted their response vide email dated 03.04.2021.

9. It is submitted that upon examining the explanations submitted by the Respondents, the Liquidator states that two explanations were found to be unsatisfactory and same are reproduced hereunder:

    a. In relation to the reduction in tangible assets, the Applicant did not accept the explanation furnished by the Respondent and alleged that the reduction from Rs. 18.52 lakh to Rs. 5.67 lakh represented a loss of Rs. 12.85 Lakh to the Corporate Debtor. It is alleged that the said

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amount had been siphoned off and was liable to be restored by the Respondent, the transaction being characterized by the Applicant as an undervalued transaction under Section 45 of the Code.

b. In relation to the trademark, the Applicant stated that the explanation furnished by the Respondent was not found satisfactory and alleges that its transfer was at an undervalued causing financial loss to the Corporate Debtor.

10. Further, the Applicant had filed affidavit to place on record Page No. 93 of the Forensic audit report annexed with the instant Application.

11. The Respondents filed a Reply to the instant Application and raised the following contentions:

11.1. The Respondent submits that the forensic auditor, while submitting its report to the Liquidator, completely failed to understand the operational dynamics and the specific nature of the business in which the Corporate Debtor operates. Furthermore, a bare perusal of the forensic audit report reveals that the auditor, based on mere assumptions, concluded that there were undervalued transactions in the Corporate Debtor without any cogent evidence being available on record.

11.2. The Respondent denies the contents thereof and submits that the transactions referred to therein are no longer res integra. It is

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submitted that the suspended director had already provided a detailed explanation regarding the said transaction, which was found satisfactory, as evidenced by the fact that the Liquidator has not sought any relief in the present Application in respect of the said transaction.

11.3. It is submitted that the tangible assets of the Corporate Debtor were sold in FY 2018-19 pursuant to a strategic management decision to shift from in-house production to outsourcing. This transition was undertaken to reduce fixed costs, secure better credit cycles, and adapt to changed sales channel fulfilment timelines that required advance inventory storage. It is submitted that the allegations in the Application pertain strictly to those tangible assets that were used for in-house production.

11.4. The Respondent further submits that the assets sold during FY 2019-20 comprised store fixtures returned by franchise owners upon store closures. While un-reusable materials such as wooden planks and electrical wire fittings yielded no financial recovery, all reusable electrical and other fittings were sold back to the franchises what Respondents contend was a fair price. It is contended that the Liquidator has miserably failed to pinpoint specific undervalued transactions, choosing instead to cursorily mention an overall loss on

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the sale of assets during the two financial years, rendering the allegations completely vague.

11.5. It is stated that the transaction in question is not covered under Section 45 of the Code. It is contended that neither the forensic auditor nor the Liquidator considered or appreciated the responses submitted by the suspended directors, nor did the Liquidator assign any reasons as to why the explanations provided were found unsatisfactory, leaving the allegations entirely bereft of merit and evidence.

11.6. The Liquidator has composite-alleged the transaction under Sections 43, 45, 49, and 66 of the Code. It is submitted that while no specific prayer has been made by the Liquidator in respect of this transaction, a single transaction cannot legally be classified as a preferential, undervalued, and fraudulent transaction all at the same time.

12. We have heard the learned counsel for both parties and perused the material available on record, the forensic audit report and the material placed on record. The present Application has been filed by the Liquidator under Section 45 of the Insolvency and Bankruptcy Code, 2016. Though the forensic audit report and the Application refer to certain other transactions, including discounts extended by the Corporate Debtor and the transfer of the trademark "Mr. Button", the substantive relief sought in the present Application is a direction to the Respondents to repay an amount of ₹12.85

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lakh in respect of the alleged reduction/transfer of tangible assets of the Corporate Debtor.

13. Section 45 of the Code contemplates an application by the Resolution Professional or Liquidator where, upon examination of the transactions of the Corporate Debtor, he forms the opinion that certain transactions were made during the relevant period under Section 46 and were undervalued. For the purposes of Section 45, a transaction is undervalued where the Corporate Debtor makes a gift to a person or enters into a transaction involving transfer of one or more assets for a consideration, the value of which is significantly less than the value of the consideration provided by the Corporate Debtor, and such transaction has not taken place in the ordinary course of business of the Corporate Debtor.

14. Thus, mere reduction in the value of tangible assets appearing in the books of account between two financial years cannot, by itself, constitute an undervalued transaction within the meaning of Section 45. For such a finding, there must be sufficient material enabling the Adjudicating Authority to identify the transaction or transactions complained of and to determine, inter alia, the asset transferred, the consideration received therefor and whether such consideration was significantly less than the value provided by the Corporate Debtor. It must further be shown that the transaction was not in the ordinary course of business. These are substantive

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statutory requirements and cannot be substituted merely by an inference drawn from a reduction in the year-end balance of fixed or tangible assets.

15. In Anuj Jain, Interim Resolution Professional for ***Jaypee Infratech Limited v. Axis Bank Limited & Ors., (2020) 8 SCC 401***, the Hon'ble Supreme Court, while considering the scheme of avoidance transactions under the Code, explained that preferential transactions, undervalued transactions, transactions defrauding creditors and fraudulent trading are governed by distinct statutory provisions, with their respective ingredients and consequences. The examination must therefore be directed to the requirements of the particular provision invoked. In the present case, since the Application and the relief under consideration are based upon Section 45, it is the ingredients of an undervalued transaction under that provision which are required to be established.

16. On examining the forensic audit report, we find that the basis of the Applicant's claim is the reduction in the balance of tangible assets from ₹18.52 lakh in FY 2018-19 to ₹5.67 lakh in FY 2019-20. The difference between these two figures is ₹12.85 lakh, which is also the amount sought to be recovered from the Respondents. The Applicant alleges that the assets were transferred to franchise holders against security deposits which could not be repaid and that the remaining assets were disposed of for cash to local parties.

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17. The two pages of the forensic audit report placed before us assume significance in this regard. The auditor, after noticing the reduction in tangible assets, records an impression that the company had sold/discarded tangible assets shortly before commencement of CIRP and proceeds on that basis to recommend recovery. However, neither the forensic audit report nor the Application places before us a transaction-wise identification of the assets allegedly transferred at an undervalue. In particular, there is no material identifying the specific assets constituting the alleged undervalued transactions, the dates of their respective transfers, the persons to whom they were transferred, the consideration received in respect thereof, or any contemporaneous valuation or other material demonstrating that the consideration received was significantly less than the value of the assets transferred.

18. This omission assumes particular importance because the amount of ₹12.85 lakh claimed by the Applicant is merely the arithmetical difference between the tangible-asset figures of ₹18.52 lakh and ₹5.67 lakh appearing for the two financial years. Such difference in book values cannot, without further evidence, be equated either with the amount allegedly siphoned off by the Respondents or with the extent of undervaluation contemplated under Section 45. A reduction in the balance-sheet value of tangible assets may arise on account of sale or disposal of assets, depreciation, write-off or other

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accounting or commercial events. What Section 45 requires is proof of an identified transfer for a consideration significantly lower than the value provided by the Corporate Debtor. The material presently before us does not establish this essential link.

19. We have also considered the explanation furnished by the Respondents. According to them, the Corporate Debtor had taken a commercial decision during FY 2018-19 to shift from in-house production to outsourcing with the object of reducing fixed costs, obtaining better credit cycles and adapting its business operations. It is further their case that, upon closure of franchise stores during FY 2019-20, certain store fixtures were returned or transferred to franchise owners; certain materials such as wooden planks and electrical wiring were not reusable; and reusable electrical and other fittings were sold to franchisees at what the Respondents contend were fair prices.

20. We do not consider it necessary, for deciding the present Application, to record an affirmative finding that every aspect of the aforesaid explanation furnished by the Respondents stands independently proved. The Applicant seeking relief under Section 45 must place before the Adjudicating Authority sufficient material establishing the statutory ingredients of the transaction sought to be avoided. Even after the explanation of the Respondents was furnished, no transaction-specific material has been brought on record demonstrating that any identified asset was transferred for

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a consideration significantly less than its value or that such transfer was outside the ordinary course of business. An inference or suspicion arising from the reduction in the balance-sheet figure, even when recorded in a forensic audit report, cannot by itself substitute the material necessary for recording a finding of an undervalued transaction under Section 45.

21. There is another aspect of the matter. The forensic audit report and the Application make references at places to Sections 43, 45, 49 and 66 of the Code. The Respondents have objected to such composite characterisation. We need not accept the wider proposition urged by the Respondents that the same factual transaction can, in no circumstances, attract more than one avoidance provision. What is material for the present case is that each statutory provision has its own ingredients, which have to be independently satisfied before relief thereunder can be granted. An omnibus or composite reference to Sections 43, 45, 49 and 66 cannot dispense with proof of the ingredients of Section 45, under which the present relief has been sought.

22. We also notice that the forensic audit report and the pleadings refer to higher discounts granted by the Corporate Debtor during FY 2018-19 and FY 2019-20 and to the agreement dated 05.11.2019 concerning the trademark "Mr. Button". In relation to the trademark, the Applicant alleges that no valuation from a registered valuer was obtained before the settlement and that the transaction resulted in an alleged loss of approximately ₹20 lakh. However,

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the substantive prayer in the present Application is confined to repayment of ₹12.85 lakh relating to tangible assets. No specific avoidance, restoration or monetary relief has been sought in respect of either the discounts or the trademark transaction. We, therefore, refrain from returning any conclusive finding upon those transactions in the present Application.

23. We may clarify that our conclusion does not proceed on the basis that the commercial explanation furnished by the Respondents necessarily establishes that the assets were transferred at fair value. Equally, the mere fact that the Liquidator considered the explanation unsatisfactory does not establish the converse. For an order under Section 45, there must be material from which the Adjudicating Authority can determine that an identified transaction answers the statutory description of an undervalued transaction. That evidentiary foundation is absent in the present case.

24. In view of the foregoing discussion, we find that the Applicant has failed to establish that the reduction of tangible assets from ₹18.52 lakh in FY 2018-19 to ₹5.67 lakh in FY 2019-20 represents an undervalued transaction within the meaning of Section 45 of the Code. There is also no sufficient material to hold that the arithmetical difference of ₹12.85 lakh represents an amount siphoned off by the Respondents or an amount liable to be restored by them under the avoidance provisions of the Code.

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25. Consequently, the prayer seeking a direction to the Respondents to repay ₹12.85 lakh to the Corporate Debtor cannot be granted. **IA(IBC) No. 403/JPR/2021 is accordingly dismissed**. No order as to costs.

REETA KOHLI
JUDICIAL MEMBER

KAVITA BHATNAGAR
TECHNICAL MEMBER

RR/LRA