

## Case Snippets

### Volume 03, Number 16 (April 15, 2020)

#### **ANUJ JAIN Vs. AXIS BANK LIMITED ETC. ( CIVIL APPEAL NOS. 8512-8527 OF 2019 ) Decided on 26 Feb, 2020)**

Sections 3(4), 3(31), 3(35), 43,44,45,48 r/w section 66 of Insolvency and Bankruptcy Code, 2016 . Sections 5(7), 5(8) and 5(24) read with Sections 124,126 and 127 of the Indian Contract Act, 1872.

#### **Preferential, undervalued and fraudulent, in terms of Sections 43, 45 and 66 of the Code**

The IRP, under clause (j) of Section 25(2) of the Code, made the application under consideration before the Adjudicating Authority stating, *inter alia*, that JIL mortgaged its unencumbered land in a highly questionable manner and in complete disregard to the interests of the creditors and stakeholders of the corporate debtor. Also, the mortgage of land was in nature of asset stripping and was entered with intent to defraud the creditors of the corporate debtor without obtaining the approval of shareholders. The NCLT allowed the company application filed by the Resolution Professional under Sec. 66, 43 & 45 of the Insolvency and Bankruptcy 2016.

The aggrieved parties filed separate appeals against the impugned order dated 16.05.2018 passed by AA before the NCLAT. The Appellate Tribunal allowed the appeals and set aside the impugned order. Hence these appeals.

**Following are two major questions/issues, which are under consideration in these appeals:**

**(i) Whether the transactions in question deserve to be avoided as being preferential, undervalued and fraudulent, in terms of Sections 43, 45 and 66 of the Code;**

**(ii) Whether the respondents (lender of JAL) could be recognized as financial creditors of the corporate debtor JIL on the strength of the mortgage created by the corporate debtor, as collateral security of the debt of its holding company JAL.**





**With regards to the first issue, SC held that the** transactions in question are hit by Section 43 of the Code and the Adjudicating Authority had been justified in issuing necessary directions in terms of Section 44 of the Code in relation to the transactions concerning properties under reference. Further, NCLAT had not been right in interfering with the well-considered and justified order passed by NCLT in this regard.

**While coming to the second issue SC held that** lenders of JAL, on the strength of the mortgages in question, may fall in the category of secured creditors, but such mortgages being neither towards any loan, facility or advance to the corporate debtor nor towards protecting any facility or security of the corporate debtor, it cannot be said that the corporate debtor owes them any 'financial debt' within the meaning of Section 5(8) of the Code. Hence, such lenders of JAL do not fall in the category of the 'financial creditors' of the corporate debtor JIL.

## **SUMMATION**

- 1.The impugned order dated 01.08.2019 as passed by NCLAT in the batch of appeals is reversed and is set aside.
- 2.The appeals preferred before NCLAT against the order dated 16.05.2018, as passed by NCLT on the application filed by IRP, are dismissed; and consequently, the order dated 16.05.2018 so passed by NCLT is upheld in regard to the findings that the transactions in question are preferential within the meaning of Section 43 of the Code. The directions by NCLT for avoidance of such transactions are also upheld accordingly
3. The appeals preferred before NCLAT against the orders passed by NCLT dated 09.05.2018 and 15.05.2018 on the applications filed by the lender banks are also dismissed and the respective orders passed by NCLT are restored with the findings that the applicants are not the financial creditors of the corporate debtor Jaypee Infratech Limited (JIL).

