

RJA

Rajput Jain & Associates

Chartered Accountants

Forensics in IBC, 2016

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields. The firm has provided a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. The firm focuses on providing tailor-made solutions to challenging problems of our clients, and performs with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services. To serve better and to bring a bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms, a pioneer in diversified fields.
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional backgrounds with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market, we are constantly looking forward for a team of associates comprising of highly skilled professionals to cater to the needs of ever-increasing clientele.

**Transactions specifically being
looked at by the forensic experts**

**Preferential transactions and relevant time
[Section 43]**

**Avoidance of undervalued transactions
[Section 45]**

**Transactions defrauding creditors
[Section 49]**

Extortionate credit transactions [Section 50]

**Fraudulent trading or wrongful trading
[Section 66]**

Preferential transactions and relevant time [Section 43]

- **Liquidator or the resolution professional to apply to NCLT** for avoidance of preferential transactions;
- Corporate Debtor shall be **deemed to have given a preference**, if:
 - ❑ there is a **transfer of property or an interest** thereof **for the benefit of a creditor** or a surety or a guarantor;
 - ❑ such transfer 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 u/s 53

Preferential transactions and relevant time [Section 43]

- **Exceptions:** a preference shall not include the following transfers:
 - 1) transfer made in the **ordinary course** of the business;
 - 2) any transfer creating a security interest in property acquired by the corporate debtor to the extent that such **security interest secures new value**;
 - 3) any transfer made in pursuance of the **order of a court**
- **Relevant Time:**
 - 1) given to a **related party** = period of **2 years** preceding the insolvency commencement date;
 - 2) given to a person **other than a related party** = period of **1 year** preceding the insolvency commencement date

Avoidance of undervalued transactions [Section 45]

- Liquidator or resolution professional to **apply to NCLT to:**
 - 1) declare **undervalued transactions as void**; and
 - 2) **reverse the effect** of such transaction
- A **transaction shall be considered undervalued** where the corporate debtor:
 - makes a **gift to a person**; or;
 - enters into a transaction with a person which involves the transfer of one or more assets for a **consideration the value of which is significantly less**and ***such transaction has not taken place in the ordinary course of business of the corporate debtor.***

Transactions defrauding creditors [Section 49]

- Where **NCLT is satisfied that undervalued transaction was deliberately entered** into by such corporate debtor:
 - 1) **for keeping assets of the corporate debtor beyond the reach of any person** who is entitled to make a claim against the corporate debtor; or
 - 2) **in order to adversely affect the interests** of such a person in relation to the claimthe **NCLT may, then, make following order(s)**:
 - a) **restoring the position** as it existed before such transaction;
 - b) **protecting the interests of persons who are victims** of such transactions

Extortionate credit transactions [Section 50]

- A transaction shall be considered an **extortionate credit transaction** u/s 50(2) where the terms:
 - 1) require the corporate debtor to **make exorbitant payments in respect of the credit provided**; or
 - 2) are **unconscionable under the principles of law** relating to contracts - Regulation 11 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.
- The **liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the NCLT** if the terms of such transaction required exorbitant payments to be made by the corporate debtor

Fraudulent trading or wrongful trading [Section 66]

- If during the corporate insolvency resolution process or a liquidation process, it is found that **any business of the corporate debtor has been carried on with intent:**
 - **to defraud creditors** of the corporate debtor or
 - **for any fraudulent purpose**
- the NCLT may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make **such contributions to the assets** of the corporate debtor as it may deem fit.

Persons not eligible to be resolution applicant [Section 29A]

- a) **un-discharged insolvent;**
- b) **wilful defaulter;**
- c) classified as **NPA** as per guidelines of the RBI;
- d) convicted for any offence punishable with **imprisonment for 2 years or more;**
- e) is **disqualified to act as a director** under Co. Act;
- f) is **prohibited by SEBI** from trading in securities or accessing the securities markets;
- g) has been a **promoter or in the management or control of a corporate debtor** in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by NCLT;
- h) has **executed an enforceable guarantee** in favour of a creditor in respect of a corporate debtor under CIRP

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