S.No.1

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07.05.2026 AT 10:30 A.M.

IA (IBC)/224/2024 in CP(IB) No.326/7/HDB/2018
U/s 7 of IBC

IN THE MATTER OF:
Bank of India **…Petitioners**

AND

Khaitan Electricals Ltd **…Respondent**

C O R A M:-
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC)/224/2024

Orders pronounced, recorded vide separate sheets. In the result, the IA (IBC)/224/2024 is dismissed.

Sd/- **Sd/-**
MEMBER (T) **MEMBER (J)**

Vamsi

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – II,

IA (IBC) No. 224/2024

IN

CP (IB) No.: 326/7/HBD/2018

IN THE MATTER OF:

Bank of India
Mid Corporate Branch,
5 B.T.M. Sarani, P.S. Hare Street,
Kolkata – 700 001.

.... Financial Creditor

Versus

Khaitan Electricals Limited (in Liquidation)
A-13, Sri Venkateshwara Co-operative Industrial Estate,
Balanagar, Hyderabad – 500 032

..... Corporate Debtor

AND

IN THE MATTER OF:

Kamalesh Kumar Singhania, Liquidator
Bajrang Kunj, Room No.412 & 413,
2B Grant Lane, 4th Floor,
Kolkata – 700 012.

..... Applicant

Versus

1. Khaitan (India) Ltd.
2. Auric Engineering Pvt. Ltd.
3. Sunil Krishna Khaitan, erstwhile Director of Khaitan Electricals Ltd.
4. Gairk Banerjee, erstwhile Director of Khaitan Electricals Ltd.
5. Sujata Chatterjee, erstwhile Director of Khaitan Electricals Ltd.

..... Respondents

Date Of Order:7.5.2026

Coram:
Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels:

For Applicant : Mr. Pranay Agarwal
For Respondent Nos. 1 and 3 : Ms. Sree Ramya, and Mr. CV Narasimham
For Respondent No.2 : Ms. Sarvani Desiraju
For Respondent No.5 : Ms. Mathur Andrea

I. ***Case of the Applicant:***

1. The petition bearing CP (IB) No. 326/7/HDB/2018 was filed on 17.07.2018, by Bank of India[1] under Section 7 of the Insolvency and Bankruptcy Code, 2016[2] for initiation of the Corporate Insolvency Resolution Process[3] against the Corporate Debtor[4].

2. Pursuant to that, the said petition was admitted by this Tribunal vide its order dated 28.11.2018, and the Applicant was appointed as the Interim Resolution Professional[5]. Further, it is averred that, the RP appointed M.C. Bhandari & Co., as the transaction auditor of the Corporate Debtor.

3. The transaction and forensic audit of the accounts of the CD revealed that, the CD had entered into several transactions with Khaitan (India) Ltd., arrayed as Respondent No. 1, which is alleged to be a related party. In this regard, it is also averred that, on 30.06.2018, the CD transferred a Tempo Traveler mini bus to Respondent No. 1 for a book value of Rs. 54,687/-, which was allegedly undertaken without receipt of any consideration, at a time when the account of the CD had already been classified as NPA by the Financial Creditor.

4. On the same date, i.e., 30.06.2018, as per the applicant, the CD further transferred certain assets, including dies, patterns, jigs, fixtures, racks, trolleys, and testing equipment to Respondent Nos. 1 and 2. The total book value of these assets was Rs. 4,52,218/-, though they were purportedly sold for Rs. 8,00,000/-. It is also alleged that, no monetary consideration was received, and the transactions were conducted outside the ordinary course of business.

5. In light of the same, the Applicant has characterized the said transactions as preferential, undervalued, fraudulent, and otherwise avoidable under the provisions of the IBC.

6. It is the case of the Applicant that, on 21.10.2018, during the pendency of the Section 7 petition and shortly prior to the initiation of CIRP, the CD transferred five motor cars to Respondent No. 1 at a book value aggregating to Rs. 10,80,860/-. It is alleged that no consideration was received for the said

[1] Hereinafter referred to as Financial Creditor/FC
[2] Hereinafter referred to as IBC
[3] Hereinafter referred to as CIRP
[4] Hereinafter referred to as CD
[5] Hereinafter referred to as IRP

transfer, though Respondent No. 1 has admitted the transfer in its reply and has expressed willingness to return the vehicles, if so, directed by this Tribunal.

7. On the same date, the CD is stated to have transferred computer hardware and a printer to Respondent No. 1 at a book value of Rs. 6,26,555/, again allegedly without receipt of any consideration from Respondent No.1 to the CD. Thus, it is contended that these transfers, being related party transactions entered just prior to the CIRP, clearly attract Sections 45(2)(b), 49, and 43(2) of the IBC.

8. The Applicant further submits that Respondent No. 1 had claimed to have taken over receivables of the CD amounting to approximately Rs. 0.75 crores from various vendors and sundry debtors. However, it is also averred that, no documents evidencing payment to the CD have been produced, despite assertions that such payments were made through banking channels. It is also alleged that, contradictory statements made by Respondent No. 1 regarding the net inflow from the CD raises doubts on the genuineness of the transaction.

9. Furthermore, it is alleged that, on 31.08.2018, certain plant and machinery were said to be transferred by the CD to Respondent No.1, at a book value of Rs. 2,32,350/-, and on 31.12.2018, further plant and machinery were transferred to Respondent No.2 for Rs. 28,11,940/-. It is also averred that the said transfer to Respondent 2 was executed without the knowledge or permission of the Applicant, who was then the Resolution Professional. Moreover, these transactions were partially reversed in accounting records, indicating their irregularity.

10. In this background, the Applicant submits that the impugned transactions, undertaken within the statutory look-back period, involved the transfer of receivables, plant and machinery, vehicles, and other assets at undervalued amounts or without consideration, resulting in loss to the creditors of the Corporate Debtor.

11. It is further contended that, these transactions are preferential, undervalued, and fraudulent in nature, which have been carried out to siphon assets beyond the reach of creditors. Also, it is alleged that Respondent Nos. 3, 4, and 5, being erstwhile directors, were aware of the financial position of the

Corporate Debtor and are liable under Sections 43, 45, 49, and 66 of the Insolvency and Bankruptcy Code, 2016.

12. Subsequently, as no resolution plan was received, the Committee of Creditors in its 5th meeting recommended liquidation of the CD, and accordingly, this Tribunal, vide order dated 23.08.2019, ordered liquidation of the CD and appointed the Applicant herein as the Liquidator.

13. In view of the aforesaid determinations, the Applicant had earlier filed IA No. 43 of 2020 on 27.11.2019, seeking avoidance of such transactions. The said application came to be dismissed by this Tribunal on account of the addition of other parties, with liberty granted to the Applicant to file a fresh application.

14. The present application has accordingly been filed, identifying the above-mentioned transactions.

II. Case of the Respondent No. 2:

15. It is submitted that, the Applicant alleged that, on 31.12.2018, the CD sold its assets, including plant and machinery and other equipment, to Respondent No. 2[6], during the CIRP of the CD. The said transactions are stated to be undervalued, not in the ordinary course of business, and without consideration, undertaken with the intent to place the assets beyond the reach of creditors, thereby attracting Sections 45(2)(b) and 49 of the IBC.

16. It is further averred that, AEPL[7] was incorporated in 1972 and has been engaged in business transactions with KEL[8] since 1978. Their business relationship originally commenced with Khaitan Tibrewala Electricals Limited, which subsequently merged with KEL around 1999–2000. Over the years, the volume and nature of transactions between AEPL and KEL fluctuated due to changes in KEL's management and operational policies.

17. During the period 2011–2018, AEPL supplied electrical components to KEL's Hyderabad unit. By the financial year 2011–12, KEL had accumulated substantial outstanding dues towards AEPL, which led to a shift in the nature of transactions from job-work to direct sales. Despite KEL's deteriorating

[6] Hereinafter referred to as R.2
[7] Auric Engineering Private Limited
[8] Khaitan Electricals Limited

financial position, AEPL continued the business relationship in view of their longstanding association and, in furtherance thereof, also invested in tooling in accordance with KEL's requirements.

18. In 2017, KEL, facing financial constraints, proposed transfer of surplus and old plant and machinery to AEPL in partial settlement of outstanding dues. Following negotiations, and after physical lifting of machinery between May and September 2017, the parties finalised the transaction in a meeting dated 03.10.2017 at a value of Rs. 23.95 lakhs (inclusive of taxes), subject to adjustments towards dismantling charges, missing/damaged parts, tooling charges, and outstanding dues, including interest.

19. It is the case of R.2 that the transaction was thus concluded in 2017 itself, much prior to commencement of CIRP on 28.11.2018. Correspondence dated 30.04.2017[9] and 15.05.2017[10], along with the Minutes of Meeting dated 03.10.2017[11], are relied upon to substantiate the same.

20. It was agreed that the value of the machines would be Rs. 23.95 lakhs (with taxes included), subject to the following:

    a. KEL to issue a tax invoice for Rs. 23.95 lakhs and also to issue a credit note of Rs. 2.65 lakhs against dismantling charges and missing and damaged parts.

    b. AEPL to adjust its total pending dues as on 03.10.2017 of Rs. 24.88 lakhs as per AEPL ledger.

    c. For the Tempest Tool, KEL agreed to adjust/pass a credit note of Rs. 9.50 lakhs against the machinery debit note and tax invoice.

    d. Pending interest to be accounted by KEL of Rs. 9.60 lakhs as on 31.03.2016 and further any increase to be informed to KEL for entries to be made and this due payment to be paid by KEL after adjusting the machinery debit note and tax invoice.

21. Thus, it is submitted by R.2 that, the alleged transactions between the CD and the R.2 were completed much prior to the commencement date of the CIRP of the CD, i.e., 28.11.2018. In fact, the CD and the R.2 had agreed on

[9] At annexure 1 on pages 16-17 of the Reply
[10] At annexure 2 on pages 18-20 of the Reply
[11] At annexure 3 on page 21 of the Reply

the sale in the year 2017 itself, between themselves with regard to the unpaid dues payable to the R.2.

22. It is the case of the R.2, that it has annexed the correspondences dated 30.04.2017 and 15.05.2017 exchanged between the CD and the R.2, where it can be seen that discussions had taken place between the mentioned parties concerning the sale of the machinery belonging to the CD to the R.2, towards the payment of the dues to the R.2.

23. It is further submitted that subsequent to 30.04.2017, discussions continued between the Corporate Debtor and R.2, which were recorded in a letter dated 15.05.2017 issued by R.2 to the Corporate Debtor. In the said communication, the parties agreed upon a base value for the sale of the machinery belonging to the Corporate Debtor against the dues payable to R.2; however, it was expressly understood that the final value for settlement of dues would be determined upon further negotiations. Thereafter, following several rounds of discussions, the parties ultimately arrived at a consensus, which was duly recorded in the Minutes of Meeting dated 03.10.2017.

24. The book value of the old machines sold to the Respondent, as per the Applicant's filing, is stated as Rs. 24,24,732/-[12]. However, this value included capitalized (sunk) costs such as foundation, erection, and assembly charges, which are not recoverable upon the sale of old machines. Further, several machines had damaged or missing parts, and certain items listed were not delivered/handed over, yet no adjustment has been made for the condition of the machines. The Applicant has compared the sale value of Rs. 23,95,000/- with the aforesaid book value without considering these essential factors.

25. The Respondent submits that, the book value claimed by the Applicant contains errors, inasmuch as it is unclear what specific machines were sold and whether the same have been correctly tallied for the purpose of computing the book value, particularly since KEL had multiple machines of similar description. It is also unclear how missing or damaged parts were accounted for, if at all. Additionally, certain machines listed for delivery were not delivered to the Respondent. In the absence of clarity as to the list of machines

[12]Calculated as Rs. 23,14,302 + Rs. 38,864 + Rs. 71,566

and the basis of valuation, the Respondent is unable to reconcile the stated book value of the same.

26. It is stated that, the Respondent and KEL fixed the value of the machines at Rs. 23.95 lakhs on 03.10.2017 itself, which is the same value of the debit note raised by KEL. However, how and why KEL (Corporate Debtor) debited the value of Rs. 28,11,940/- in their books much later is not known to the Respondent and appears to be an oversight/clerical error made by the CD during the reversal entry. The amount being debited for sale of machines should be Rs. 23,95,000/- in 2017, but was delayed as KEL had issues with tax compliances and a fund crisis, delaying issuance of the tax invoice to the Respondent No.2.

27. It is also submitted that, R.2 has been in the business since 1972 and has been working with the CD, in the ordinary course of business since 1978. There have been multiple business transactions between the parties over the years and these were undertaken in the ordinary course of business. Further, on examining the documents annexed with this reply, it can be seen that the transaction cannot be termed as undervalued as a detailed breakdown of the transaction has been provided and therefore the sale of the machinery to R.2 cannot be brought under the purview of Section 46 of the IBC, 2016.

28. Further, it is to be noted that this plant and machinery was already in the nature of scrap and was not in working condition. In fact, even the credit notes passed by the CD, give a higher valuation to such scrap plant and machinery than their real value and without giving any consideration to the other charges around it, the Tempest Tool value, which ought to have been deducted and even the GST amounts. As per the ledger of the Respondent, payment for the old machines sold has been made as this was adjusted against their supply dues, pending dues and also against the Tempest Tool dues and pending interest to be paid by KEL.

29. The sale transaction between the CD and R.2, which is the subject of the present Application, is the result of negotiations and discussions between the parties in the year 2017. It is not out of place to mention again that R.2 has maintained a business relationship with the CD for years, as the CD is an old company with decades of operations. Correspondence and documents exchanged between the parties in respect of this sale of plant and machinery,

which are annexed herein, clearly evidence that the transaction took place in the ordinary course of business.

30. It is contended that, the R.2 attached a challan book[13] maintained by the CD, which shows that the machinery in question was checked out from the premises of the CD in the year 2017, and these events occurred much prior to the commencement of the CIRP and were unconnected to the initiation of CIRP proceedings, and the appointment of the Applicant herein. Hence, the Applicant's claim is that the transactions occurred during the CIRP is unsupported, and internal accounting entries do not alter the actual date of the transaction.

31. It is further stated that, the present Application has been filed solely based on a transaction audit report[14] prepared by the Liquidator. Such a transaction audit report was made without reference to relevant documents, and this Respondent was never asked to submit any explanation, documents or ledger extracts in respect of such a sale.

32. Further, it is also averred that, the sale transaction occurred in 2018 is prima-facie incorrect, as from March–April 2018 itself the factory of the Corporate Debtor was under lock and key due to protests of employees/workers who were not allowing any person or material to enter or exit the factory, and the Applicant had sealed the Company and placed security guards around July 2018.

33. Thus, the plant and machinery were sold and delivered to this Respondent in the year 2017 itself and the price was already discussed and agreed upon. There is no element of undervalued/preferential transaction or fraud in the said transaction. Thus, the present petition, to the extent of the claim against this Respondent, ought to be dismissed in limine.

34. It is further stated that provisions of Section 66 of the IBC, 2016 shall not be attracted against R.2, it being a third party to the insolvency proceedings. The Hon'ble Supreme Court in Anuj Jain Interim ***Resolution Professional for Jaypee Infratech Limited vs Axis Bank Limited (2020) 8 SCC 401*** and

[13] At pages 27-39 of the Reply
[14] Hereinafter referred to as TAR

other judgments have clarified the scope of such provisions. Hence, R.2 does not fall within the ambit of Section 66 of the IBC.

35. The Applicant herein has only produced averments against R.2 without any supporting material evidence. The R.2 has provided documents and records in support of its case which clearly establish that the transactions between the parties were completed prior to the commencement of CIRP. Therefore, there is no illegality in the transactions between the Corporate Debtor and R.2.

III. Case of the Respondent No. 3

36. Respondent No. 3 submits that it is not liable to pay any amount to the Company in liquidation or to the Applicant. It is further submitted that the present application is not maintainable, having been filed in the personal name of the Liquidator instead of on behalf of the Company in liquidation.

37. It is contended that the application, stated to be filed under Sections 43, 45, 49, and 66 of the IBC, pertains to alleged transactions of the year 2018 or prior thereto and has been filed after more than five years from the date of such transactions. Accordingly, the application is barred by limitation under Section 238A of the IBC and is liable to be dismissed on this ground.

38. Respondent No. 3 submits that it was not a party to IA/43/2020, which was withdrawn giving liberty to the Applicant, and is added for the first time in the present application, with all records, accounts, and transaction documents that are in the custody of the Applicant. It is also submitted that, the alleged transactions, cannot be specifically recalled without access to the records as they are old enough, and the Respondent reserves the right to file an additional counter upon provision of such documents, relying also on the counter filed by Respondent No. 1.

39. It is contended that, the Prayers (b), (c), (d), and (e) were not part of IA/43/2020 and cannot be raised afresh in the present petition. The Respondent No.3 submits that the alleged transactions are carried out in the ordinary course of business; hence the application is devoid of merit.

40. It is submitted that the present interim application, including the earlier IA-43 filed by the Applicant, has been filed without forming any opinion that the

Company in liquidation was subjected to avoidance transactions within the stipulated 75-day period from the admission of the CD, i.e., by 28.11.2018. It is also alleged that nothing has been place on record in the 3rd and 5th CoC meetings held on 28.02.2019 and 30.04.2019 indicating that, the Applicant could have determined the existence of avoidance transactions within the prescribed period.

41. The Respondent submits that, the Applicant sought to make this Respondent jointly liable with others, without providing any details of the alleged sum of Rs. 1,30,72,067 and the answering respondent is no way connected to R.2, and resigned as director of Respondent No. 1 on 12.08.2016.

42. The present application is contended to be filed, based on the TAR of M.C. Bhandari & Co., which contains errors, unverified conclusions, and selective analysis. Further, it is stated that, the TAR was prepared without seeking any clarifications from the answering Respondent nor Respondent No. 1. The Liquidator, relying on the same, made incorrect allegations in I.A No. 43/2020, some of which were withdrawn upon submission of evidence by Respondent No. 1. The Applicant has ignored the factual clarifications provided in the counter filed by Respondent No. 1.

43. Respondent No. 1 is engaged in the manufacture of sugar and the trading of electrical goods, while the Corporate Debtor operates in the manufacture and trading of electrical goods. For over fifteen years, they have carried on regular transactions, consistently on an arm's length basis and in the ordinary course of business. The TAR relied upon by the Applicant itself records that sales to Respondent No. 1 were made at the same rates as to unrelated parties.

44. During the period under consideration, the CD sold goods worth Rs. 24,16,200 to Respondent No. 1, and the net transfers between them totaled Rs. 362.43 lakh, with Rs. 5,71,44,610 of the total Rs. 8,42,17,156 inflow into the CD's account coming from Respondent No. 1. These transactions were not isolated and they reflect long-standing business dealings conducted fairly and at arm's length. Any allegations of preferential treatment are therefore baseless.

Specific Transactions:

45. It is contended that, between 23.10.2018 and 16.11.2018, Respondent No. 1 made payments totaling Rs. 17,11,800/- to the Corporate Debtor by bank transfer, covering the full consideration for the assets purchased from the Corporate Debtor. The used cars and computer equipment were acquired by the Respondent No.3, at book value, while their market value was far below the book value. Further, the computers had negligible value, and the cars were old with minimal market value. Therefore, it is contended that, the Corporate Debtor suffered no loss, and no undue advantage was obtained by any Respondent.

46. It is further alleged that, plant & machinery and a tempo traveller were sold to Respondent No. 1. Similarly, the allegation that receivables of Rs. 75.19 lakh were taken over without consideration is incorrect, as full payment was made by bank transfer. In total, Respondent No. 1 transferred Rs. 571.25 lakh (net Rs. 362.43 lakh) to the Corporate Debtor's account, covering all alleged transactions, and the Corporate Debtor still owes approximately Rs. 1.05 crore to Respondent No. 1.

47. It is submitted that the allegation that Respondent No. 1 is a related party is baseless and does not fall within Section 5(24) of the IBC. The application is not filed with a bona fide intention and has been made without proper verification of facts. Without prejudice, if this Tribunal directs the return of assets, Respondent No. 1 will do so upon receipt of the sale consideration from the Corporate Debtor.

IV. Counter Filed On Behalf Of The Respondent No. 5

48. The Respondent No. 5 denies all the allegations and averments made by the Applicant in the present Application as the same are false and baseless, except those which are specifically admitted hereinafter.

49. At the outset, all the material allegations made in the Application are denied except so far as they are specifically admitted hereinafter, and the Applicant is put to strict proof of all the allegations that are not admitted. No part of the Application shall be deemed to have been admitted merely because the same has not been specifically controverted hereunder. There are no merits in the

Application and, as such, the same is liable to be dismissed against Respondent No. 5 in limine.

50. It is submitted that the present IA has been filed by the Applicant, i.e., the Liquidator, under Sections 43, 45, 49, and 66 of the IBC against Respondent No. 5, alleging preferential, undervalued, and fraudulent and wrongful transactions on false and baseless grounds, without any iota of truth or evidence on record. Respondent No. 5 has been made a party in a stereotyped and mechanical manner without looking into the records, just to harass Respondent No. 5.

51. It is submitted that the answering Respondent No. 5 had, and still has, no knowledge or information about the alleged transactions, being totally unaware of the same, and would like to submit the true and correct facts to this Tribunal as follows:

52. It is submitted that Respondent No. 5 was an Independent Non-Executive Director for a short period of seven months from the date of her appointment in the Corporate Debtor Company, which is under liquidation.

53. It is submitted that the Applicant filed I.A. No. 224 of 2024 in CP (IB) No. 326/7/HBD/2018 for allegedly preferential, undervalued, and fraudulent transactions against Respondent No. 3 (Managing Director of the Corporate Debtor), Respondent No. 1 (Khaitan India Limited), and R.2 (Auric Engineering Pvt. Ltd.), and added Respondent No. 5 as a party along with others in a stereotyped manner, without considering the tenure of Respondent No. 5 as Director and her role in the Corporate Debtor Company.

54. The answering Respondent No. 5 further submits that she was an Independent and Non-Executive Director in the Corporate Debtor and was appointed as such on 25.04.2018 (Annexure-1).

55. It is submitted that Respondent No. 5 was an Independent Non-Executive Director throughout her tenure of merely seven months from the date of her appointment, before the Company was admitted into Corporate Insolvency Resolution Process on 28.11.2018.

56. It is submitted that Respondent No. 5, being an Independent Non-Executive Director, was never involved or engaged in the day-to-day affairs, supervision, and control of the Corporate Debtor Company and had only information relating to the matters brought before the Board for discussion/approval.

Respondent No. 5 was in no way involved in or aware of any transactions, much less the alleged transactions.

57. It is submitted that Respondent No. 5 attended Board Meetings and Audit Committee meetings, which were primarily held for statutory agenda items, including approval of financial statements and agenda related to the Annual General Meeting. It is stated that none of the alleged transactions in the instant Application were placed before the Board or Audit Committee during her tenure as an Independent Non-Executive Director, and hence Respondent No. 5 had no information in relation to these transactions.

58. It is submitted that the law implies that an Independent Director or Non-Executive Director shall be held liable only in respect of such omission or commission by a company which occurred with her knowledge, attributable through Board processes, and with her consent or connivance, or where she had not acted diligently. It is borne out from the record that Respondent No. 5 is in no way involved, and none of the ingredients of the said provisions are fulfilled in the case of Respondent No. 5.

59. It is submitted that the Hon'ble Supreme Court in the cases of ***SEBI vs. Gaurav Varshney*** reported at **(2016) 4 SCC 430**, ***Sunil Bharti Airtel vs. Central Bureau of Investigation*** reported at **(2015) 4 SCC 609**, and ***Municipal Corporation of Delhi vs. Ram Kishan Rohatgi & Ors.*** reported at **(1983) 1 SCC 1**, has held that a Non-Executive or Independent Director shall not be held liable if the alleged violation has been committed by the company without her knowledge, consent, connivance, or negligence.

60. It is submitted that Respondent No. 5, erstwhile Director of M/s Khaitan Electrical Limited, was a Non-Executive Independent Director and was not at all involved in the day-to-day affairs, control, and supervision of the Company under liquidation. Further, Respondent No. 5 herein is not aware of any such transactions and has no role in the said transactions in any manner whatsoever. It is specifically stated that none of the alleged transactions in the instant Application were brought before the Board or Audit Committee during her tenure, and Respondent No. 5 had no information in relation to these transactions. Further, Respondent No. 5 had no pecuniary or other interest in these alleged transactions.

61. It is further submitted that at the time of the Corporate Debtor being admitted into CIRP, or at any time before that, Respondent No. 5 was not a director in Respondent No. 1. Respondent No. 5 became a director in Respondent No. 1 only from 31st July 2020, that too as an Independent and Non-Executive Director, and her appointment was confirmed by the shareholders at the Annual General Meeting held on 30th September 2020, as mandated under the Companies Act, 2013 to have at least one woman director on the Board of the Company. It is again reiterated that Respondent No. 5 is an Independent Non-Executive Director on the Board of Respondent No. 1 and is not involved in the day-to-day affairs, control, or supervision of Respondent No. 1, and is in no way related to the alleged transactions.

62. It is submitted that the Applicant, without any reason and without considering the facts and merits, has made the answering Respondent No. 5 a party in the said Application. Therefore, any financial or other allegation against Respondent No. 5 is totally unjustified, unlawful, and against the principles of natural justice.

V. Rejoinder On Behalf Of The Applicant/Liquidator To The Reply Filed By Respondent No. 3

63. It is submitted that, upon commencement of liquidation of the CD, the Liquidator is duly empowered under the IBC, to initiate proceedings on behalf of the CD, including those under Sections 43, 45, 49, and 66. The objection regarding limitation is misplaced, as the transactions in question fall within the statutory look-back period. Furthermore, allegations of fraud are not barred by limitation.

64. It is further denied that the transactions were undertaken in the ordinary course of business/at arm's length, as the transfer of vehicles, machinery, and other assets without adequate or any undervalued consideration is irregular and outside the normal business activities of the Corporate Debtor. Moreover, the plea that no consideration was received is unrebutted by any documentary evidence from the Respondents. The assertion that the Respondents derived no benefit is also denied, as the transactions resulted in depletion of the Corporate Debtor's assets without corresponding value.

65. The objections to the TAR are baseless, and the report is neither erroneous nor unilateral, and has been duly considered by the Applicant (who formed an independent opinion) prior to filing the present Application.

66. The contention regarding Regulation 35A is misplaced, as the Application is within time and, in any event, the said regulation is directory and pertains to CIRP, whereas the Corporate Debtor is presently in liquidation. The claim that the Respondents are not related parties is also denied, as is the allegation that the Application is not bona fide.

VI. Rejoinder On Behalf of The Applicant/Liquidator to The Reply Filed by Respondent No. 5

67. It is specifically denied that Respondent No. 5 lacked knowledge of the transactions in question. It is immaterial that she acted as Director for a limited period, as she admittedly held office during the relevant time when the impugned transactions were undertaken.

68. Respondent No. 5 has herself admitted in paragraph 7 of her Reply that she was appointed as an Independent Non-Executive Director on 25.04.2018. The transactions in question were executed during her tenure. As an Independent Director, Respondent No. 5 was under a statutory obligation to exercise due diligence, oversight, and independent judgment. The role is fiduciary in nature and not merely ornamental.

69. Under Section 149(6) of the Companies Act, 2013 read with Schedule IV, an Independent Director is required to:

    a. safeguard the interests of stakeholders,

    b. ensure that management acts in good faith,

    c. identify and report unethical or improper conduct.

70. Respondent No. 5 owed a duty of vigilance and cannot now disclaim responsibility. It is denied that such transactions could have been executed without her knowledge, consent, or concurrence. Her plea of non-involvement is untenable.

71. The reliance placed on Section 149(12) of the Companies Act, 2013 is misconceived. The protection under the said provision is not absolute and

does not extend to cases where an Independent Director has failed to act diligently.

72. The reliance on the judgments in:

    a. SEBI v. Gaurav Varshney (2016) 4 SCC 430

    b. Sunil Bharti Mittal v. CBI (2015) 4 SCC 609

    c. Municipal Corporation of Delhi v. Ram Kishan Rohatgi (1983) 1 SCC 1,

    is misplaced, as these pertain to criminal liability and vicarious liability, and are not applicable to proceedings under the Insolvency and Bankruptcy Code, which examine fiduciary duties and oversight responsibilities.

73. It is denied that Respondent No. 5 ought not to have been impleaded. It is further denied that she had no role, knowledge, or involvement in the affairs or transactions of the Corporate Debtor.

VII. Findings:

74. The present application has been filed by the Liquidator of the Corporate under Sections 43, 45, 49, and 66 of IBC, seeking avoidance of certain preferential, undervalued, and fraudulent transactions allegedly entered into by the Corporate Debtor with Respondent No. 1 and R.2 and consequential relief against the erstwhile Directors of the Corporate Debtor, namely Respondent Nos. 3, 4, and 5.

75. A petition bearing CP (IB) No. 326/7/HDB/2018 was filed on 17.07.2018 by Bank of India under Section 7 of the IBC for initiation of CIRP against the CD. The said petition was admitted by this Tribunal vide order dated 28.11.2018, and the Applicant was appointed as the Interim Resolution Professional.

76. As no resolution plan was received, the Committee of Creditors, in its 5th meeting, recommended liquidation of the Corporate Debtor. Accordingly, this Tribunal, vide order dated 23.08.2019, ordered liquidation of the Corporate Debtor under Section 33 of the IBC and appointed the Applicant as the Liquidator.

77. Further, during the CIRP, a transaction and forensic audit of the accounts of the Corporate Debtor was conducted by M/s. M.C. Bhandari & Co., and the TAR revealed that the Corporate Debtor had entered into several transactions with Respondent No. 1, averred as a related party, and with R.2, which were allegedly preferential, undervalued and fraudulent. Based on the TAR, the Applicant filed I.A. No. 43 of 2020 on 27.11.2019.

78. I.A. No. 43/2020 was dismissed by this Tribunal with liberty granted to the Applicant to file a fresh application with appropriate parties. Pursuant to such liberty, the present I.A. No. 224 of 2024 has been filed, impleading additional respondents. **Respondent No. 4 has been set *ex-parte***.

79. Before dealing with impugned transactions, we deem it appropriate to determine regarding the maintainability issues raised by the respondents.

a. Issue 1: Whether the present application having been filed in the name of the Liquidator, is maintainable.

80. Respondent No. 3 contends that the application is not maintainable as it has been filed in the personal name of the Liquidator rather than in the name of the Company in Liquidation. This contention is without merit and is rejected for the following reasons.

81. Section 35(1) of the IBC delineates the functions and duties of the Liquidator. More significantly, Sections 43(1), 45(1), 49(1) and 66(3) of the IBC each expressly contemplate an application being made by 'the liquidator.' The provisions thus directly authorize the Liquidator, to initiate avoidance proceedings. The Liquidator acts in a representative capacity on behalf of the Corporate Debtor and its stakeholders, and all such applications are, in substance, filed on behalf of the Corporate Debtor.

b. Issue 2: Whether the compliance with Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is mandatory or directory?

82. In order to understand the nature of Regulation 35A of IBBI (CIRP) Regulations, we rely upon the judgment of the Hon'ble Supreme Court in

(2017) 16 SCC 143 in "Surendra Trading Company vs Juggilal Kamlapat Jute Mills Company Limited and Ors", wherein the Tribunal has held that timeline prescribed in Regulation 35-A of CIRP is directory and not mandatory.

83. The relevant extract is reproduced as follows:

> *"11. Questions I & II*
>
> ***** ***** *****
>
> *…….. One of the objective of the Code is to maximize the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of the Resolution Process, reach of the Court and shall cause great inconvenience and injustice to Corporate Debtor. Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations. There may be genuine and valid reasons for Resolution Professional not to file application for avoiding the transactions within time prescribed which are question relating to each case and has to be examined on case to case basis and if there are reasons due to which Resolution Professional could not file the Application within time the same has to be examined on merit."*

84. Given the above facts, and also the law laid down by the Hon'ble Supreme Court, we hold that Regulation 35-A is directory and in the present case the application filed by the Resolution Professional cannot be rejected only on the ground of delay in filing beyond 135 days of admission.

85. Accordingly, the objections raised by the Respondents on the grounds of maintainability and delay are devoid of merit and are hereby rejected. The application is held to be maintainable and shall be examined on its merits in accordance with law. We now proceed to examine the transactions impugned in the application.

c. ***Issue 3: Transactions with Respondent No. 1 (Motor Cars & Computer Hardware)***

86. The applicant has sought the avoidance of a transaction dated 21.10.2018, whereby five motor cars, alongside specified computer hardware and a printer,

were transferred by the Corporate Debtor in favour of R.1. The Applicant has alleged that the aforesaid transactions fall within the ambit of Sections 43 (Preferential Transactions), 45 (Undervalued Transactions), and 49 (Transactions Defrauding Creditors) and 66 (Fraudulent Transactions), of the Insolvency and Bankruptcy Code, 2016.

87. At the outset, the allegation of a preferential transaction under Section 43 is considered. For a transaction to fall within the ambit of Section 43(2), it must be established that: (i) there was a transfer for the benefit of a creditor; (ii) such transfer was in respect of an antecedent debt; and (iii) it had the effect of placing such creditor in a more beneficial position than it would have been in the event of liquidation. These conditions are cumulative.

88. It is noted that, the averment in the application of the RP that "there must have been dues" owed by the Corporate Debtor to Respondent No. 1 is a mere assumption and nothing has been placed on record by the RP to even proven that there exists an antecedent debt, which is a sine qua non for invoking Section 43(2) of the Insolvency and Bankruptcy Code, 2016. In the absence of an identified pre-existing liability, the concept of a "preferential transaction" is unsustainable.

89. Even otherwise, there is no material to demonstrate that the impugned transaction resulted in Respondent No. 1 being placed in a more beneficial position vis-à-vis other creditors, as required under Section 43(2)(b). The reliance on the timing of the transaction, on the ground that it falls within the look-back period under Sections 43(4)(a) and 46(1), is misplaced. Mere proximity to the initiation of CIRP is insufficient in the absence of satisfaction of the substantive requirements under Section 43(2). Accordingly, the case of a preferential transaction is not made out.

90. Furthermore, in regard to the allegation of the undervalued nature of the transaction, the Applicant had relied upon entries in the statutory books of the Corporate Debtor to contend that the aggregate book value of the assets was Rs. 17,07,415/-. However, we observed that the material on record, including documents produced by Respondent No. 3, establishes that Respondent No. 1 paid a total consideration of Rs. 17,11,800/- to the Corporate Debtor. These payments are duly substantiated through banking channels for the period from 23.10.2018 to 16.11.2018.

91. At this juncture, we find it appropriate to rely on the Section 45(2) of the Insolvency and Bankruptcy Code, 2016, wherein it provides that a transaction shall be considered undervalued where the Corporate Debtor—

    (a) makes a gift to a person; or

    (b) 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 than the value of the consideration provided by the Corporate Debtor, and such transaction is not in the ordinary course of business of the Corporate Debtor.

92. In the present case, we have examined the material on record in light of the above statutory requirements, and observed that the Applicant has primarily relied upon the transaction audit report to allege undervaluation. However, no material has been placed on record to show that the Corporate Debtor either made a gift or transferred assets for a consideration significantly of lesser value. In particular, no contemporaneous valuation or other cogent evidence has been produced to establish the value of the assets at the relevant time.

93. In the absence of such evidence, the essential ingredients of Section 45(2) are not satisfied. Accordingly, we are unable to hold that the impugned transactions are undervalued, and the allegation is rejected.

94. Additionally, the allegation that Respondent No. 1 is a related party is also denied for want of compliance with the specific requirements of Section 5(24) of the Code. The reliance on a father-son relationship between an individual associated with the Corporate Debtor and a director of Respondent No. 1, as well as the presence of a single common director, does not satisfy any of the statutory thresholds relating to shareholding, control, or management. In the absence of such relevant facts, the look-back period applicable to related parties cannot be invoked.

95. It is noted that, the sweeping allegations of undervalued transactions and transactions defrauding creditors have been made by the RP, without satisfying the statutory ingredients of Sections 45 or 66 of the Code, and are liable to be rejected on this ground alone.

96. Furthermore, we now deal with the prayers for the avoidance of transactions involving Receivables (Rs. 75.19 Lakhs), Plant & Machinery (Rs. 2.32 Lakhs), a Tempo Traveller (Rs. 54,687/-), and various technical equipment including

Dies, Jigs, and Fixtures, along with allegations that the assets were undervalued.

97. Upon a review of the documents on record, we observed that the applicant has just filed this application based on a transaction and forensic audit report and has not gone into the details of the transactions. We take note that apart from these audit reports, no other relevant material was brought on record by the Applicant to support the allegations raised against the Respondents in the present case. By the operation of law, when the Applicant was appointed as the Resolution Professional of the Corporate Debtor, the Applicant was in control of all the records of the Corporate Debtor from the date of admission of the Corporate Debtor into CIRP but we found that he did not make any effort to go through these records.

98. In this regard, reliance may be placed on the decision in ***Nitesh Kumar More, RP of* SPS *Steels Ltd. v. SPS Steels Ltd.*, (2022) ibclaw.in 322 NCLT**, wherein the Adjudicating Authority, while placing reliance on **Allahabad Bank v. SPS Steels Rolling Mills Limited (Order dated 26.02.2020)**, observed as follows:

> *"Paragraph 11 – We further consider it pertinent to observe that the assistance of expert agencies can be taken for determination of preferential, invalid or fraudulent transactions, but, in spite of that, independent opinion of Resolution Professional / Liquidator remains a must, meaning thereby, irrespective of the exercise done by the expert agency, the Resolution Professional should independently form a belief / opinion that such transactions, in fact, existed which require appropriate order from this Authority.*
>
> *Paragraph 14 – Now, coming to the facts of the case, it is noted that no material of whatsoever nature has been brought on record which can establish the fact of formation of opinion by the Resolution Professional as regards the Corporate Debtor being subjected to such transactions. Thus, provisions of Section 43 of the IBC, 2016 read with Regulation 35A of IBBI (CIRP) Regulations, 2016 stand non- complied and violated. Further, even in the application, this aspect has not been covered and in our considered view, reliefs sought by way of prayers do not amount to formation of opinion. Thus, merely on this basis, the application filed by the Resolution Professional is liable to be rejected"."*

99. Accordingly, in the absence of supporting material and independent analysis, we find no basis to hold that the transactions in question are undervalued or otherwise avoidable.

100. We now proceed to examine the transactions with R.2. The Applicant relied on an accounting entry in the Corporate Debtor's books dated 31.12.2018 showing transfer of plant and machinery to R.2 for Rs. 28,11,940/-, which, if accepted as the transaction date, would fall during the CIRP period (after admission on 28.11.2018). R.2, on the other hand, contends that the transaction was completed in 2017 and the accounting entry of 2018 was merely a delayed bookkeeping entry.

101. The documents filed by R.2 in support of its case are:

(a) Correspondence dated 30.04.2017 and 15.05.2017 exchanged between the Corporate Debtor and R.2, evidencing negotiations regarding the sale of plant and machinery in settlement of outstanding dues;

(b) Minutes of Meeting dated 03.10.2017 recording the agreement between the parties on a price of Rs. 23,95,000/- (inclusive of taxes) for the machinery, subject to specific adjustments including credit notes, tool development charges, and interest on delayed payments;

(c) A challan book maintained by the Corporate Debtor showing that the machinery was physically lifted from the Corporate Debtor's factory premises between 23.05.2017 and 18.09.2017.

102. The Applicant has not placed on record any document emanating from the Corporate Debtor, such as a tax invoice, delivery challan, or contemporaneous correspondence to establish that any transaction with R.2 took place in December 2018. The only evidence from the Applicant's side is the unilateral accounting entry in the Corporate Debtor's books. R.2 has filed documents illustrating the negotiations from April 2017, an agreed price in October 2017, and physical delivery completed by September 2017.

103. This Tribunal further notes an important and unrebutted fact placed on record by R.2: the Corporate Debtor's factory was reportedly under lock and key from approximately March–April 2018 due to protests by employees and workers, and security guards were placed around the premises from approximately July 2018. In these circumstances, the physical delivery of heavy plant and machinery from the Corporate Debtor's factory premises in

December 2018, i.e., after the admission when the Applicant was already in control as IRP is implausible. This fact further corroborates the R.2's version that physical delivery was completed in 2017.

104. The discrepancy between the agreed price of Rs. 23.95 lakhs (as per the Minutes of Meeting) and the accounting entry of Rs. 28.11 lakhs in the Corporate Debtor's books have been explained by R.2 as a clerical or transcription error made by the Corporate Debtor during a reversal entry. While this explanation is not ideal for want of fuller documentation, in the overall context where: (i) the agreed price is documented in the contemporaneous MoM; (ii) there is no CD-side tax invoice to establish Rs. 28.11 lakhs as the agreed consideration; and (iii) the physical delivery predates the accounting entry by well over a year, this Tribunal accepts that the accounting entry of Rs. 28.11 lakhs do not correctly represent the date or value of the transaction.

105. Having held that the transaction between the Corporate Debtor and R.2 was substantially completed in 2017 (agreement by October 2017; delivery between May and September 2017), it is necessary to examine whether this transaction falls within the look-back period under the IBC.

106. As R.2 is not a related party of the Corporate Debtor, the applicable look-back period is one year preceding the insolvency commencement date, i.e., from 28.11.2017 to 28.11.2018. In the present case, the machinery was delivered in September 2017 and the consideration was agreed in October 2017, both of which are prior to 28.11.2017. Therefore, even if the date of the transaction is taken as October 2017, it falls outside the look-back period, and the transaction cannot be examined under the relevant avoidance provisions.

107. Regarding the applicability of Section 49, fraudulent intent at the time of the transaction must be demonstrated. The transaction with R.2 was: (i) a genuine settlement of admitted and documented dues payable by the Corporate Debtor to R.2; (ii) the subject of extended arms-length negotiations in which R.2 contested the valuation; (iii) between parties who had a commercial relationship of over four decades (since 1978); (iv) documented through contemporaneous correspondence, minutes of meeting, and physical delivery challans. There is no credible inference of an intent to defraud creditors.

108. For all the foregoing reasons, the application against Respondent No. 2 is dismissed. The transaction between the Corporate Debtor and Respondent No. 2 was completed in 2017, outside the relevant look-back period, for genuine consideration, and without any fraudulent intent.

109. Therefore, the application filed by the Applicant/Liquidator is dismissed.

Sd/-

Sanjay Puri
Member (Technical

Sd/-

Rajeev Bhardwaj
Member (Judicial)