THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 5256 OF 2024

Section 43 and Section 66 of the Insolvency and Bankruptcy Code, 2016

Mr. Hasti Mal Kachhara
(Resolution Professional of Nagraj Alloys Private Limited)

...**Applicant**

V/s

Niraj Mangal Meshram & Ors.

…**Respondent**

In the matter of
COMPANY PETITION (IB) NO. 89 OF 2022

Nagraj Alloys Private Limited

…Petitioner/Corporate Debtor

Order delivered on: 07.05.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

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MUMBAI BENCH-I

IA 5256 OF 2024
IN
COMPANY PETITION (IB) NO. 89 OF 2022

Appearances:

For the Applicant	:	Mr. Yahya Batatawala a/w Adv. Khyati
For the Respondent	:	Mr. Jatin Kumar

ORDER

1. This Application IA 5256/2024 has been filed by Mr. Hasti Mal Kachhara ("Applicant/RP"), the Resolution Professional in the Corporate Insolvency Resolution Process ("CIRP") of Nagraj Alloys Private Limited ("Corporate Debtor") under Section 43, and 66 of the Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:-

   A. *To allow the present Interlocutory Application;*

   B. *To declare the transaction as mentioned in Para 7(A) as Preferential Transaction under Section 43 of the IBC, 2016;*

   C. *To direct the Respondent Nos. 4 and 5 to repay the amount of Rs. 4,97,180/- back to the Corporate Debtor;*

   D. *To declare the transaction as mentioned in Para 7(B) as Fraudulent Transaction under Section 66 of the IBC, 2016*

   E. *To direct the Respondent Nos. 1 to 3 to pay an amount of Rs. 10,83,69,000/- to the Corporate Debtor;*

   F. *To pass such other Order or Orders as this Hon'ble Tribunal shall deem fit and expedient.*

2. The Applicant is a Resolution Professional of the Corporate Debtor appointed vide order dated 11.03.2024 passed by this

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Tribunal in place of Interim Resolution Professional, Mr. Prasad Kamalakar Dharap appointed while admitting the Corporate Debtor into CIRP. Respondent Nos. 1, Mr. Niraj Mangal Meshram (appointed on 30.09.16 and continuing till date), and 2, Mr. Pravin Bajirao Gujar (appointed on 30.09.16 and continuing till date), are the Suspended Directors of the Corporate Debtor. Respondent No. 3, Prakash Bajirao Waghdhare (appointed on 11.11.11 and continued till 28.01.2022), is the past Director and promoter of the Corporate Debtor. Respondent Nos. 4 and 5 i.e. Rohini Metals Industries and Rohini Steel Traders respectively are stated to be the related party debtors who are alleged to be paid in preference to Financial Creditors.

3. This Tribunal admitted the Corporate Debtor in CIRP process vide order dated 02.01.2024 ("Insolvency Commencement Date") appointing Interim Resolution professional ("IRP") to carry out the functions as per the provisions of the Code and thereafter in the 1st Meeting of CoC convened on 31.01.2024, wherein the CoC decided to appoint the Applicant herein as the RP of the Corporate Debtor in place of the IRP, which was allowed by this Tribunal vide Order dated 11.03.2024.

4. The CoC, in its Meeting held on 01/04/2024, confirmed the appointment of M/s. Khanzode & Shenwai, Chartered Accountants to carry out Transaction Audit of the Corporate Debtor in terms of the provisions of IBC, 2016, accordingly, the Applicant engaged them vide appointment letter dated 12/04/2024 detailing the scope of work. It is stated that the Transaction Auditor has conducted transaction audit being limited to 1 Year for Transactions with Unrelated Party from the

insolvency commencement date and limited to 2 years from the insolvency commencement date for Transactions with Related parties, and, the Applicant had extended the scope for lookout of fraudulent transaction, for 10 years i.e., from 02.01.2014 to 01.01.2024.

5. On the basis of the all records, documents, information, data, etc. to the Transaction Auditor provided by the Applicant time and again, M/s. Khanzode Shenwai, Chartered Accountants, Transaction Auditor has provided his Transaction Audit Report dated 12.08.2024 to the Applicant.

6. The Transaction Auditor in the said Report has identified one (1) Preferential Transaction under Section 43 and one (1) Fraudulent Transaction under Section 66 of the IBC, 2016, which are described briefly below :

   a. cash payment of Rs. 4,97,180/- made Respondent No. 4 & 5, being related parties in preference over financial creditors attracts Section 43 of the IBC, 2016, out of cash in hand available with the corporate debtor amounting to Rs. Rs.9,34,452/- as on 31 .03.2023 and the remaining amount was paid to other creditors leaving a balance of Rs. 8/- handed over to the IRP at commencement of CIRP;

   b. write off of inventories amounting to Rs. 10,83,69,000/- in the FY 2020- 21.

7. The Transactional Auditor is stated to have sought details from the Respondent Nos. 1 and 2 as to how these figures were arrived, however, they were able to provide only oral explanation and did

not have any documentary proof to back their explanation. It is further stated that the *Transaction Auditor, in its Report, has stated that after doing analysis of the soft copy of Tally Data files pertaining to the said period do not reflect proper consumption treatment in Books of Accounts and that they were unable to logically follow the events with respect to these items for want of Quantity data for the years w.e.f F.Y 2017-18 onwards. Further the inventory/closing stock as on 31.03.2021 is also missing*. Accordingly, *the Transaction Auditor in its Report has thus concluded that writing off of Inventory to the tune of Rs. I 083.69 Lakh is a transaction to defraud the creditors under Section 66 of the IBC, 2016*.

8. Respondent No. 1 to 3 have filed common reply stating that the word 'determination' within the scheme and provisions of Regulation 35A, connotes an independent application of mind by the RP qua the avoidance transactions that may have transpired vis-a-vis the corporate debtor, during the relevant period. This can be inferred from the fact that the Regulations do not empower the RP to immediately move this Tribunal, upon forming a prima facie opinion under sub-regulation (1), and in fact, provides for an additional period of 40 days [in terms of sub-regulation (2)] for the RP to make necessary inquiries, and then formulate an independent 'determination' under Regulation 35A(2), only after which this Tribunal can be approached under the relevant provisions of the Code. However, As can be seen from the contents and averments of the application under reply and the documents filed therewith, the RP has not applied their independent mind to the contents of the Transaction Audit

Report. It is further stated that the Respondents, at no point, were permitted to give any explanation or justification, in respect to the allegations made against them in the Report, which, in Respondent's respectful submission, further disabled the RP (or even the COC) to make a 'determination', as stipulated under Regulation 35A. It is further submitted that, in absence of signatures of the Transactional Auditor, on all the pages, and in particular absence of documents referred therein, the credibility of the Report is under tremendous suspicion. It is further submitted that, to prove the transaction to be fraudulent in nature, the degree of proof and evidence should be of unimpeachable nature and a transaction cannot be dubbed as fraudulent, on the basis of inadequate and tentative findings, as recorded in the Transaction Audit Report relied upon by the Applicant. Besides this preliminary objections, the Respondent No. 1 to 3 have also furnished their para-wise explanation.

9. Respondent No. 4 & 5 have filed their common reply taking identical preliminary grounds, as are taken by Respondent No. 1 to 3 in their reply. Further, the Respondent No. 1 to 3 have also furnished their para-wise explanation.

10. Heard the Counsel and perused the material on record.

11. It is trite that the timelines prescribed under Regulation 35A of CIRP Regulations are directory in nature.

12. It is noted that the applicant as well as transaction auditor has stated facts in relation to transactions, which are not disputed by the Respondents, though the respondents have challenged the

conclusions derived from such facts. In the para 3, Part B of the Transaction Audit Report under caption "*Caveats, Limitations & Disclaimers*", it is stated that *we have relied on the information provided by the Resolution Professional and the staff and Promoters of Corporate Debtor and available in the public domain*". It is further stated in the said part that "*We have tried to visit the Factory Office and the Registered Office of CD on 21.07.2024 and earlier as well, however good co-operation was extended to us by the suspended directors of the CD. The matters not disclosed to us might have affected our analysis of the situation and our reports are subject to this limitation.*" It is evident from these statements made in the report, the Respondent No. 1 and 2 had knowledge of the information/data shared with the transaction auditor, forming basis of its findings. Accordingly, the absence of those documents, which otherwise were provided/made available by the Respondent no. 1 & 2, hence no adverse inference in relation to the content of report can be drawn merely because the relied upon documents are appended to the final report. Needless to say, the Respondent No. 1 & 2 could have required the inspection of documents forming basis of findings from the applicant also. Further, the applicant has placed the transaction report as having received from the transaction auditor, and it is applicant who is attesting the authenticity of the said report. Hence, even if each page of such report is not signed, the said report can not be discarded so long as the facts stated therein are not in dispute.

13. It is further noted that the said report at Para 1 Part C states that "*10. The Reply / Comments of Directors of CD vide their telecom discussion on Sunday, 21 July, 2024, and on Thursday, 25 July*

2024, with Shri. Prakash Waghdhare, Ex-Director of the CD, regarding to the draft points of issues raised during our analysis, shared with them on 21 July, 2024, during the visit to Plant of the CD, and on telephone thereafter 11. We have shared a written letter for soliciting the reply from he Promoters 12. Their views on the observations are depicted at appropriate places along with our respective observations. This statement clearly indicates that the suspended board members's comments were sought in relation to the findings, hence, the allegation of they not having been permitted to given explanation or justification is false and devoid of any merit.

Preferential Payment amounting to Rs. 4,97,180/- to Respondent No. 4 & 5 impugned u/s 43 of IBC :

14. The Applicant submits that on evaluation of the Transaction Audit Report, it can be inferred that Respondent Nos. I and 2 have made cash payments to Respondent Nos. 4 and 5 who are related parties of the Corporate Debtor. Also, making such huge cash payments cannot be considered as an ordinary course of business, accordingly, this Tribunal ought to direct Respondent Nos. 4 and 5 to return the cash payment so made to them.

15. Section 43 of IBC is a deeming fiction, and if the conditions stated therein are satisfied, the necessary consequents are to follow. It is noted that the applicant has stated primary facts, which evidence the payments made to Respondent No. 4 to 5 in cash by the corporate debtor out of cash balance available with it during the period of one year. These facts are not disputed by the

Respondent No. 1 & 2 as well as Respondent No. 4 & 5 in so far they relate to them.

16. The transaction auditor has stated at para 5 Part F of the report that The Cash in Hand as of 31.03.2023 of Rs. 9,34,452.00, however Rs. 8.00 was handed over to RP. The Management has shared a list of creditors paid in cash for the records. The Summery of the Cash Payments may be depicted as follows:

Reconcillation of Cash Balance	Amount
Opening Cash balance (As On 01.04.2023)	**934452**
Less : Cash Payment Made during the year	
Aditya Air Products	88800
AL Tamash Enterprlses	37909
National Flying Institute pvt Ltd	24120
Unnati Motors	11793
Jain Acld & Chemicals	26078
Parag Kela & Co	29500
Padmaja Traders	132122
Rohini Metals Industries	**435000**
Rohini Steel Traders	**62180**
Dhawan Dinesh Kawade	21240
Kaushik Industries	60002
Expenses of Postage & Courier	5700
	934444
Closing Balance (As on 02.01.2024)	**8**

17. Respondent No. 1 & 2 have stated that although none of the allegations in the corresponding paragraphs relate to the Answering Respondent, the transaction mentioned in the paragraph have been conducted in the normal course of business of the Corporate Debtor' only two of these transactions pertain to entities that can be considered as related party to the Answering Respondents or the Corporate Debtor; and The fact that payments were also made to other entities that cannot be considered as related party to the Corporate Debtor or the Answering Respondents, further establishes the fact that these

transactions were nothing, but transactions done by the Corporate Debtor in ordinary course of business. It is further stated that the Corporate Debtor has long standing relationships with entities mentioned in the table and the same can be substantiated from the books of accounts of the Corporate Debtor.

18. Respondent No. 4 & 5 have submitted that Respondent No. 4 entity is a Partnership Firm run by the ex-director and majority shareholders of the Corporate Debtor, Shri. Prakash Waghdhare, who has also been arrayed as Respondent No. 3 in the Applicant under reply. Respondent No. 4 and the Corporate Debtor have had regular business transactions between each other since the years, and the said relationship can be reflected by a perusal of the ledger statements since the financial year 2017-18.

19. It is noted from the above that all the cash payments to aforesaid parties took place within the period of one year from the commencement of CIRP, as the corporate debtor is admitted to be carrying a cash balance as on 31.3.2023, which stood reduced to Rs. 8/- consequent upon payments made to aforesaid parties. It is further noted that the applicant has only impugned payments made to Respondent No. 4 & 5, and has not given any reason for not impugning the other payments in terms of section 43 of IBC even though all the payments were made within period of 1 year from commencement of CIRP. Nonetheless, if some of the creditors who were also paid within look back period have been left out by the application in his opinion, the payments made to Respondent No. 4 & 5 can not held to be in ordinary course of business merely on this ground.

20. The Reply of Respondent No. 1 & 2 as well as 4 & 5 makes it clear that the corporate debtor owed certain sums to Respondent No. 4 & 5, and were paid out of cash available with the corporate debtor immediately prior to commencement of CIRP. Thus, there was an antecedent debt and the payment was made to discharge said antecedent debt. The said payment is made within one year of commencement of CIRP, hence, falls within the period prescribed u/s 43(4) of IBC, even if the payees may not be related parties. It is further noted that the date of payments were neither made available by the Respondent No. 1 & 2 to the applicant nor have been asserted by Respondent No. 4 & 5 in their reply and Respondent No. 4 seems to have consciously filed the ledger account of corporate debtor in its books only for the period upto 31.3.2023. These facts clearly indicate that the said payments were to appropriate the cash in hand available with the corporate debtor prior to commencement of CIRP so as to reduce it considerably to avoid handing over of such cash to IRP upon commencement of CIRP. In our considered view, these payments can not said to be made in the ordinary course of business of the corporate debtor. Hence, these payments, having met the ingredients of section 43(1) & 43(2) of IBC and not falling within exception clause contained in section 43(3), we hold that these payments were made to Respondent no. 4 & 5 in preference to the other creditors necessitating a direction to Respondent No. 4 & 5 to pay back these amounts to the corporate debtor within 30 days. Further, such amounts shall carry an interest @ 12% p.a. from the date of this order, if the payments are not made within 30 days, and the amounts paid after 30 days shall first be appropriated towards the interest due on the unpaid amount.

Write off of Inventories worth Rs.* 10,83,69,000/- in the FY 2020- 21 impugned as Fraudulent Transaction *:

21. It is case of the applicant that, on evaluation of the Transaction Audit Report, it can be inferred that Respondent Nos. I to 3 are unable to provide data for the relevant period and have not maintained proper stock record which indicate improper management on their part which resulted in write off of stock/inventory to the tune of Rs. I 0,83,69,000/-, therefore, resulting in fraudulent transaction under Section 66 of the IBC, 2016, hence, this Tribunal ought to declare the said transaction as fraudulent transaction under Section 66 of IBC, 2016.

22. The Transaction Auditor, in its report at Para 1 Part F, has stated that *The CD is engaged melting the Lead and Copper Metal and forming them in saleable Ingots, in particular. The Management has explained that the Stock caught Fire in 2016, and again in 2021, and some Pilferage is not ruled out. All these events have a cumulative effect on the non availability of Stock, which become pressing in the Post Covid-19 Period, when the Operations were very minimal. Hence, the Management has written off the Stock I Inventory to the tune of Rs.1083.69 Lakh. We have sought the details of these figures, which are still awaited, only oral explanation is received. As such, we are unable to conclude on this aspect of accountability. The Non maintenance of Stock Records is a point which indicates improper management or lapse at the side of Management.* It is further stated at Para 2 Part F that "*The CD is engaged in providing the Scrap Trading and Manufacturing facility and has been maintaining Stocks till FY 16-17, and thereafter, no record is available for comparison*".

23. It is submitted by the Respondent No. 1 & 2 that a fire occurred on May 10, 2016, around 12:30 AM at the factory of corporate debtor, and claim was lodged with the insurer, namely Bharti AXA General Insurance reporting the details of loss/damaged property, however, the said claim was rejected by the insurer and the corporate debtor and a complaint is pending before National Consumer Disputes Redressal Commission, New Delhi in respect of rejection of claim, the particulars of which have been given to the applicant.

24. It is noted from the claim form placed on record by the Respondent No. 1 & 2 that the loss to 'Structural Steel, Raw-material, Plastic Container, Coal, Furnace Oil, Bhatti & Installations" was reported as loss/damage to the property. It is further noted from the summary of Balance Sheet & Profit & Loss account given by the transaction auditor in its report that the corporate debtor had not accounted for any write off of inventory or fixed assets in the profit & loss account for the year ended 31.3.2017 as 'exceptional items', and is reported to be carrying an inventory of Rs. 293 lakhs. Even if it is assumed that there was such write-off, which forms part of the material consumed/change in inventories and depreciation debited to the profit & loss account during the relevant year, the inventory of Rs. 293 lakhs would have been derived after accounting of loss of inventory in the fire, if any, and the corporate debtor was carrying inventory of Rs. 1159.65 lacs as on 31.3.2020 as per audited financial statements, which already would have stood adjusted after taking into consideration the loss on account of

fire of 2016, if any. Hence, there is no merit in the explanation in relation to write off in the inventory on ground of fire in 2016.

25. It is further submitted by Respondent No. 1 & 2 that the documents pertaining to the fire incident that took place in the year 2021 are not in the custody of the Answering Respondents and were present at the registered office of the Corporate Debtor when the Applicant took custody of the said premises, however, the submission of the corporate debtor in this relation was also recorded by this Tribunal in the order dated 2.1.2024 admitting the corporate debtor into CIRP as "*The Corporate Applicant submits that due to a fire accident at the registered office of the Corporate Applicant, the Corporate Applicant suffered huge losses since the batteries used for recycling caught fire and were burnt down to ashes. The insurance claim filed by the Corporate Applicant was also rejected, which eventually resulted in closing the factory of the Corporate Applicant*".

26. The Respondent No. 1 to 3 filed an additional affidavit of December, 2025 enclosing a discharge order dated 21.7.2020 issued by the insurer in respect of second fire and stating that a perusal of the discharge voucher, which has been issued by the Insurance company, would demonstrate that the said fire took place on 10.09.2019, and the said voucher also mentions that, the Insurance company in full and final settlement of the claims towards the said incident has approved to release an amount of Rs. 5,53,108/- (Rs. Five lakh fifty-three thousand, one hundred eight only).

27. As is evident from the additional affidavit that the second fire occurred on 10.9.2019, thus the loss of inventory would have already been accounted for in the financial statement for the year ended on 31.3.2020, which shows an inventory of Rs. 11,59,65,250/- as on 31.3.2020. It is noted that the afore-stated insurance claim receipt is accounted as other income in the audited financial statement for the year ended 31.3.2021, however, no loss arising on account of fire taken place in the year 2019-20 was accounted for in that year. The impugned write off has taken place in the financial statements for the year ended 31.3.2021 indirectly by reducing the closing stock of inventory as on 31.3.2021 by such amount of write off resulting into corresponding increase in the 'change in inventories' amount debited to the profit & loss account.

28. It is noted that, in relation to this transaction, the applicant herein has finally stated in the application that, *on evaluation of the Transaction Audit Report, it can be inferred that Respondent Nos.1 to 3 are unable to provide data for the relevant period and have not maintained proper stock record which indicate improper management on their part which resulted in write off of stock/inventory to the tune of Rs.10,83,69,000/-. Therefore, resulting in fraudulent transaction under Section 66 of the IBC, 2016.* It shows that the foundation of allegation of fraud is non provision of data for the relevant period and non-maintenance of stock records, which is also evident from observation of transaction auditor, wherein it has been observed that the quantitative data was not available in the form 3CD (a report filed under Income Tax Act, 1961 by the corporate debtor) from

financial year 2017-18 indicating conscious withholding of quantitative particulars of inventory by the corporate debtor from disclosing even in form 3CD, which is otherwise required to be disclosed therein under Income Tax Act, 1961. It follows therefrom that the corporate debtor was not maintaining quantitative records of its inventory from FY 2017-18, though it carried inventory of Rs. 819 lacs, Rs. 1077 lacs, and Rs. 1160 lacs as on 31.3.2018, 31.3.2019 and 31.3.2020, while its revenue from operations started declining from FY 2017-18 i.e. Rs. 3393 lacs, Rs. 2265 lacs and Rs. 1365 lacs in the year ended on 31.3.2018, 31.3.2019 and 31.3.2020. These trend demonstrate that major part of the inventory written off claiming it to be lost in fire was not in existence, as the corporate debtor, despite having inventory of Rs. 2265 lacs as on 31.3.2019, purchased further raw-material amounting to Rs. 13,26,05,139/- during the financial year 20119-20 for earning revenue from operations amounting to Rs. 1365 lacs. This is also reflected in slight increase in the inventory as on 31.3.2020 as compared to 31.3.2019.

29. Further, perusal of ratio of revenue from operations to material costs for the FY 2017-18 to FY 2019-20 also indicates that the loss of inventory, if any, arising on 2019 fire is already factored in the 'Change in Inventories', as the fall in such ratio confirms the fact in the below table.

Particulars	2017-18	2018-19	2019-20

Revenue from operations (A)	3391	2265	1374
Cost of Materials Cons. (B)	3326	1627	1390
Changes in Inventories (C)	-393	420	-83
Total (B+C) D	2933	2047	1307
Ratio – (A-D)/A	13.51	9.63	4.88

30. These facts leads to a conclusion, which appears to more probable than not, that the inventory so written off was in fact non-existent, and to remove the same from books of accounts, the management considered it appropriate to write it off in financial year 2020-21 as they had alibi of loss on fire in view of receipt of small claim from fire insurance. In any case, the claim of Rs. 5,53,108/- can not justify that there loss of inventory worth about 10 crores in such fire.

31. In view of the aforesaid, we are of considered view that the write off of inventory in FY 2020-21 is a fraudulent act to conceal the non-existence inventory, which may have already been sold. This fact assumes importance as the CIRP commenced on an application filed by the corporate debtor u/s 10 of IBC on

26.8.2021, and the audited financial statements for the year ended on 31.3.2021, in which such write off took place, were signed on 26.06.2021.

32. This constitutes an act carried out with an intent to defraud the creditors so that the corporate debtor is not made to hand over the inventory claimed in the books in case insolvency process commences and squarely falls within section 66(1) of IBC. Since, the Respondent No. 3 was also director of the corporate debtor during the relevant time of write off and accumulation of inventory, he is also liable for the same. Hence, Respondent No. 1 to 3 are directed to contribute to the assets of corporate debtor a sum of Rs. 10,83,69,000/- within 30 days of this order. Further, such amounts shall carry an interest @ 12% p.a. from the date of this order, if the payments are not made within 30 days, and the amounts paid after 30 days shall first be appropriated towards the interest due on the unpaid amount.

33. In terms of above, IA 5256 of 2024 is allowed and disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)