

**RJA**

**Rajput Jain & Associates**  
Chartered Accountants

**Specific Transaction under  
Insolvency and Bankruptcy Code 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 has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform 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 bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms 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 background 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 team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

# SPECIFIC TRANSACTIONS



Preferential Transactions



Undervalued Transactions



Defrauding Transactions



Avoidable and extortionate credit transactions

# Preferential Transactions

- Where the liquidator or the resolution professional is of the opinion that the corporate debtor has at a “**relevant time**” given a preference in such transactions to any persons he shall apply to the Adjudicating Authority for avoidance of preferential transactions

# Preferential Transactions Section 43

There is a transfer of property or an interest of the corporate debtor



For the benefit of a creditor on account of an antecedent financial debt or other liabilities



Such transfer has the effect of putting such creditor in a beneficial position than in distribution of assets stated in Section 53

# What cannot be considered as preferential transaction under Section 43

1. Transfer made in ordinary course of business of the corporate debtor or the transferee
2. Any transfer creating a security interest in the property acquired by the corporate debtor to the extent that,
  - a. 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
  - b. 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

# New Value – Section 43

## **“ NEW VALUE” means the following**

- 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 substituted for existing financial or operation debt.

# Relevant Time – Section 43

**A preference shall be deemed to be given at a “ relevant time” *IE***

*(a) it is given to a related party during the period of 2 years preceeding the insolvency commencement date.*

*(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.*

# Orders passed by AA in case of Preferential transactions– Section 44

## The A.A may,

- require any property transferred in connection with the giving of the preference to be vested in the corporate debtor
- 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
- Release of any security interest created by the corporate debtor
- require any person to pay such sums to the liquidator or the resolution professional as AA may direct for which benefits are received by him from the corporate debtor
- direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged by 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
- 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 by the giving of the preference
- 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 by the giving of the preference



# When the orders passed by AA in case of Preferential transactions shall not apply— Section 44

## **An Order under this section shall not apply to the following**

- 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
- 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

# Undervalued Transactions – Section 45

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

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 by the corporate debtor 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 corporatedebtor

# Application by RP - Undervalued transaction- Section 47

On examination of corporate debtor's transactions the liquidator or RP



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graph TD; A[On examination of corporate debtor's transactions the liquidator or RP] --> B[determines that certain transactions made during the relevant period were undervalued]; B --> C[shall make an application to the Adjudicating Authority]; C --> D[to declare such transactions as void and reverse the effect of such transaction];
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determines that certain transactions made during the relevant period were undervalued

shall make an application to the Adjudicating Authority

to declare such transactions as void and reverse the effect of such transaction

# Relevant Period – Section 46

Party to the transaction	Relevant Period
Any other person	one year preceding the insolvency commencement date
Related Party	two years preceding the insolvency commencement date

**Note: The “Adjudicating Authority” may require an independent expert to assess evidence relating to the value of the transactions mentioned above**

# Application by creditor is made in cases of Undervalued transactions – Section 47

Where an undervalued transaction has taken place and the liquidator or the RP has not reported it to AA, a creditor, member or a partner of a corporate debtor may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect

Adjudicating Authority, after examination of the application is satisfied that

- (a) undervalued transactions had occurred and
- (b) liquidator or RP after having sufficient information or opportunity to avail details of such transactions did not report such transaction to the Adjudicating Authority

The Adjudicating Authority shall pass an order

- (a) restoring the position as it existed before such transactions and reversing the effects and
- (b) requiring the Board to initiate disciplinary proceedings against the liquidator or RP

# Orders passed by AA in case of Undervalued transactions - Section 48

## The Adjudicating Authority shall pass the following orders

- require any property transferred as part of the transaction, to be vested in the corporate debtor
- release or discharge any security interest granted by the corporate debtor
- require any person to pay such sums, in respect of benefits received by such person to the liquidator or RP as the Adjudicating Authority may direct
- require the payment of such consideration for the transaction as may be determined by an independent expert

# Transactions defrauding the Creditors – Section 49

A transaction is said to be a defrauding transaction, when

**The corporate debtor**

**has entered into an undervalued transaction and the AA is satisfied that such transaction was deliberately entered into by such corporate debtor**

(a) keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor or

(b) in order to adversely affect the interests of such a person in relation to the claim

# Orders by A.A under Section 49

The Adjudicating Authority shall pass an order

- (a) restoring the position as it existed before such transaction as if the transaction had not been entered into and
- (b) protecting the interests of persons who are victims of such transactions

Order passed by the Adjudicating Authority,

- shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest and
- shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction



# Application to avoid extortionate credit transactions– Section 50

## Extortionate credit transactions

Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period within two years preceding the insolvency commencement date, the liquidator or the resolution professional as the case may be, may make an application for avoidance of such transaction to the Adjudicating Authority if the terms of such transaction required exorbitant payments to be made by the corporate debtor

The Board may specify the circumstances in which a transactions which shall be covered under the above stated section

# Orders passed by A.A in respect to extortionate credit transaction – Section 51

**A.A after examining the application shall order to,**

- restore the position as it existed prior to such transaction
- set aside the whole or part of the debt created on account of the extortionate credit transaction
- modify the terms of the transaction
- require any person who is, or was, a party to the transaction to repay any amount received by such person
- require any security interest that was created as part of the extortionate credit transaction to be relinquished in favor of the liquidator or RP

# Extortionate Credit Transactions – CIRP Reg 5

Reg 5. A transaction shall be considered extortionate 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

# Sec 66 of IBC ( Fraudulent trading or wrongful trading)

- 66. Fraudulent trading or wrongful trading. - (1) 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 Adjudicating Authority 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.
- (2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if- (a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and (b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.
- Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

# Sec 67: Proceedings under Section 66

- S.67(1) Where the Adjudicating Authority passes an order under sub-section (1) or subsection (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may— (a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and (b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section. Explanation. – For the purposes of this section, “assignee” includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the declaration has been made. (2) Where the Adjudicating Authority has passed an order under sub-section (1) or (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.

# CIRP Reg 35A : Preferential & other transactions

- 35A. Preferential and other transactions. (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66. (2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board. (3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.]

# Liquidation Regu 10 and 11

- **10. Disclaimer of onerous property.** (1) Where any part of the property of a corporate debtor consists of- (a) land of any tenure, burdened with onerous covenants; (b) shares or stocks in companies; (c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or (d) unprofitable contracts; the liquidator may, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, make an application to the Adjudicating Authority within six months from the liquidation commencement date, or such 10 extended period as may be allowed by the Adjudicating Authority, to disclaim the property or contract. (2) The liquidator shall not make an application under sub-regulation (1) if a person interested in the property or contract inquired in writing whether he will make an application to have such property disclaimed, and he did not communicate his intention to do so within one month from receipt of such inquiry. (3) The liquidator shall serve a notice to persons interested in the onerous property or contract at least seven days before making an application for disclaimer to the Adjudicating Authority: Explanation: A person is interested in the onerous property or contract if he- (a) is entitled to the benefit or subject to the burden of the contract; or (b) claims an interest in a disclaimed property or is under a liability not discharged in respect of a disclaimed property. (4) Subject to the order of the Adjudicating Authority approving such disclaimer, the disclaimer shall operate to determine, from the date of disclaimer, the rights, interest and liabilities of the corporate debtor in or in respect of the property or contract disclaimed, but shall not, except so far as is necessary for the purpose of releasing the corporate debtor and the property of the corporate from liability, affect the rights, interest or liabilities of any other person. (5) A person affected by the disclaimer under this Regulation shall be deemed to be a creditor of the corporate debtor for the amount of the compensation or damages payable in respect of such effect, and may accordingly be payable as a debt in liquidation under section 53(1)(f).
- **11. Extortionate credit transactions.** A transaction shall be considered an extortionate credit transaction under section 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.

# Liquidation Regu 15 : Progress Report

- 15(2)(e) : A progress Report shall provide all information relevant to liquidation for the quarter, including “ filing of, developments in applications for avoidance of transactions in accordance with Chapter III of Part II of the Code.”

## VL Reg 13. Extortionate credit transaction

- 13. Extortionate credit transactions. A transaction shall be considered an extortionate credit transaction under section 50(2) where the terms- (a) require the corporate person to make exorbitant payments in respect of the credit provided; or (b) are unconscionable under the principles of law relating to contracts.



# Examples of preference

- B borrowed money from A. A is an existing creditor of B. Later, A demands that a charge be created on B's assets against the money borrowed. The security interest thus created is not a "new value".
- Second example: A lent money to B. In order to pay A, B takes loan from C and creates a charge on its property for C. There is no "new value" involved.
- Third example: A lent money to B against a charge on the assets of B. B takes loan and acquires a technology for its assets under charge to A. B has acquired a "new value" by creating security interest in favour of A

# EXCLUDED ASSETS, S.79(14)

- Unencumbered tools, books, vehicles, equipment
- Unencumbered furniture, household equipment and provisions
- Unencumbered personal ornaments for self and family which cannot be parted for religious usage- 1 lakh (limit)
- Unencumbered LIC and pension plans
- Unencumbered single dwelling unit owned- 10/ 20 lakh- (limit)

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## Branch Offices

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