IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA (IBC)/141/KOB/2025
IN
CP(IBC)/10/KOB/2024

(Under Section 45 of the Insolvency and Bankruptcy Code, 2016, read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and Rule 11 of the NCLT Rules, 2016)

Date of Institution:21.04.2025
Order delivered on:08.05.2026

In the matter of:

M/s Pelican Biotech And Chemicals Labs Pvt. Ltd.

MEMO OF PARTIES:

Piyush kisanlal Jani,
Resolution Professional of Pelican
Biotech and Chemicals labs Pvt Ltd
Plot No. 212, 2nd Floor, Pragati Colony,
Near Kalpvraksha Hospital,
Chatrapati Square, Nagpur 440015,
Email: ip.pelicanbiotech@gmail.com

...Applicant

-Vs-

Chuzattil Naryanana Manoj
3/117D, S.NO 98/11 A, Vayalar P.O. Cherthala Thaluk, Cherthala, Kerala,
India -688536.

...Respondent 1

Priya Raghavendra Rao
3/117D, S.NO 98/11 A, Vayalar P.O., Cherthala Thaluk, Cherthala, Kerala,
India -688536.

...Respondent 2

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

Appearances:

For the Applicant : Mr. Georgie Johny, Advocate.
For the Respondents : Mr. Akhil Suresh, Advocate.

O R D E R

1. This Application has been filed by the Resolution Professional of Pelican Biotech and Chemicals Labs Pvt Ltd under Section 45 of the Insolvency and Bankruptcy Code, 2016, read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and Rule 11 of the NCLT Rules, 2016, against suspended directors of the Corporate Debtor, Pelican Biotech and Chemicals Labs Private Ltd. The applicant/Resolution Professional has filed this application with the following reliefs: -

    a. *Declare the transactions amounting to INR 5.56 Lakhs as undervalued under Section 45 of the IBC, 2016;*
    b. *Direct the Respondents to compensate the Corporate Debtor for the losses incurred due to such transactions;*
    c. *Pass any such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.*

Brief facts of the case:

2. The Applicant submitted that the Corporate Debtor was admitted into CIRP vide order dated 28.05.2024 in CP(IBC)/10/KOB/2024 by this Adjudicating Authority. A transaction audit report dated 07.03.2025 submitted by Sidharth Gupta & Company, Chartered Accountants, identified undervalued transactions amounting to Rs. 5.56 Lakhs in violation of Section 45 of the Insolvency and Bankruptcy Code, 2016. The report noted that the suspended directors sold goods to the related party, M/s Pelican Kenterra Private Limited, at prices

significantly lower than those charged to third parties, without reasonable justification.

3. It is submitted that the Corporate Debtor sold "COMPOSORB 100 LTR" to its related party, M/s Pelican Kenterra Private Limited, at Rs. 300/- per unit, whereas the same product was sold to third parties at Rs. 862/- per unit, thereby affecting the transfer of assets at a grossly undervalued price. The said transactions conferred an undue benefit upon the related party to the detriment of the creditors of the Corporate Debtor, thereby attracting the ingredients for avoidance of preferential transactions under the Insolvency and Bankruptcy Code, 2016.
4. Further, it is submitted that the transactions in question constitute undervalued transactions under Section 45 of the Insolvency and Bankruptcy Code, 2016, having been entered into for consideration significantly below actual value, and were carried out within the look-back period prescribed under Section 46 of the Code. Upon independent examination of the audit report, the Applicant has determined that undervalued transactions amounting to Rs. 5.56 Lakhs were undertaken by the suspended directors, warranting appropriate directions for compensation to the Corporate Debtor.

Reply filed by the Respondents

5. The Respondents submitted that the present Application is not maintainable. The CIRP was commenced on 28.05.2024; a forensic audit was recommended on 24.07.2024, and M/s. Sidharth Gupta & Company was appointed on 05.08.2024. The report dated 07.03.2025 alleged undervalued transactions of Rupees 5.56 lakhs. Under Regulation 35A, the Applicant was required to act by 11.08.2024 (75th day), 20.09.2024 (115th day), and file by 10.10.2024 (135th day). The

application filed on 23.03.2025, with a delay of 164 days and without seeking condonation under Section 5 of the Limitation Act, is barred by limitation.

6. Respondents further submitted that the alleged transaction with M/s. Pelican Kenterra Private Limited was in the ordinary course of business. Further, declaratory relief under Prayer (a) is impermissible under Section 45 read with Section 48 of the Insolvency and Bankruptcy Code, 2016, and Prayer (b) does not lie against the present Respondents. The application does not meet the threshold under Section 45 of the Insolvency and Bankruptcy Code, 2016, as there is no clear evidence that the transactions were either undervalued or intended to defraud creditors. The Applicant has merely reiterated the Forensic Audit report without independent application of mind.
7. It is submitted that all transactions, including those with Kenterra and Esav, were at arm's length and in the ordinary course of business. The allegation regarding the undervaluation of Composorb is misconceived. The patent was applied for on 31.10.2011 in the personal names of the suspended directors, Mr. C.N. Manoj and Ms. Priya, prior to any funding from BIRAC or other agencies. The research and patent filing were undertaken independently without the use of BIRAC or institutional funds; hence, allegations of diversion or misappropriation are untenable. The suspended directors, despite holding the patent title, voluntarily transferred beneficial use and royalties to the Corporate Debtor, granting 25% equity, 5% royalty, and rights to manufacture Composorb with a 50% gross margin, creating a stable revenue stream.
8. It is further submitted that, additionally, the Corporate Debtor received enhanced royalties linked to service revenues, including ancillary services like maintenance, watering, and branding for projects using Composorb, thereby legitimately augmenting its income beyond direct product sales.
9. They further stated that the royalty disbursement to the Corporate Debtor ensured the Corporate Debtor earned continuous income from Composorb, both

from product sales and value-added services, all transparently recorded and at arm's length. The patent was ultimately assigned to M/s Pelican Kenterra Private Limited to foster a start-up environment, attract investment, and scale operations, a strategic, commercially sound decision that does not constitute an undervalued or fraudulent transaction. The Hon'ble Supreme Court in ***R. Dinesh v. Arvind Mills Ltd.*, (2021) 10 SCC 269,** affirms that IP ownership, licensing, and commercialization fall within business judgment when independently executed without diverting public funds.

10. The Composorb patent was assigned to the Corporate Debtor in good faith to generate revenue, granting a 50% gross margin plus 5% royalties on sales and services. Royalty remittances from Kenterra totalled Rs. 2,34,850.57/- on revenues of Rs. 46.97 lakhs, fully recorded and transparently accounted for. This arrangement reflects the intent to benefit the Corporate Debtor and is neither undervalued nor fraudulent under Section 45 of the Insolvency and Bankruptcy Code, 2016. Section 45(2) of the Code requires deliberate intent to defraud creditors for a transaction to be reversed. There is no evidence of malicious intent; the suspended directors acted to generate revenue and sustain the Corporate Debtor, even infusing capital themselves.
11. The petition is liable to be dismissed for non-joinder of a necessary party, M/s Pelican Kenterra Private Limited, the alleged counterparty and beneficiary of the impugned transactions. An application under Section 45 of the Insolvency and Bankruptcy Code, 2016, is not maintainable without impleading the beneficiary, as no effective order can be passed in its absence. The Corporate Debtor and Kenterra are distinct entities, and the suspended directors cannot be held liable for the latter. The Corporate Debtor reserves its right to file further counter-affidavits, if directed.

Written Submissions of the Respondents

12. The Respondents further submitted that a significant circumstance undermining the Applicant's case is that the Resolution Professional, while running the Corporate Debtor as a going concern, has continued the very same transactions with Pelican Kenterra at the same pricing now alleged to be undervalued. Such conduct renders the application internally inconsistent, as the Resolution Professional cannot simultaneously treat identical transactions as commercially justified in practice while challenging them as undervalued in law. Given that the Resolution Professional is functioning with full control, access to records, and professional advice, the continuation of the same pricing model indicates that the transactions were neither abnormal nor outside the ordinary course of business, thereby materially weakening the basis of the avoidance application.

Objection by the applicant to the new grounds raised in written submissions by the Respondents:-

13. The Applicant submits that the Respondents have introduced entirely new grounds and allegations in their written submissions, which were neither pleaded nor urged during arguments, particularly the contention that the Resolution Professional has continued the same transactions with Pelican Kenterra at the same pricing now challenged as undervalued. It is contended that such an attempt is only to malign the Resolution Professional and divert from the merits of the case, amounting to an abuse of the process of this Tribunal. The Applicant therefore prays that the said submissions be struck off, as their consideration would require reopening of the matter and would cause prejudice.

Reply to the objection raised by the Applicant:-

14. The Respondents opposed the Applicant/Resolution Professional's objection to striking off the said paragraphs, contending that the same is misconceived and

liable to be rejected in limine. It is submitted that said submission does not introduce any new cause of action or extraneous facts, but merely highlights a material circumstance arising from the Applicant's own conduct during the CIRP, namely the continuation of similar transactions with Pelican Kenterra at the same pricing, which directly undermines the allegation of undervaluation. The Respondents submitted that this constitutes a legitimate rebuttal relevant to assessing the credibility, consistency, and bona fides of the Applicant's case under Section 45 of the Insolvency and Bankruptcy Code, 2016.

15. It is further submitted that the Applicant cannot dispute the underlying factual matrix and simultaneously raise a technical objection without addressing the substance of the contention. The Respondents assert that the Applicant's conduct during CIRP is directly relevant to determining whether the impugned transactions were in the ordinary course of business, and reliance is placed on the stock records for the period 01.04.2024 to 31.03.2025, which are stated to be verifiable from the Corporate Debtor's books. The stock item register/stock statement for the period from 01.04.2024 to 31.03.2025, reflecting item-wise stock movements, inward and outward entries, and corresponding transactions with Pelican Kenterra Private Limited during the CIRP period, is produced along with the document and marked as Annexure 1. It is therefore prayed that the objection be rejected, the said paragraphs be taken on record, and Annexure 1 be considered in the interest of justice.

Findings: -

16. This Adjudicating Authority has considered the arguments advanced by the parties, and perused the documents on record, including the written submissions filed by both parties, the transaction audit report, stock registers, and other material placed in support of their respective contentions.

17. The Respondents have raised a preliminary objection with regard to limitation, contending that the present Application has been filed beyond the timelines prescribed under Regulation 35A of the CIRP Regulations and is therefore not maintainable in the absence of an application under Section 5 of the Limitation Act, 1963. Respondents have also raised an objection regarding non-joinder of necessary parties, contending that M/s Pelican Kenterra Private Limited, being the alleged beneficiary of the impugned transactions, ought to have been impleaded in the present proceedings.

18. This Adjudicating Authority places reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal in ***Aditya Kumar Tibrewal (Resolution Professional) v. Om Prakash Pandey & Ors.*, (2022) ibclaw.in 278 NCLAT**, wherein it has been held that the timelines prescribed under Regulation 35A of the CIRP Regulations are directory in nature and not mandatory. This Adjudicating Authority observed that the purpose of Regulation 35A is to ensure timely identification and reporting of avoidance transactions and not to curtail or extinguish substantive rights available under the Insolvency and Bankruptcy Code, 2016.

19. In view of the aforesaid legal position, this Adjudicating Authority is of the considered view that Regulation 35A, though prescribing timelines for the Resolution Professional to form an opinion and take necessary steps in respect of avoidance transactions, is procedural in nature and cannot be construed as mandatory so as to render an application non-maintainable solely on account of delay. Consequently, mere non-adherence to the timelines prescribed under Regulation 35A cannot, by itself, defeat the maintainability of an application under Section 45 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016. Accordingly, the objection raised by the Respondents on the ground of limitation is rejected.

20. The Respondents have further contended that the present Application is liable to be dismissed for non-joinder of necessary parties, on the ground that M/s Pelican Kenterra Private Limited, being the alleged beneficiary of the impugned transactions, has not been impleaded. In support of the said contention, reliance has been placed on the judgment of the Hon'ble NCLAT in SREI Multiple Asset Investment Trust vs. Arcelormittal India Pvt. Ltd. and Ors., wherein reference was made to the judgment of the Hon'ble Supreme Court in Mumbai International Airport Private Limited v. Regency Convention Centre & Hotels Private Limited & Ors. explaining the distinction between a necessary party and a proper party.

21. The relevant extract is reproduced below: "A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit." Applying the aforesaid principles to the facts of the present case, this Adjudicating Authority is of the considered view that M/s Pelican Kenterra Private Limited cannot be treated as a necessary party to the present proceedings. The reliefs sought in the application are primarily directed against the Respondents, being the erstwhile management of the Corporate Debtor, in relation to the alleged undervalued transactions and consequential restoration of value to the Corporate Debtor. No substantive relief has been sought against the said entity, nor is any adjudication proposed directly affecting its independent rights. Therefore, even if the said entity may at best be regarded as a proper party in the factual context of the case, its non-impleadment would not render the present application defective or non-maintainable.

22. The principal allegation pertains to the sale of "COMPOSORB 100 LTR" to the related party M/s Pelican Kenterra Private Limited at allegedly undervalued rates. As per the record, before the commencement of CIRP, the Corporate Debtor had sold the said product to the related party at Rs. 300 per unit. The audit report and Applicant submitted that the same product was sold to third parties at around Rs. 862 per unit, which is relied upon by the Applicant to allege undervaluation.

23. In their written submissions, the Respondents have placed reliance on the continuation of similar transactions during the CIRP period with M/s Pelican Kenterra Private Limited at comparable pricing levels, to contend that the pricing structure was commercially justified and consistent in nature. The Applicant has objected to the said submission contending that it introduces a new factual ground which was neither pleaded nor part of the original record, and therefore ought not to be considered at this stage of the proceedings.

24. This Adjudicating Authority is of the view that, as a general principle, written submissions cannot travel beyond the pleadings so as to introduce new and independent causes of action. However, in the present case, the contention raised by the Respondents does not constitute a new or extraneous factual plea, but is intrinsically connected to the core issue already under consideration, namely, the nature, continuity, and commercial character of transactions with the same related party. The reliance placed on CIRP-period transactions is not a fresh allegation but arises from the same transaction chain and is based on records of the Corporate Debtor, including stock registers and books of account already forming part of the record. Therefore, the same is relevant for the limited purpose of assessing whether the pricing pattern was isolated or consistently followed over time, and whether the allegation of undervaluation can be sustained in that context.

25. It is further noted that the Applicant has not specifically disputed the factual position that, during the CIRP period, the Resolution Professional also continued transactions with the same related party, M/s Pelican Kenterra Private Limited, at prices broadly similar to those prevailing before CIRP. This is also corroborated by Annexure-1 produced by the Respondents, which reflects continuation of supply transactions at or around the same pricing levels. Thus, from the material placed on record, it emerges that both prior to CIRP and during CIRP, the Corporate Debtor under the control of Respondents and subsequently the Resolution Professional in the course of business as a going concern, has transacted with the same related party at substantially similar price levels.

26. In such circumstances, even though the Applicant has relied upon a third-party sale price of approximately Rs. 862 per unit to allege undervaluation, the mere existence of a higher external benchmark, by itself, cannot be determinative. It is also relevant to note that the Resolution Professional, while conducting the CIRP, is expected to act in a commercially reasonable and prudent manner to ensure continuity of business and preservation of the value of the Corporate Debtor as a going concern. In the present case, the continuation of the sale of the same product to the same related party, at around Rs 300 to Rs 400 per unit during CIRP, indicates that the said pricing was also considered commercially viable and appropriate in the interest of the Corporate Debtor. When such pricing has been consistently adopted both prior to CIRP and during CIRP, it reflects a commercially accepted mechanism rather than an abnormal or distorted valuation. The other surrounding circumstances and commercial factors brought on record by the Respondents also indicate that the transactions formed part of a consistent business arrangement and commercial decision undertaken in the ordinary course of business, and do not fall within the ambit of Section 45 of the Insolvency and Bankruptcy Code, 2016. Therefore, such transactions, having been carried out at a consistent and justified price structure,

cannot, in isolation, be characterised as undervalued transactions under Section 45 of the Insolvency and Bankruptcy Code, 2016.

27. This Adjudicating Authority is therefore of the considered view that the continuity of pricing between pre-CIRP and CIRP periods, coupled with the absence of any material deviation in the rate at which the same related party was being supplied goods, is a relevant and significant factor in assessing the allegation of undervaluation. The material on record indicates a consistent transaction pattern rather than any abrupt or artificial reduction in value. Accordingly, it cannot be said that the transactions were structured in a manner intended to prejudice creditors or to siphon value out of the Corporate Debtor so as to attract Section 45 of the Code.
28. In view of the findings and observations, **IA(IBC)/141/KOB/2025 in CP(IBC)/10/KOB/2024** is hereby **dismissed.**
29. The Registry is directed to send e-mail copies of the order forthwith to the parties and their respective counsels.
30. Let the certified copy of the order be issued upon compliance with requisite formalities.
31. File be consigned to records.

Sd /-

VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 8th day of May, 2026.

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D/Steno