

S.No.03

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
25.06.2026 AT 10:30 A.M.**

**IA (IBC)/1138/2024 in Company Petition IB/4/2022  
U/s 7 of IBC**

**IN THE MATTER OF:**

**IL & FS Financial Services Ltd**

**...Petitioner**

**AND**

**Bharat Waterfront Pvt Ltd**

**...Respondent**

**C O R A M:-**

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)**

**SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA (IBC)/1138/2024**

Orders pronounced, recorded vide separate sheets. In the result, the IA (IBC)/1138/2024 is dismissed.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

**IA (IBC) No. 1138 of 2024 in**  
**CP (IB) No. 04/7/HDB/2022**

**In the mater of**  
**M/S. BHARAT WATERFRONT PRIVATE LIMITED**

**Between:**

Mr Golla Ramakantha Rao,  
Liquidator in the matter of  
M/s Bharat Waterfront Private Limited,  
Plot No. 1, SLV Bhavan, D No. 1-2-597/1/4&5,  
Barafbagh Colony,  
Hyderabad – 500 029.

....Applicant

**And**

1. Mr Kunaparaju Sudarshan Varma,  
Member of Suspended Board,  
Bharat Waterfront Private Limited  
R/o Plot No. 228, Road No. 78,  
Jubilee Hills,  
Hyderabad – 500 032.
2. Mr Vadlamani Veera Venkata Satyanarayana Rao,  
Member of Suspended Board,  
Bharat Waterfront Private Limited,  
201, PT-81-85, S No 57, Annapurna Enclave,  
Jyothi Extancia, B/H Telephone Exchange,  
Chandanagar, Serilingampally,  
Hyderabad – 500 050.
3. M/s Arkay Energy (Rameswaram) Private Limited,  
Unit 3, First Floor, Sy No 115/1,  
Kapil Towers, Financial District,  
Nanakramguda, Serilingampally,  
Hyderabad – 500 032.

Respondents

**Date of order : 25.06.2026**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsel present:**

For the Applicant : Ms Pranathi Kasturi

For the Respondents 1 & 2 : Mr DVAS Ravi Prasad

For the Respondent 3 : Mr M M Viswaraj

**Applicant's Case**

1. The present Application has been filed<sup>1</sup> under Section 43 of the IBC<sup>2</sup> read with Rule 11 of the NCLT Rules<sup>3</sup> in the matter of Bharat Waterfront Private Limited<sup>4</sup>, the Corporate Debtor (**CD**) alleging preferential transaction in favour of Arkay Energy (Rameswaram) Private Limited, Respondent No. 3, involving Rs. 3,58,50,000/-.
2. Respondent Nos. 1 and 2 are described as the erstwhile Directors and members of the suspended Board, responsible for handling the day-to-day affairs of the CD prior to commencement of CIRP<sup>5</sup>. Respondent No. 3 is alleged to be the entity to which funds were transferred by the erstwhile management with the intention of causing unlawful loss to the CD and its creditors.

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<sup>1</sup> The neat copy of the Application records substitution of the Liquidator as the Applicant in place of the Resolution Professional pursuant to order dated 30.01.2026.

<sup>2</sup> Insolvency and Bankruptcy Code, 2016

<sup>3</sup> National Company Law Tribunal Rules, 2016

<sup>4</sup> The Corporate Debtor

<sup>5</sup> Corporate Insolvency Resolution Process

3. The CD was admitted into CIRP on 04.10.2023, which is treated as the Insolvency Commencement Date (**ICD**). After constitution of the CoC<sup>6</sup> and confirmation of the Applicant as Resolution Professional (**RP**), the Applicant claims to have examined the books of account and identified transactions undertaken by the erstwhile management prior to CIRP, which according to him were PUF<sup>7</sup> transactions<sup>7</sup> intended to defraud the creditors and to personally gain at the cost of the CD and its creditors.
4. With the approval of the CoC, the Applicant appointed M/s. Nukala Sreedhar & Co., Chartered Accountants, as Transaction Auditor (**TA**). The Transaction Audit Report (**TAR**)<sup>8</sup> dated 25.03.2024 identified certain transactions as PUF<sup>7</sup> transactions. Relying on the said report and the books of account, the Applicant seeks reversal of the transaction in question.
5. The transaction challenged is the transfer of Rs. 3,58,50,000/- on 07.04.2022 to Respondent No. 3, as reflected in the Bank of India statement for 01.04.2022 to 31.03.2023. Since the transfer took place about 18 months before the ICD, the Applicant states that the issue is whether Respondent No. 3 was a related party on the date of transaction, so as to attract the two-year look-back period.
6. The Application pleads that Smt. Kanumuri Rama Devi and Shri Kanumuri Raghu Rama Krishnam Raju, shareholders of the CD, were also shareholders of Respondent No. 3, and that they, along with their son Shri Kanumuri Bharat, held substantial shareholding in Respondent No. 3 on the date of transfer. It is further pleaded that

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<sup>6</sup> Committee of Creditors

<sup>7</sup> Preferential, Undervalued, Fraudulent & Extortionate Transactions

<sup>8</sup> Page 10 -46 of the Application

Shri Kanumuri Bharat was the Managing Director of Respondent No. 3 on 07.04.2022.

7. The Applicant disputes the stand that the relationship must be tested as on the ICD, when Shri Kanumuri Bharat had allegedly resigned. According to the Applicant, the relevant date for determining related-party status is the date of the transaction, namely 07.04.2022; on that date, Respondent No. 3 was a related party and the transaction falls within the two-year look-back period.
8. The Application further pleads that Respondent No. 3 was a subsidiary of Ind-Barath Power Infra Limited and that the promoters of the CD had substantial interests in both entities. It refers to the directorial role of Shri Kanumuri Raghurama Krishna Raju in Ind-Barath Power Infra Limited during 12.11.2009 to 16.06.2019, the Additional Directorship of Respondent No. 2 since 05.09.2019, and the shareholdings of Shri Kanumuri Raghu Rama Krishnam Raju, Shri Kanumuri Bharat, the family collectively, and Sriba Seabase Private Limited in Ind-Barath Power Infra Limited.
9. The Applicant alleges that almost the entire balance in the CD's bank account was transferred to Respondent No. 3 on 07.04.2022, with the sole intention of siphoning funds to another group entity. It is also pleaded that the main company petition had been filed in December 2021 and registered on 04.01.2022; therefore, the erstwhile management was aware of the impending insolvency proceedings and transferred assets to related parties so as to keep creditors out of reach.
10. On this basis, the Applicant seeks a declaration that the transfer of Rs. 3,58,50,000/- to Respondent No. 3 is a preferential transaction; a direction to **Respondent** No. 3 to repay the said amount to the CD;

and a direction to Respondent Nos. 1 and 2 to make such contributions to the CD as this Tribunal may deem fit for the alleged fraudulent transactions.

**Respondent Nos. 1 and 2**

11. Respondent Nos. 1 and 2 seek dismissal of the Application on the ground that CIRP commenced on 04.10.2023, whereas the transaction dated 07.04.2022 was with an unrelated party and is outside the statutory look-back period. They state that the payment was not preferential but a repayment of loan availed by the CD in 2017 for making payment to IL&FS.
12. Their principal objection is that the Resolution Professional did not form the opinion required under Section 43 and instead filed the Application on the sole basis of the Transaction Auditor's report. They contend that the statutory satisfaction cannot be substituted by "borrowed satisfaction" or "borrowed opinion", particularly when the report is subject to disclaimers and is alleged to be perverse of record.
13. Respondent Nos. 1 and 2 dispute the basis on which Respondent No. 3 has been treated as a related party. They state that the report wrongly records that 100% equity of the CD was held by Mrs. K. Rama Devi, whereas she held 99%; and that she and her husband together held only 0.128% equity in Respondent No. 3, much below the 2% threshold allegedly mandated under law. They rely on the order dated 29.03.2022 under Section 230 of the Companies Act, 2013, approving the scheme of re-arrangement with appointed date 01.04.2021, to demonstrate the shareholding of Respondent No. 3.
14. They further submit that the reasons assigned by the Transaction Auditor are contrary to Section 5(24) of the IBC and put the Applicant

to strict proof. They also allege that the Transaction Auditor wrongly treated IL&FS as a secured creditor, though IL&FS allegedly carried out circular transactions without any security of the CD.

15. Respondent Nos. 1 and 2 contend that the Application is vague, ambiguous and filed without discharging the statutory requirements of Section 43. Relying on *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited*<sup>9</sup>, they submit that the prescribed period is a condition precedent for invoking Section 43. They further plead that IL&FS was not a secured creditor and had no priority; therefore, treating the repayment of Rs. 3,58,50,000/- as preferential is perverse of record.
16. In their para-wise reply, Respondent Nos. 1 and 2 deny that the payment to Respondent No. 3 was made with the intention of causing unlawful loss to the CD or its creditors. They also deny any active collusion with Respondent No. 3 or that the transactions identified by the Resolution Professional were PUFÉ transactions intended to defraud creditors.
17. Respondent Nos. 1 and 2 do not deny the payment dated 07.04.2022. Their case is that the payment was made more than 18 months before commencement of CIRP and is therefore outside the applicable look-back period. They allege that Respondent No. 3 was wrongly labelled as a related party only to overcome the one-year limit, and further state that Respondent No. 3 ceased to be a subsidiary of Ind-Barath Power Infra Limited with effect from 01.04.2021 under the scheme approved on 29.03.2022.
18. They also assert that Respondent No. 3 was a separate legal entity

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<sup>9</sup> (2020) 8 SCC 401

and not a group company of the CD when the transaction took place. They deny that the CD was insolvent or that CIRP was imminent at the relevant time, and **allege** that a substantial part of the IL&FS loan had already been repaid. According to them, IL&FS had engaged in circular transactions to keep its books green and was not entitled to be treated as a financial creditor under the IBC.

**Respondent No. 3**

19. Respondent No. 3 adopts a similar defence and seeks dismissal in limine, contending that the Application is vague and ambiguous and rests solely on the Transaction Audit Report of Nukala Sreedhar & Co., without compliance with Section 43. It alleges that the report is contrary to law and perverse of record.
20. Respondent No. 3 submits that Section 43 requires the Resolution Professional/Liquidator to form an independent opinion that the CD had given a preference during the relevant period. According to Respondent No. 3, such satisfaction cannot be substituted by the borrowed opinion of the Transaction Auditor. Respondent No. 3 further states that it had no knowledge of any preferential payment and received the amount only against an outstanding debt dating back to 2017, in the ordinary course of business.
21. Respondent No. 3 denies being a related party under Section 5(24) of the IBC and submits that the two-year look-back period is inapplicable. It also relies on the order dated 29.03.2022 approving the scheme of re-arrangement under Section 230 of the Companies Act, 2013, with appointed date 01.04.2021, to contend that it was not a related party and had ceased to be a subsidiary of Ind-Barath Power Infra Limited with effect from 01.04.2021.

22. Respondent No. 3 denies that Shri Kanumuri Raghu Rama Krishnam Raju, Mrs. K. Rama Devi and Shri K. Bharat held substantial shareholding in it. It states that the amount of Rs. 3,58,50,000/- was paid towards repayment obligation of a loan availed by the CD in 2017 for payment to IL&FS, and that the transaction was not preferential either to a related party or otherwise.
23. Respondent No. 3 also disputes the status of IL&FS as a secured creditor, refers to the alleged circular transactions, and states that the claim of IL&FS as a secured financial creditor has been challenged in IA 2269/2024. It denies the reliefs sought and prays for dismissal of the Application with exemplary costs.

#### **Applicant's Rejoinders**

24. In the Rejoinders, the Applicant denies the averments in the Counters unless specifically admitted and states that non-traversal shall not be treated as admission. Apart from reiterating the Application, the Applicant states that he independently verified the relationship between the CD and Respondent No. 3 and found a long-standing relationship between them.
25. The Applicant reiterates that Shri Kanumuri Bharat, son of the promoters holding 100% stake in the CD, was the Managing Director of Respondent No. 3 when the transaction took place. It is further stated that the shareholders of the CD were also shareholders in Ind-Barath Power Infra Limited, the holding company of Respondent No. 3, and therefore Respondent No. 3 “squarely falls” within Section 5(24) of the IBC.
26. The Applicant gives additional particulars of what he terms the “deep entanglement” between the parties. He states that Shri Kanumuri

Raghu Rama Krishnam Raju and Mrs. Kanumuri Rama Devi were 100% shareholders of the CD and held significant shares in Ind-Barath Power Infra Limited; that Ind-Barath Power Infra Limited held 67.93% of Respondent No. 3 as on 31.03.2022; and that Shri Kanumuri Bharat was Managing Director of Respondent No. 3 from 16.06.2019 to 12.12.2022 and was earlier a Director in Ind-Barath Power Infra Limited from 26.09.2014 to 01.07.2017.

27. The Applicant further relies on the manner in which the alleged financial debt was extended by Respondent No. 3 to the CD. According to him, the debt was not supported by any official agreement or security, and Respondent No. 3's claim form relied only on a ledger extract. The ledger allegedly shows payments by Respondent No. 3 on behalf of the CD to third parties, including vendors, without underlying documents and only on oral instructions, showing that the entities worked in tandem on a day-to-day basis.
28. The Applicant disputes the reliance placed on the order dated 29.03.2022 in CP(CAA) 5/2022. He states that the order was passed in a different context and cannot, by itself, prevent Respondent No. 3 from being treated as a related party. According to the Applicant, the entire web of transactions and relationships must be examined.
29. The Applicant denies that the Application is based solely on the Transaction Audit Report. He states that he reviewed the bank statements and the Transaction Audit Report before forming his view. He also submits that averments relating to the Financial Creditor are immaterial to the present question of preferential transaction.
30. The Applicant further states that the transaction dated 07.04.2022 took place after the Section 7 petition had been filed and while it was

pending adjudication. According to him, the erstwhile management knew that CIRP was likely and nevertheless transferred almost the entire funds of the CD to Respondent No. 3.

31. In response to Respondent No. 3's plea of lack of knowledge, the Applicant states that the ledger itself shows day-to-day dealings between Respondent No. 3 and the CD. Since persons belonging to the same family had a major say in the affairs of both entities, Respondent No. 3 cannot plead ignorance and is liable to reimburse the amount to the CD.
32. The Applicant contends that the payment was towards discharge of IL&FS debt and states that there was no agreement between Respondent No. 3 and the CD authorizing Respondent No. 3 to make payments on behalf of the CD. He also states that the alleged circular transaction argument had already been rejected when the CD was admitted into CIRP, and that proceedings before the NCLAT have no bearing on this Application.
33. Finally, the Applicant states that after the transfer of Rs. 3,58,50,000, the CD's bank account had only Rs. 46,586/-, which further reduced to Rs. 5,646/- by the time CIRP commenced. According to the Applicant, this shows that the Respondents intended to turn the CD into a mere paper company with no assets, and that the transaction, undertaken in active collusion with Respondent No. 3, is liable to be reversed.

### **Findings & Decision**

34. We have heard the parties and perused the pleadings and documents placed on record. The following issues arise for consideration

(a) Whether Respondent No. 3 is a "related party" of the

Corporate Debtor within the meaning of Section 5(24) of the IBC on the date of transaction;

- (b) Whether the transfer of Rs. 3,58,50,000/- dated 07.04.2022 falls within the relevant look-back period under Section 43(4) of the IBC;
- (c) Whether the transaction satisfies the ingredients of Section 43(2) of the IBC;
- (d) Whether the allegations of fraud can be examined under Section 66 of the IBC in the present Application and, if so, whether the ingredients of Section 66 are made out.

**Respondent No.3: Whether a Related party?**

- 35. The admitted position is that the impugned transfer of Rs. 3,58,50,000/- on 07.04.2022 preceded the Insolvency Commencement Date, i.e. 04.10.2023, by about 18 months. Therefore, unless Respondent No. 3 is established to be a related party of the Corporate Debtor, the transaction would fall outside the one-year look-back period applicable to persons other than related parties under Section 43(4)(b) of the IBC.
- 36. The Application, filed under Section 43, proceeds on the allegation that Respondent No. 3 was a related party of the Corporate Debtor, but does not specifically invoke Section 5(24). The express invocation of Section 5(24) however appears in the Rejoinders, wherein the Applicant contends that Respondent No. 3 “squarely falls” within the said provision. We shall, therefore, first examine whether the relationship pleaded by the Applicant satisfies the statutory definition of “related party” under Section 5(24), so as to attract the two-year look-back period under Section 43(4)(a).

37. Section 5(24) reads as under

“**related party**“, in relation to a corporate debtor, means—

- (a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;
- (b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;
- (c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
- (d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- (h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
- (i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
- (j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
- (k) any person in whom the corporate debtor controls more than twenty percent. of voting rights on account of ownership or a voting agreement;
- (l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
- (m) any person who is associated with the corporate debtor on account of—
  - (i) participation in policy making processes of the corporate debtor;  
or
  - (ii) having more than two directors in common between the corporate debtor and such person; or

- (iii) interchange of managerial personnel between the corporate debtor and such person; or
- (iv) provision of essential technical information to, or from, the corporate debtor;

Closest to the allegations made in the Application, is clause (d) of Section 5(24), according to which the CD can be treated as related to a private company, where a director, partner, or manager of the CD is also a director of that private company, while holding—along with their relatives—more than two per cent of its share capital.

38. Here it is noteworthy that Section 5 is a definition clause and opens with the expression “unless the context otherwise requires”. Therefore, although Section 5(24)(d) uses the present-tense expression “is”, the date with reference to which the relationship is to be examined depends upon the statutory context in which the definition is being applied.
39. In the present case, the definition is being applied in the context of Section 43<sup>10</sup>. Section 43(1) speaks of a case where the Corporate

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<sup>10</sup> **43. Preferential transactions and relevant time.—**

- (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
- (2) A corporate debtor shall be deemed to have given a preference, if—
  - (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
  - (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.
- (3) For the purposes of sub-section (2), a preference shall not include the following transfers—
  - (a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- ....
- (4) A preference shall be deemed to be given at a relevant time, if—
  - (a) it is given to a related party, other than by reason only of being an employee, during the period of two years preceding the insolvency commencement date; or

Debtor “has at a relevant time given a preference”, and Section 43(4)(a) treats a preference as having been given at a relevant time if “it is given to a related party” during the period of two years preceding the insolvency commencement date.

40. Thus, for the purposes of Section 43, while the Insolvency Commencement Date of 04.10.2023 is the terminal point from which the look-back period is calculated, it is not necessarily the date on which the related-party relationship must exist. The relevant enquiry is whether, on the date on which the alleged preference was given, the party to whom the preference was given, was a related party of the Corporate Debtor.
41. A party which was a related party on the date of the transaction cannot avoid the rigour of Section 43(4)(a) merely because the relationship was later altered or severed before commencement of CIRP. Equally, a party which was not a related party on the date of the transaction cannot be brought within the two-year look-back period merely because some relationship existed at an earlier or later point, unless such relationship satisfies the statutory definition as on the date of the impugned transfer.
42. Having said so, the specific statutory requirements of Section 5(24)(d) must be satisfied. Clause (d) of section 5(24) is not attracted merely because the transferee has some commercial, family or shareholding connection with the shareholders or promoters of the Corporate Debtor. The clause requires cumulative satisfaction of the following conditions in the context of the present case: first, the transferee (i.e. Respondent No.3) must be a private company; secondly, a director,

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

partner or manager of the Corporate Debtor must be a director in such private company; and thirdly, such director, partner or manager of the Corporate Debtor must hold, along with his relatives, more than two per cent of the share capital of such private company.

43. In the present case, Respondent No. 3 is a private company. However, the further requirements of Section 5(24)(d) have not been established. The Applicant's case is substantially that Shri Kanumuri Bharat, son of Smt. Kanumuri Rama Devi and Shri Kanumuri Raghu Rama Krishnam Raju, was the Managing Director of Respondent No. 3 on the date of the transaction; that Smt. Kanumuri Rama Devi and Shri Kanumuri Raghu Rama Krishnam Raju were shareholders/promoters of the Corporate Debtor; and that they also had shareholding or interest in Ind-Barath Power Infra Limited, which according to the Applicant was connected with Respondent No. 3.
44. Even if the Applicant's pleaded facts are taken at their face value, they do not satisfy Section 5(24)(d). The provision does not speak of a private company in which a shareholder or promoter of the Corporate Debtor, or a relative of such shareholder or promoter, is a director. It specifically refers to a private company in which a "director, partner or manager of the corporate debtor" is a director and holds, along with relatives, more than two per cent of its share capital. The statutory office-holder contemplated by clause (d) must therefore be a director, partner or manager of the Corporate Debtor itself.
45. The Applicant has not shown that Shri Kanumuri Bharat was a director, partner or manager of the Corporate Debtor on 07.04.2022. The fact that he was the son of persons alleged to be shareholders/promoters of the Corporate Debtor, or that he was the Managing Director of Respondent No. 3, does not by itself satisfy

- clause (d). Similarly, the Applicant has not shown that Respondent Nos. 1 and 2, who are described as erstwhile Directors of the Corporate Debtor, were also directors of Respondent No. 3 and held, along with their relatives, more than two per cent of its share capital.
46. Now the question, in substance, is that even if Respondent No. 3 does not fall within Section 5(24)(d), can it still be treated as a related party having regard to the “entire web of transactions and relations” between the parties. It is therefore necessary to examine whether any other clause of Section 5(24) is attracted.
47. In the present case, clauses (a), (b), (c), (e) and (g) do not carry the Applicant’s case any further. Respondent No. 3 is not pleaded to be a director, partner, key managerial personnel, relative, limited liability partnership or partnership firm. Clause (d), as already discussed, requires that a director, partner or manager of the Corporate Debtor should be a director in Respondent No. 3 and should hold, along with relatives, more than two per cent of its share capital. The material on record does not establish this statutory link.
48. Clause (i) also does not assist the Applicant on the present record. It covers a body corporate which is a holding, subsidiary or associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary. The Applicant’s pleading is that Respondent No. 3 was a subsidiary of Ind-Barath Power Infra Limited and that the shareholders/promoters of the Corporate Debtor held shares in Ind-Barath Power Infra Limited. This is not the same as showing that Respondent No. 3 was a holding, subsidiary or associate company of the Corporate Debtor, or that both were subsidiaries of a common holding company. Moreover, the Respondents rely on the order dated 29.03.2022 under Section 230

of the Companies Act, 2013 to contend that Respondent No. 3 ceased to be a subsidiary of Ind-Barath Power Infra Limited with effect from 01.04.2021. Even leaving that defence aside, the Applicant has not brought the case within the precise language of clause (i).

49. Clause (j) applies where a person controls more than twenty per cent voting rights in the Corporate Debtor on account of ownership or voting agreement. Clause (k) applies where the Corporate Debtor controls more than twenty per cent voting rights in such person. Clause (l) applies to a person who can control the composition of the board of directors or corresponding governing body of the Corporate Debtor. The Applicant has not pleaded or established that Respondent No. 3 controlled more than twenty per cent voting rights in the Corporate Debtor, that the Corporate Debtor controlled more than twenty per cent voting rights in Respondent No. 3, or that Respondent No. 3 could control the composition of the Board of the Corporate Debtor. These clauses are therefore not attracted.
50. The clauses which require closer consideration are clauses (f), (h) and (m). Clause (f) covers a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor. Clause (h) covers any person on whose advice, directions or instructions a director, partner or manager of the corporate debtor is accustomed to act. Clause (m) covers a person associated with the corporate debtor on account of participation in policy-making processes, having more than two directors in common, interchange of managerial personnel, or provision of essential technical information to, or from, the corporate debtor. These clauses are intended to capture cases of influence, control, accustomed conduct and managerial or policy-level

association. The Supreme Court in *Phoenix ARC v. Spade*<sup>11</sup> examined related-party status with reference to clauses (h) and (m)(i), where there was material showing deep entanglement, influence in policy-making and accustomed conduct.

51. The Applicant has pleaded that Respondent No. 3 and the Corporate Debtor had a long-standing relationship; that Respondent No. 3 paid monies on behalf of the Corporate Debtor to third parties and vendors; that such payments were allegedly made without underlying documents and on oral instructions of the Corporate Debtor; and that the parties worked in tandem on a day-to-day basis. These facts, if proved with the necessary particulars, would require examination under clause (f), because Respondent No. 3 is a body corporate and the allegation is that it acted on the instructions of the Corporate Debtor. However, clause (f) is not satisfied by a mere assertion that payments were made on oral instructions. The Applicant must show that the board of directors, managing director or manager of Respondent No. 3, in the ordinary course of business, acted on the advice, directions or instructions of a director, partner or manager of the Corporate Debtor.
52. On the present pleadings and material, this statutory requirement is not established. The Applicant has not identified which director, partner or manager of the Corporate Debtor issued such advice, directions or instructions; to whom such directions were issued in Respondent No. 3; whether the board, managing director or manager of Respondent No. 3 acted on such directions; and whether such conduct was in the ordinary course of business. Ledger entries and

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<sup>11</sup> Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475

payments made to third parties may show commercial dealings between the parties, but they do not, without more, establish the statutory relationship contemplated under Section 5(24)(f).

53. Clause (h) is even less attracted on the pleaded facts. That clause would apply if a director, partner or manager of the Corporate Debtor was accustomed to act on the advice, directions or instructions of Respondent No. 3, or of a person whose position can be attributed to Respondent No. 3. The Applicant's case is substantially the reverse, namely that Respondent No. 3 acted on the instructions of the Corporate Debtor. There is no specific pleading that the directors or managers of the Corporate Debtor were accustomed to act on the advice, directions or instructions of Respondent No. 3. Clause (h), therefore, is not made out.
54. Clause (m)(i) would apply if Respondent No. 3 participated in the policy-making processes of the Corporate Debtor. Clause (m)(ii) would require more than two directors in common; clause (m)(iii) would require interchange of managerial personnel; and clause (m)(iv) would require provision of essential technical information to, or from, the Corporate Debtor. The Applicant has relied on family relationship, shareholding in connected entities, and the fact that Shri Kanumuri Bharat was Managing Director of Respondent No. 3. However, the Applicant has not shown that Respondent No. 3 participated in policy-making of the Corporate Debtor, that there were more than two common directors, that there was interchange of managerial personnel, or that essential technical information was provided to or from the Corporate Debtor. General expressions such as "deep entanglement", "long-standing relationship" and "working in tandem" cannot substitute the statutory particulars required under clause (m).

55. We are therefore of the view that, although Section 5(24) is broad and commutative in its reach, the Applicant has not established, on the present pleadings and material, that Respondent No. 3 falls within any specific clause of Section 5(24). The facts pleaded may create suspicion of a close commercial or familial connection, but Section 43(4)(a) requires a statutory related-party relationship. Suspicion, association or indirect promoter-level connection is not enough unless the relationship is brought within the language of Section 5(24).
56. We accordingly hold that Respondent No. 3 has not been established as a related party of the Corporate Debtor under Section 5(24) of the IBC on the date of the impugned transaction. Consequently, the two-year look-back period under Section 43(4)(a) is not attracted. Respondent No. 3 must be treated as a person other than a related party for the purposes of Section 43(4)(b), and the applicable look-back period is one year preceding the Insolvency Commencement Date. Since the transfer dated 07.04.2022 occurred beyond one year prior to the ICD of 04.10.2023, it falls outside the relevant time under Section 43.

**Impugned Transaction: Whether fraudulent?**

57. We next examine the allegation of fraud and the applicability of Section 66. The Application is filed under Section 43 read with Rule 11. The prayer seeks declaration of the transfer as preferential and repayment of Rs. 3,58,50,000/- by Respondent No. 3. It also seeks a direction to Respondent Nos. 1 and 2 to make such contribution as may be deemed fit for “fraudulent transactions”. The pleadings repeatedly use expressions such as “fraudulent”, “collusion”, “siphoning” and “defraud the creditors”.

58. The use of such expressions, however, does not by itself attract Section 66. Section 43 and Section 66 operate in distinct fields. Section 43 deals with avoidable preferences. It is not necessary under Section 43 to prove fraud. Conversely, if fraud or wrongful trading is alleged, the statutory ingredients of Section 66 must be pleaded and proved.
59. Section 66(1) requires a finding that the business of the Corporate Debtor was carried on with intent to defraud creditors or for any fraudulent purpose, and that the person against whom contribution is sought was knowingly party to carrying on the business in such manner. Section 66(2) requires a finding that, before the ICD, the director or partner knew or ought to have known that there was no reasonable prospect of avoiding CIRP, and that such director or partner did not exercise due diligence in minimising potential loss to creditors.
60. In the present case, the pleadings are centred on a specific transfer dated 07.04.2022. The Applicant has alleged that the transfer was made after the Section 7 petition had been filed and that almost the entire bank balance was transferred to Respondent No. 3. These are serious allegations. However, for relief under Section 66, the Applicant was required to plead and establish the statutory elements of fraudulent or wrongful trading: the carrying on of business with intent to defraud or for fraudulent purpose; knowledge and participation of the persons sought to be made liable; or, in the case of wrongful trading, knowledge that there was no reasonable prospect of avoiding CIRP and absence of due diligence to minimise loss.
61. The present Application does not frame a distinct case under Section 66. It does not identify the business of the Corporate Debtor alleged to have been carried on fraudulently; the period during which such

business was carried on; the specific persons knowingly party to such carrying on of business; the material showing their knowledge; or the due diligence expected and not exercised by Respondent Nos. 1 and 2. A single payment, even if suspicious, cannot automatically be equated with the carrying on of the business of the Corporate Debtor with intent to defraud within the meaning of Section 66(1).

62. Further, the prayer for contribution from Respondent Nos. 1 and 2 is general and consequential. It is not supported by the specific statutory foundation required under Section 66(1) or Section 66(2). In proceedings where personal contribution is sought against directors or other persons on the ground of fraud or wrongful trading, the pleading and proof must be clear. Such relief cannot be granted merely because the transaction has been described as fraudulent in an application filed principally under Section 43.
63. We therefore hold that the Applicant has not made out a case for relief under Section 66 of the IBC in the present Application. This finding shall not preclude the Liquidator from taking any other appropriate actions, if otherwise advised and if permissible in law, from taking recourse to appropriate proceedings on the basis of proper pleadings and material. We express no opinion on the maintainability or merits of any such independent proceeding.

### **Summary of the Conclusions**

64. To summarise our findings:
- (a) The transaction dated 07.04.2022 occurred about 18 months prior to the ICD of 04.10.2023.
  - (b) For the transaction to fall within Section 43, the Applicant was required to establish that Respondent No. 3 was a related party of the Corporate Debtor on the date of transaction, so as to attract the two-year look-back period under Section 43(4)(a).

- (c) The Applicant has not established that Respondent No. 3 falls within Section 5(24) of the IBC in relation to the Corporate Debtor.
- (d) Consequently, Respondent No. 3 has to be treated as a non-related party for the purposes of Section 43(4), and the applicable look-back period is one year preceding the ICD.
- (e) Since the transaction dated 07.04.2022 is beyond one year preceding the ICD, it is outside the relevant time under Section 43(4)(b).

The Application under Section 43 therefore fails. Further, as the allegations of fraud do not independently satisfy the statutory requirements of Section 66 of the IBC, the present IA No. 1138 of 2024 is dismissed.

**Sd/-**  
**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

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