THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

MA 4064 of 2019

Section 43, 45, 49 & 50 r/w Section 66(1) r/w Section 252(2)(j) of the Insolvency and Bankruptcy Code, 2016

PUNJAB NATIONAL BANK

...**Applicant**

V/s

GEETA MERCANTILE PVT. LTD. & OTHERS

…**Respondent**

In the matter of

COMPANY PETITION NO. 1239 OF 2018

BANK OF BARODA

…Petitioner

V/s

TOPWORTH PIPES & TUBES PVT. LTD.

…Respondent

Order delivered on: 22.07.2026

***Coram**:*

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Honey Satpal
For the Respondent No. 23, 32, 36, 37, 44, 49 and 72	:	Adv. Nausher Kohli
For the Respondent No. 23 & 44	:	Adv. Vinit Vdeknawi
For the Respondent Nos. 32, 36, 37, 49 and 72	:	Adv. Ankit Pittil, CA Rajan Maheswari

ORDER

1. This Application MA 4064 of 2019 was filed by Topworth Pipes and Tubes Pvt. Ltd. through Mr. Sanjay Gupta (Applicant) Resolution Professional in the Corporate Insolvency Resolution Process ("CIRP") of M/s Topworth Pipes & Tubes Pvt. Ltd. ("Corporate Debtor"), under Section 43, 45, 49 and 50 read with Section 66 (1) and 25 (2) (j) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking following reliefs:-

   a) *This Hon'ble Court be pleased to allow the present application.*

   b) *This Hon'ble Court be pleased to pass an order declaring the transactions mentioned in para 16 to 20, involving amount of Rs. 434.08 crores as preferential transaction within the meaning of Section 43 of the Code.*

   c) *Pass an order declaring the transactions mentioned in para 22 & 23 involving amount of Rs. 22.19 crores within the meaning of section 45 of the Code and;*

   d) *Pass an order declaring the transactions mentioned in para 24 involving amount of Rs. 334.17 crores within the meaning of Section 49 of the Code;*

e) *Pass an order declaring the transactions mentioned in para 25 involving amount of Rs. 4 crores within the meaning of Section 50 of the Code;*
f) *Pass an order declaring the transactions mentioned in para 27 involving amount of Rs. 248.97 within the meaning of Section 66 of the Code.*
g) *This Hon'ble Court be pleased to direct the Respondents to make such contributions to the assets of the Corporate Debtor as it may deem fit;*
h) *pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*
i) *For costs.*

2. The Corporate Insolvency Resolution Process in relation to the Corporate Debtor commenced pursuant to an Order dated 11.12.2018 passed by this Tribunal wherein one Mr. Kishan Gopal Somani was appointed as the Interim Resolution Professional, thereafter, the Applicant Mr. Sanjay Gupta, was proposed as Resolution Professional during the CoC meeting held on January 9, 2019 and was confirmed as the Resolution Professional a by the Committee of Creditors with 100% vote share during its second meeting. The appointment of the Resolution Professional was ratified by this Tribunal vide its Order dated February 11, 2019 and the certified copy of order was received on 18.02.2019.
3. The Applicant was substituted in this application as applicant in capacity of Liquidator. Thereafter, Punjab National Bank, the Financial Creditor, was substituted in place of the erstwhile Liquidator for prosecuting the captioned avoidance application on

behalf of Financial Creditors, who are to receive proceeds arising from this application. Further, one of the parties, U A Trading Co. Pvt. Ltd. was wrongly included twice in the memo of parties as Respondent No. 45 and Respondent No. 70, therefore U A Trading Co. Pvt.'s name as Respondent No. 70 was deleted. There are 72 Respondents in the present application after deletion of Respondent No. 70, and Respondent No. 72 & 73, namely Mr. Abhay Narendra Lodha and Mr. Manish Kumar are suspended board members.

4. It is stated by the applicant that, in furtherance of Section 25(2)(j) of IBC, M/s Grant Thornton ("GT/TA") was appointed to conduct the Transaction Audit of the Corporate Debtor pursuant to the decision taken in e-voting taken place pursuant to 5th meeting of the CoC, and GT performed its work substantially as per the scope of work for Transaction Audit as mentioned in Engagement letter dated 08th April, 2019.

5. It is further stated by the applicant that GT analyzed various records of the Corporate Debtor like books of accounts, sample transaction documents, bank statements, details of potentially related parties etc. as made available by the Corporate Debtor. For the preparation of the report, GT sought responses from the management of the Corporate Debtor on the transactions under review, from time to time.

6. It is further stated by the applicant that, on 13.08.2019, GT shared a draft report on transaction audit with observation and requested for the comments of the suspended management with the relevant documentary evidences against each of the observations by 16.08.2019, however, the management did not provide the comments and requested to meet GT team. The

Resolution Professional Team, suspended management and GT team met on 17.08.2019 and discussed the observations in the draft Transaction Audit report. After the meeting it was requested by the GT to provide the comments with documentary evidence before 21.08.2019. The suspended board provided the comments on the observations on 21 and 23rd of August, 2019.

7. It is further stated by the applicant that a draft transaction report was shared by GT on 25.08.2019 which was shared with the members of committee on 26.08.2019. In the 13th meeting of CoC dated 26.08.2019, GT gave presentation on the Transaction Audit Report and shared a final draft report on 29.08.2019 which included the comments of the suspended management verbatim. The suspended management on 29.08.2019 sought some more time to discuss the observations. The suspended management was requested to provide any explanation/documents, if there are any perceived material changes from the previous comments. Accordingly, on 20.09.2019, some additional comments were shared by the suspended management with GT and the Applicant. The Final Signed Report was received by the Applicant on 02.11.2019 from GT which was discussed with the Committee of Creditors in the 15th meeting of CoC dated 11.11.2019.

8. It is further stated by the applicant that, from the review of the transactions mentioned in the final report, it emerges that the Corporate Debtor including the Respondents have carried out certain transactions which potentially be classified as preferential transactions, undervalued transactions, transactions defrauding creditors, extortionate transactions and fraudulent and wrongful transactions under the relevant provisions of the Code during the Audit Period cumulatively amounting to Rs. 1043.41 crores.

Sr. No.	Particulars	Cumulative cost/loss caused to the Corporate Debtor (in Rs. Crores)
1.	Preferential transaction falling under the ambit of Section 43	434.08
2.	Undervalued transaction falling under the ambit of Section 45	22.19
3.	Transactions undertaken. for defrauding creditors under Section 49	334.17
4.	Extortionate Transactions under the ambit of Section 50	4.00
5.	Fraudulent and wrongful transactions under the ambit of Section 66	248.97
	Total:	1043.41

9. The Applicant has filed present application against 72 Respondents impugning therein the transactions u/s 43, 45, 49, 50 and 66 of IBC. The brief details of transactions impugned in the present application are as follows :

    i. **In following cases, the adjustment of amount payable to parties against amounts receivables from them are impugned as preferential payment u/s 43 :**

a. Set off of Rs. 119.48 crores in financial year 2016-17 & 2017-18 in account of Respondent No. 21 Maheep Marketing Pvt. Ltd., alleged to have significant adverse financial indicators and adverse media information-FIR lodged for cheating by UBI for Rs. 172.05 Cr.;
b. Set off of Rs. 63.10 crores in financial year 2016-17 & 2017-18 in account of Respondent No. 68 Harsh Steel Trade Pvt. Ltd., alleged to have significant adverse financial indicators; revenue of more than 3000 Cr. In 2015-16 turned NIL in 2016-17 and FIR lodged for cheating by UBI & BOB for Rs. 172.05 Cr & 84.70;
c. Set off of Rs. 18.34 crores in financial year 2016-17 & 2017-18 in account of Respondent No. 4 Yatin Steels India Pvt. Ltd. -R4 alleged to have negative financial indicators during review period;
d. Set off of Rs. 6.06 crores in financial year 2016-17 & 2017-18 in account of Respondent No. 10 Ratnesh Ispat Services Pvt. Ltd.;
e. Set off of Rs. 2.25 crores as on 31.3.2017 in account of Respondent No. 5 Champalal Motilal Steel Company Pvt. Ltd. – R5, who is disclosed as related party in the financial statements;
f. Set off of Rs. 1.78 crores in account of Respondent No. 25 Maruti Strips & Ferro Alloy Pvt. Ltd.;
g. Set off of Rs. 1.67 crores in account of Respondent No. 27 Felix Steels Ltd.;
h. Set off of Rs. 1.68 crores and Rs. 1.15 crores in account of Respondent No. 24 Krupay Trade Pipes Pvt. Ltd.;

i. Set off of Rs. 1.10 crores in account of Respondent No. 28 Navmi Steel Traders Pvt.;

j. Set off of Rs. 1.02 crores on 31.3.2018 in account of Respondent No. 23 Executive Trading Company Pvt. Ltd., against whom a FIR lodged by UBI for cheating with Rs. 172.05 Cr.;

k. Set off of Rs. 0.54 crores in account of Respondent No. 69 Akshata Mercatile Pvt. Ltd.;

l. Set off of Rs. 0.36 crores in account of Respondent No. 29 Siddhi Enterprises; and

m. Set off of Rs. 0.35 crores in account of Respondent No. 20 Steel Experts Industries.

ii. In the following cases, the adjustment of amount payable to one party against amount receivable from another party resulting in preferential payment to party to whom the amounts were payable by Corporate Debtor (alleging that the amounts received from receivable party were paid to payable party) are impugned as preferential payments u/s 43 of IBC –

a. A sum of Rs, 58.44 crores payable to Respondent No. 35 Topworth Steels & Power Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 34 Topworth Urja & Metals Ltd.;

b. A sum of Rs. 16.55 crores payable to Respondent No. 34 Topworth Urja & Metals Ltd. was adjusted against the amount receivable from Respondent No. 26 Crest Steel & Power Ltd.;

c. A sum of Rs. 9.18 crores payable to Respondent No. 35 Topworth Steels & Power Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 26 Crest Steel & Power Ltd.;

d. A sum of Rs. 5.54 crores received from Respondent No. 28 Navmi Steel Traders Pvt. Ltd. was paid to Respondent No. 30 Ballaleshwar Pipes & Tubes Pvt. Ltd. against its payable thereby further increasing the amount payable to Respondent No. 28;

e. A sum of Rs. 6.00 crores received from Respondent No. 31 Srilekha Trading Pvt. Ltd. was paid to Respondent No. 28 Navmi Steel Traders Pvt. Ltd. thereby further increasing the amount payable to Respondent No. 31;

f. A sum of Rs. 4.05 crores payable to Respondent No. 35 Topworth Steels & Power Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 32 Phoenix Impex Pvt. Ltd. (name struck off);

g. A sum of Rs. 3.61 crores payable to Respondent No. 35 Topworth Steels & Power Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 33 Poscho Steels Pvt. Ltd.;

h. A sum of Rs. 2.80 crores payable to Respondent No. 35 Topworth Steels & Power Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 34 Topworth Urja & Metals Ltd.;

i. A sum of Rs. 1.88 crores payable to Respondent No. 39 Trison Impex was adjusted against the amount receivable from Respondent No. 34 Topworth Urja & Metals Ltd.;

j. A sum of Rs. 1.07 crores received from Respondent No. 35 Topworth Steels & Power Ltd. was paid to Respondent No. 40 Integral Industries Pvt. Ltd. thereby further increasing the amount payable to Respondent No. 35;

k. A sum of Rs. 0.50 crores payable to Respondent No. 41 MSTC Limited was adjusted against the amount receivable from Respondent No. 14 Vyash Vanijya Pvt. Ltd.;

l. A sum of Rs. 0.49 crores received from Respondent No. 24 Krupay Trade Pipes Pvt. Ltd. was paid to Respondent No. 42 Mondial Ispat Pvt. Ltd. thereby further increasing the amount payable to Respondent No. 24;

m. A sum of Rs. 0.36 crores payable to Respondent No. 27 Felix Steels Ltd. was adjusted against the amount receivable from Respondent No. 42 Mondial Ispat Pvt. Ltd.;

n. A sum of Rs. 0.35 crores payable to Respondent No. 35 Topworth Steels & Power Ltd. was adjusted against the amount receivable from Respondent No. 5 Champalal Motilal Steel Co Pvt. Ltd.;

o. A sum of Rs. 0.25 crores payable to Respondent No. 35 Topworth Steels & Power Ltd. was adjusted against the amount receivable from Respondent No. 36 Topworth Aluminium Pvt. Ltd;

p. A sum of Rs. 0.22 crores payable to Respondent No. 35 Topworth Steels & Power Ltd. was adjusted against the amount receivable from Respondent No. 41 MSTC Limited;

q. A sum of Rs. 0.15 crores payable to Respondent No. 43 Radhika Metaliks Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 14 Vyas Vanijya Pvt. Ltd;

r. A sum of Rs. 0.10 crores payable to Respondent No. 45 U A Trading Company Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 44 Pankaj R. Sureka by way of direct payment;

s. A sum of Rs. 0.04 crores payable to Respondent No. 35 Topworth Steels & Power Pvt. Ltd. was adjusted against the amount receivable from Respondent No. 37 Topwroth Energy Pvt. Ltd; and

t. A sum of Rs. 0.03 crores payable to Respondent No. 46 J. Singh and Associates Chartered Accountants was adjusted against the amount receivable from Respondent No. 45 U. A. Trading Company Pvt. Ltd.;

iii. **Following Payments receivable from Corporate Debtor's Suspended Directors adjusted against third person's balances are impugned as preferential payments u/s 43 of IBC** –

a. A sum of Rs. 0.41 crores receivable from Respondent No. 72 Abhay Lodha, Suspended Director was adjusted against the amount payable to Respondent No. 45 U. A. Trading Company Pvt. Ltd. Earlier, this amount was paid to Respondent No. 72, accordingly, both are impugned as beneficiary;

b. A sum of Rs. 0.35 crores paid by Respondent No. 14 Vansh Vanijya Pvt. Ltd. to Respondent No. 50 Kanchan Murarka towards her gratuity payment of Rs. 0.29 crores, and adjusted accordingly in books of corporate debtor, thus settling gratuity payable to Kanchan Murarka and further an excess payment of Rs. 0.06 lacs.

iv. **Payment of Car Loan of total Rs. 0.58 crores and interest thereon Rs. 0.13 crores aggregating to Rs. 0.71 crores by CD impugned as Preferential transactions u/s 43 of IBC**, however, no details of beneficiary are stated in the application.

v. **Following payments made to related parties/potentially related parties are impugned as preferential u/s 43 of IBC** –

a. Rs. 72.15 crores paid to Respondent No. 45 U.A. Trading Company Ltd.;
b. Rs. 9.81 crores paid to Respondent No. 6 Deep Star Alloys & Steels Pvt. Ltd.;
c. Rs. 9.10 crores paid to Respondent No. 47 Infinite Buildcon Pvt. Ltd.;
d. Rs. 3.90 crores paid to Respondent No. 21 Maheep Marketing Pvt Ltd.;
e. Rs. 3.38 crores paid to Respondent No. 69 Akshata Mercantile Pvt. Ltd.;
f. Rs. 1.42 crores paid to Respondent No. 30 Ballaleshwar Pipes & Tubes Pvt. Ltd.;
g. Rs. 1.05 crores paid to Respondent No. 68 Harsh Steel Trade Pvt. Ltd.;

h. Rs. 0.79 crores paid to Respondent No. 38 Topworth Infra Pvt. Ltd.;
i. Rs. 0.63 crores paid to Respondent No. 26 Crest Steel & Power Pvt. Ltd.;
j. Rs. 0.24 crores paid to Respondent No. 28 Navmi Steel Traders Pvt. Ltd.;
k. Rs. 0.19 crores paid to Respondent No. 48 Blackstone Multi Trading Ltd.;
l. Rs. 0.10 crores paid to Respondent No. 49 Chandrakant Lad;
m. Rs. 0.10 crores paid to Respondent No. 50 Kanchan Murarka;
n. Rs. 0.10 crores paid to Respondent No. 3 S2S Trading Company Pvt. Ltd.;
o. Rs. 0.08 crores paid to Respondent No. 51 B.G. Transport;
p. Rs. 0.03 crores paid to Respondent No. 32 Phoenix Impex Pvt. Ltd. (struck off);
q. Rs. 0.03 crores paid to Respondent No. 33 Poscho Steels Pvt. Ltd.; and
r. Rs. 0.02 crores paid to Respondent No. 52 Mr. Vaibhav Lodha Suspended Director;

vi. **Following transactions have been impugned as undervalued transactions u/s 45 of IBC –**

a. The Corporate Debtor sold the product to. It is stated that In February 2017, the Corporate Debtor sold 34,143 MT of goods at rate of Rs. INR 28,296 PMT to Respondent No. 2 'Aakar Sales Private Limited', which is indirectly linked to Respondent No. 3 S2S Trading Company Pvt. Ltd, however, the transaction auditor has calculated that the average selling price for the products was INR 30,020.80 PMT. Thus, the Corporate Debtor incurred a loss of INR 5.89 Crores (34,143 x 1724.80) for undervalued sale to Respondent No. 2;

b. In February 2017, Corporate Debtor sold 24,351.39 MT of goods at rate of Rs. INR 28,296 PMT to Respondent No. 1 Geeta Mercantile Pvt Ltd. alleged to be indirectly linked to Respondent No. 3, however, the transaction auditor has calculated that the average selling price for the products was INR 30,020.80 PMT. Thus, the Corporate Debtor incurred a loss of INR 4.20 Crores (24,351.39 x 1724.80) for undervalued sale to Respondent No. 1;

c. From April 2017 to June 2017, the goods were procured by the Corporate Debtor at higher rates from Respondent No. 3 S2S Trading Company Private Limited, and subsequently sold at lower rates, resulting in financial loss to the Corporate Debtor. Respondent No. 3 was identified as one of the customers to whom the Corporate Debtor sold goods at such lower rates after purchasing them at higher rates, often within the same month, thereby causing losses to the Corporate Debtor to the tune of INR 11.57 Crores. It is stated that R3 shares the same email id that of the CD; there were no supporting documents for sale; and S2S's Financial Statements also showed adverse financial indicators.

d. In the June 2017, the CD sold 75.32 MT of goods with a loss of Rs. 7 Lakhs to Respondent No. 10 Ratnesh Ispat;

e. The Corporate Debtor ("CD") sold the product "MS Pipe" to Respondent No. 53 Deep Industries at prices lower than the weighted average purchase rate, thereby causing financial loss of Rs. 0.06 crores to the Corporate Debtor;

f. The Corporate Debtor ("CD") sold the product "MS Pipe" to Respondent No. 54 M/s Ganiyani Traders at prices lower than the weighted average purchase rate at which it has undertaken sale transactions of the said products with other parties, thereby causing financial loss of Rs. 0.33 crores to the Corporate Debtor;

g. The Corporate Debtor ("CD") sold the product "MS Pipe" to Respondent No. 5 Shree Ram Enterprises at prices lower than the weighted average purchase rate has undertaken sale transactions of the said products with other parties, thereby causing financial loss of Rs. 0.05 Crores to the Corporate Debtor; and

h. The Corporate Debtor ("CD") sold the product "MS Pipe" to Respondent No. 56 Spectrum Global Project Pvt. Ltd. at prices lower than the weighted average purchase rate has undertaken sale transactions of the said products with other parties, thereby causing financial loss of Rs. 0.02 crores to the Corporate Debtor.

vii. **The following transactions in relation to provision for doubtful debts against the receivables from customers have been impugned as transactions defrauding creditors u/s 49 of IBC alleging such provision to be made to keep such receivables away from the creditors of the CD** –

a. Rs. 137.60 Cr receivable on sale of goods from Respondent No. 13 Netra Mercantile Private Ltd. as provision for doubtful debt in Fy 2017-2018;
b. Rs. 44.57 Cr receivable on sale of goods from Respondent No. 57 Manojavaya Vintrade Pvt Ltd. as provision for doubtful debt in Fy 2017- 2018;
c. Rs. 38.63 Cr receivable on sale of goods from Respondent No. 58 Brahmcharini Vyapaar Pvt Ltd. as provision for doubtful debt in Fy 2017- 2018;
d. Rs. 32.66 Cr receivable on sale of goods from Respondent No. 59 Spiral Pack India Ltd. as provision for doubtful debt in Fy 2017- 2018;
e. Rs. 28.06 Cr receivable on sale of goods from Respondent No. 14 Vyash Vanijya Pvt Ltd. as provision for doubtful debt in Fy 2017- 2018;
f. Rs. 0.30 Cr receivable on sale of goods from Respondent No. 60 Kredence Multi Trading Ltd. as provision for doubtful debt in Fy 2017- 2018;
g. Rs. 21.60 Cr receivable on sale of goods from Respondent No.15 & 70 Omicorn Steel Trades Pvt Ltd. (arrayed twice) as provision for doubtful debt in Fy 2017- 2018;

h. Rs. 10.58 Cr receivable on sale of goods from Respondent No. 61 Stainless Matalex India Pvt Ltd. as provision for doubtful debt in Fy 2017- 2018;
i. Rs. 6.81 Cr receivable on sale of goods from Respondent No. 17 Pipavav Defence & Offshore Engineering Co. Ltd. as provision for doubtful debt in Fy 2017- 2018;
j. Rs. 4.27 Cr receivable on sale of goods from Respondent No. 19 Sunrise Metallic India Pvt Ltd. as provision for doubtful debt in Fy 2017- 2018;
k. Rs. 3.76 Cr receivable on sale of goods from Respondent No. 20 Steel Experts Industries Indore Ltd. as provision for doubtful debt in Fy 2017- 2018;
l. Rs. 1.54 Cr receivable on sale of goods from Respondent No. 62 Reliance Stainless Steel as provision for doubtful debt in Fy 2017- 2018;
m. Rs. 1.45 Cr receivable on sale of goods from Respondent No. 63 Prakash Steelage Ltd. as provision for doubtful debt in Fy 2017- 2018;
n. Rs. 1.25 Cr receivable on sale of goods from Respondent No. 64 Database Software Technology Pvt Ltd as provision for doubtful debt in Fy 2017- 2018;
o. Rs. 1.04 Cr receivable on sale of goods from Respondent No. 65 Indigo Edutainment Pvt Ltd as provision for doubtful debt in Fy 2017- 2018; and
p. Rs. 0.04 Cr receivable on sale of goods from Respondent No. 29 Siddhi Enterprises as provision for doubtful debt in Fy 2017- 2018.

viii. **Overdue charges @ 21% per annum payable to following vendor(s) on their outstanding have been impugned as extortionate transaction u/s 50 of IBC** –

a. A sum of Rs. 3.26 crores credited to Respondent No. 66 Anmol Steel Processors Private Limited; and

b. A sum of Rs. 0.76 crores credited to Respondent No. 67 Shah Steel Impex Pvt. Ltd.

ix. **Following transactions have been impugned as Fraudulent u/s 66(1) of IBC and the Applicant has also pleaded the same falling u/s 66(2) of IBC also** :

a. Write off of receivable amounting to Rs. 73.71 crores due from Respondent No. 13 Netra Mercantile Pvt. Ltd. without any bona fide recovery efforts and without assigning any reason;

b. Write off of receivable amounting to Rs. 20.10 crores due from Respondent No. 14 Vyash Vanijya Pvt. Ltd. without assigning any reasons, despite there being no sale or purchase;

c. Write off of receivable amounting to Rs. 155.15 crores due from Respondent No. 68 Harsh Steel Trade Pvt. Ltd. without assigning any reasons, despite there being no sale or purchase; and

d. Payment of INR 1.05 Crores to Harsh Steel Trade Private Limited was made after the initiation of Insolvency, however, there is no prayer in relation to this transaction.

10. Respondent No. 1 to 22, Respondent No. 24, Respondent No. 25, Respondent No. 27, Respondent No. 31, Respondent No. 33 & Respondent No. 38 to 43, Respondent No. 45, Respondent No. 48,

Respondent No. 51 to 70 & Respondent No. 73 were set ex-parte vide order dated 26.03.2025 in view of their failure to file their reply and enter appearance. However, in view of commencement of proceedings against Respondent No. 26 M/s Crest Steel & Power Limited, Respondent No. 34 M/s Topworth Urja & Metals Limited, and Respondent No. 35 M/s Topworth Steels & Power Limited under IBC, these proceedings cannot be proceeded further against them, hence, these three respondents stood discharged. Further, Respondent No. 11 M/s Larsen & Toubro Limited was also discharged. Further Respondent No. 15 and 70 are same parties, and seems to be have been arrayed twice.

11. The Respondent No. 23, Respondent No. 32, Respondent No. 36, Respondent No. 37, Respondent No. 44, Respondent No. 49, Respondent No. 50, Respondent No. 72 have filed the reply as well written notes.

12. We heard the Learned Counsel for the parties and perused the material on record.

13. It is trite that the timelines in Regulation 35A of the CIRP Regulations are directory and not mandatory, as held by the Hon'ble NCLAT in case *of* ***Aditya Kumar Tibrewal v. Omprakash Pandey & Ors., Company Appeal (AT) (Insolvency) No. 583 of 2021***. Accordingly, mere delay in adhering to those timelines neither ousts the jurisdiction of this Tribunal nor renders the application non maintainable.

14. It is stated by the Respondents that the Resolution Professional failed to form an independent opinion and that the Transaction Audit Report cannot be relied upon. It is stated by the Applicant that the application has been filed by the Applicant and not by the Transaction Auditor, after the Applicant formed his

own opinion following deliberations with the Committee of Creditors and the suspended management, accordingly, the "terms of use" and "limitation" clauses of the Transaction Audit Report relied upon by the Respondents are therefore of no assistance to them. Admittedly, the Transaction Auditor Report has only persuasive value, and it is Resolution Professional or Liquidator, as the case may be, who is required to form an independent opinion in relation to transactions to be avoided u/s 43, 45, 49 or 50 of the Code or for seeking contribution in respect of fraudulent transactions u/s 66 of IBC. In our considered view, the caveats in the Transaction Audit Report do not have any material bearing on the transactions impugned as Avoidance or Fraudulent transactions, if the facts before the Resolution Professional enables him to form an opinion as required under IBC.

15. It is noted that the Resolution Professional has stated at para 14 of the Application that "*from the review of the transactions mentioned in the final report, it emerges that the Corporate Debtor including the Respondents have carried out certain transactions which potentially be classified as preferential transactions, undervalued transactions, transactions defrauding creditors, extortionate transactions and fraudulent and wrongful transactions under the relevant provisions of the Code during the Audit Period cumulatively amounting to Rs. 1043.41 crores.*" It is further stated in the said Application at para 15 that "*The applicant seeks leave of this Hon'ble Adjudicating Authority to refer and rely on the findings of the transaction audit final audit report and the contents of the same may be read as part and parcel of the present application. That based on the final report following key findings*

emerged :-.......” Apart from this, the Resolution Professional has further stated at Para 28 of Application that “*The Transaction Auditors observed that the above parties had potential indirect relationship with the Corporate Debtor, no balance confirmation received from the identified parties, the parties were non-existent at the respective registered address, no supporting documentation pertaining to transactions with these identified parties were provided, significant adverse financial indicators of the parties, adverse media information available.*” It is further stated at Para 34 of the Application that “................*It emerges from the Final Report that the management of Corporate Debtor including the Respondents have made preferential payments to related parties within the meaning of section 43, undertaken fraudulent and wrongful transactions within the meaning of section 66 of the Code and undervalued transaction within the meaning of section 45 of the Code all amounting to Rs. 1043.41 crores approximately computed during the Audit Period as mentioned in the summary of key observations of transaction report. The Applicant seeks leave to refer to and rely on the findings of the Final Report.*” Further, it is stated at Para 37 of the Application that “*Therefore, the said transections as detailed above and as observed by the Auditor the same not being available for the benefit of all stakeholders is a transaction entered by the promoters/directors of the Corporate Debtor to defraud its creditors and the same does not appear to be in ordinary course of business. The same raises serious questions as to the bona fide of the transaction itself*”.”

16. It follows from these pleadings that the Resolution Professional has completely based his opinion on the findings in the Transaction Audit Report. The provisions relating to

Avoidance and fraudulent transactions mandates a Resolution Professional to form his own opinion even though the same may be based on external opinion. It is also noted that the conclusions derived by the Resolution Professional are solely based on the conclusions of the Transaction Auditor, and no independent opinion seems to have been formed. Nonetheless, it is also noted that the Applicant Resolution Professional has also narrated the details of each transactions, particulars relevant thereto to the extent available with him and relevant section under which each of such transaction is sought to be impugned. Further, the sufficiency of the material or reasons before Resolution Professional or Liquidator, while forming an opinion can not be looked by this Tribunal in a challenge to maintainability, as this Tribunal is required to adjudicate the transactions in the context of facts and reasoning placed before the Resolution Professional or Liquidator, as the case may be. Accordingly, we consider it appropriate to proceed to decide the application based on its merits as the object and purport of avoiding these transactions is to protect the asset base available for settlement of its creditors. Hence, we do not find any merit in objection in relation to formation of opinion.

17. The Applicant has impugned various transactions u/s 43, 45, 49, 50 and 66 of IBC. Since, the law relating to each section is different and each section has distinct ingredients, the transactions impugned in the present application are dealt with section wise in the following paragraphs.

Preferential Payments u/s 43 of IBC

18. A transaction to fall within section 43 of the IBC as preferential payments must have following ingredients :

a. There is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor;
b. Such transfer is on account of an antecedent debt or liability owed by the Corporate Debtor;
c. Such transfer has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53;
d. Such transfer is not in ordinary course of business of the corporate debtor or the transferee;
e. Such transfer is within period of 2 years of Insolvency Commencement date in case of related party, and one year in case of others.

19. Further, Section 44 of IBC provides for Orders, which can be passed by this Tribunal, in case of Preferential transactions. It reads as follows :

> ***44.*** *The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:*
>
> *(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;*
>
> *(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;*
>
> *(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;*
>
> *(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the*

liquidator or the resolution professional, as the Adjudicating Authority may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation I.—For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference,—

(i) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(ii) is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II.—A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13.

20. It is noted that the Applicant has not placed on record the ledger accounts of the parties to the transactions impugned in section 43 of IBC and these transactions have been impugned basis summary of their accounts provided in the Transaction Audit Report. Respondent No. 26, 34 and 35 have been admitted in CIRP, accordingly, no proceedings can continue against them. It is clear from section 44 of IBC that the orders in terms thereof requires restitution of the property so transferred or benefit so received in preference. There are certain transactions impugned in section 43, where these three respondents, being creditors, are alleged to have received preferential payments by way of transfer of certain receivable of corporate debtor. Further, in certain transactions, the receivables from these three Respondents have been transferred to Respondents herein being creditors in discharge of their debt. In view of commencement of proceedings under IBC in case of three Respondents, no order requiring them to restore the property or benefit received by them can be passed by this Tribunal. Further, where the balances receivable from these Three Parties have been transferred to other Respondents, the reversal of such transfer shall result into restoring the position thereby restoring these three Respondents as debtors to the extent of reversal, however, no money could be recovered from them in view of ongoing CIRP proceedings. Thus, while creditor of

corporate debtor would get restored in the books, but the restored debtor would be meaningless. Hence, we are of considered view no order can be passed in relation transactions where these parties are either transferor or transferee. Accordingly, no order can be passed in relation to the transactions listed at sub-para a, b, c, f, g, h, i, j, n, o, p & s of Para 9(ii), and at para 9(v)(i) above. Nonetheless, the Transaction Audit Report at Section V.1 has only stated that the amounts were payable to only Respondent No. 10, 23, 25 and 69 as on commencement of Insolvency Commencement Date. For this reason also, no case can be made against other Respondents in relation to the transactions of set off with them, except listed at d, f, j & k.

21. The applicant has impugned **adjustment of amount payable to parties against amounts receivables from them**, detailed at Para 9(i) above, as preferential payment u/s 43 of IBC. Indubitably, these transactions are in nature of set-off whereby the amount receivable from the said party is adjusted against the amount payable to them prior to insolvency commencement date. The Hon'ble Supreme Court in case of ***Bharti Airtel Ltd. and Anr. v. Vijaykumar V. Iyer and Ors.,*** **(2024) ibclaw.in 02 SC** dealt with issue of insolvency set-off in detail and held that the denial of set off during CIRP is subject to two exceptions, namely, Contractual Set-off and Equitable or Transactional Set off. It explained at Para 31 & 32 in following terms :

> "*31. The foundation of contractual set-off is based on the same ground as in the case of equitable set-off, which is impeachment of title, albeit contractual set-off is a result of mutual agreement that permits set-off and adjustment. Therefore, if a debtor's title to sue is impeached before the*

Corporate Insolvency Resolution Process is set into motion, so should the title of the Resolution Professional, who in terms of Section 25 of the IBC has the duty to preserve and protect assets of the corporate debtor, including continuing the business operations of the corporate debtor. The Resolution Professional takes the debtor's property subject to all clogs and fetters affecting it in the hands of the debtor"
32. The second exception will be in the case of 'equitable set-off' when the claim and counter claim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is fully justified and legal. The amount to be adjusted should be a quantifiable and unquestionable monetary claim, as the Corporate Insolvency Resolution Process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice."

22. Nothing has been placed on record by the Applicant to demonstrate that there was no mutual agreement permitting set-off and adjustment between the Corporate Debtor and respective Respondent, or the claim and counter claim in the form of set-off are not linked and connected on account of one or more transactions that can be treated as one. Accordingly, the bar on

CIRP set-off even if extended to pre-CIRP period on account of section 43 of IBC, the applicant has to demonstrate that such set-off was not permissible in terms of mutual arrangement between the parties or such claim and counter-claim were not linked and connected as one.

23. Hence, we are of considered view that set-off of receivable against payable with same person can not be deemed as preferential payment u/s 43 of IBC, accordingly, the no order can be passed in relation to transactions stated at Para 9(i) above.

24. The Applicant has also impugned the **adjustment of amount payable to one party against amount receivable from another party** resulting in preferential payment to party to whom the amounts were payable by Corporate Debtor as preferential payments u/s 43 of IBC alleging that the amounts received from receivable party were paid to payable party. These transactions are listed at Para 9(ii) above. In case of these transactions, the payment made by one party to another party have been accounted for in books of Corporate Debtor on the basis of advice from such parties to adjust such payments in their accounts with the corporate debtor. There are two kinds of transactions in this category, one where the amount payable to one creditor has increased by corresponding reduction in amount payable to another creditor, and other where the amount receivable from one debtor is decreased in books of corporate debtor with corresponding reduction in amount payable to a creditor in books of corporate debtor.

25. As regards first category, where one liability has replaced another liability, we are of considered view such transaction does not effect the total corpus available to the creditors in case of

liquidation in the absence of any transfer of an asset, as one liability is replaced by another liability. Accordingly, no order in terms of section 43 can be passed in relation to the transactions stated at sub-para d, e & l of para 9(ii).

26. The second category i.e. transactions at sub-para k, m, q, r & t of Para 9(ii) entails the transfer of receivable of corporate debtor to a creditor of corporate debtor. It is stated in the transaction audit report that these transactions had taken place within look back period and had the effect of payment towards antecedent debt. There is no quarrel that transfer of an asset, in form of receivable to a creditor towards its antecedent debt, constitutes preferential payment, if such transfer is not in ordinary course of business or financial affairs. The transfer of receivables to the creditor can not be considered as arising from ordinary course.

27. This Tribunal, vide order dated 26.3.2026, had required the Applicant to furnish "*ledger account of the parties concerning the transactions impugned in section 43 of IBC*". The ledger accounts of these parties were not placed before this tribunal till 15.6.2026 despite being granted sufficient time on multiple occasions, and the matter had to be proceeded further in its absence in view of sufficient time having been granted to the applicant. The ledger account were necessitated as the details stated at section V.2 of the Transaction Audit report only states the balance of Party 1 and Party 2 (the parties to each of impugned transactions) as on date of Insolvency Commencement date and it is not clear from the said report as to whether the amount was payable or receivable from such party. It is also noted from the details of balances stated in said section that Respondent No. 27 and

Respondent No. 43, being one of party to transactions listed at m & q, had nil balance as on Insolvency Commencement date. Respondents were subjected to multiple transactions (having effect on debit as well as credit side) impugned in the present application. For example, transaction at sub para r & t pertains to Respondent No. 45 U A Trading Company Pvt. Ltd. and it is stated in relation to transaction at 'r' that the transaction entailed payment to this Respondent against payable to it, while transaction at 't' entailed transfer of receivable from this Respondent to Respondent no. 46.

28. This Tribunal has to ascertain whether there was an antecedent debt due to creditor and the payment was made towards such antecedent debt, and it is not clear from the summary of account placed in transaction audit report as to what was status as on commencement of look back period in each creditor's account and if any payment or any material was subsequently received back from such party. In our considered view the net reduction in amounts payable to the party alleged to have been paid in preference can only be impugned in section 43 of IBC, as such net reduction only results into preference to such party.

29. In view of non-availability of such ledger accounts, this tribunal is unable to hold that the transfer of receivables from one respondent to another respondent was towards antecedent debt and such transfer was within look back period. Hence, no order in terms of section 43 can be passed in relation to transactions at sub-para k, m, q, r & t of para 9(ii) also.

30. The Applicant has also impugned Payments receivable from Corporate Debtor's Suspended Directors adjusted against third

person's balances are impugned as preferential payments u/s 43 of IBC as described at Para 9(iii) above.

31. It is stated that a sum of Rs. 0.41 crores receivable from Respondent No. 72 Abhay Lodha, Suspended Director was adjusted against the amount payable to Respondent No. 45 U. A. Trading Company Pvt. Ltd. Further, a sum of Rs. 0.35 crores paid by Respondent No. 14 Vansh Vanijya Pvt. Ltd. to Respondent No. 50 Kanchan Murarka towards her gratuity payment of Rs. 0.29 crores, and adjusted accordingly in books of corporate debtor, thus settling gratuity payable to Kanchan Murarka.

32. As regards gratuity payment by Respondent No. 14 to Kanchan Murarka, the gratuity payments are required to be paid to the employees in priority and are not ordinary operational debt. The Applicant has not considered this fact and has not demonstrated if Respondent No 50 had received amount lesser than Rs. 0.29 crores. Accordingly, the prayer in relation to payment of Rs. 0.29 crores is rejected. Further, payment made in excess of Rs. 0.29 lacs is not towards payment of antecedent debt due to her, hence no order can be passed in terms of section 43 of IBC. However, the same is recoverable from Respondent No. 50 in ordinary course, and the same has to be recovered accordingly. We hold similarly for Rs. 0.10 lacs paid as advance to her earlier

33. As regards transfer of receivable from Respondent No. 72 against payable to Respondent no. 45, since the said transfer is within look back period, is against antecedent debt, and can not said to be in ordinary course of business, the said transfer is liable to be set-aside in terms of section 43 of IBC.

34. The Applicant has also impugned payment of Car Loan of total Rs. 0.58 crores and interest thereon Rs. 0.13 crores

aggregating to Rs. 0.71 crores by CD as Preferential transactions u/s 43 of IBC, however, no details of beneficiary are stated in the application. Accordingly, in the absence of beneficiary creditors details, no order can be passed u/s 43 of IBC in relation to transaction at para 9(iv).

35. The Applicant has also impugned payments to related parties/potentially related parties as preferential u/s 43 of IBC as described at para 9(v) above.

36. Section 5(24) of IBC defines Related Party. Section 43 is a deeming fiction and it is trite that deeming fiction are to be strictly construed. Since, Section 43(4) of IBC contains the word "Related Party", the transactions parties falling within ambit of Section 5(24) of IBC shall only fall within the look back period of 2 years, and any other term 'potential related party' is alien to Section 43(4), accordingly, the transactions with potential related party can only be impugned within a period of one year of Insolvency Commencement date.

37. The transactions stated to sub-para a to h & j to r of Para 9(v) above are direct payments from the corporate debtor to these parties and are stated to be within look back period. Accordingly, these payments are set-aside and the concerned Respondent parties are directed to remit the amount stated against their name at para 9(iv) above within 30 days of this order.

Undervalued Transaction u/s 45 of IBC

38. The Applicant has also impugned transaction of sales to Respondents, as described at sub-para a to h, except c, of Para 9(vi) above, as undervalued transactions u/s 45 of the IBC. The Applicant has also impugned purchases from Respondents,

described at sub-para c of Para 9(vi) above, also as undervalued u/s 45 of IBC alleging that such purchases caused loss to the corporate debtor.

39. Section 45 of IBC reads as under –

> ***45.*** *(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.*
>
> *(2) 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 by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,*
>
> *and such transaction has not taken place in the ordinary course of business of the corporate debtor.*

40. The allegation of undervalued sale is based on the weighted average price determined by Transaction Auditor. Section 45(2) provides that the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor shall be considered undervalued where the corporate debtor. This section uses the word 'significantly', accordingly, the undervaluation should be significant as compared to the price

paid by the corporate debtor, but it excludes the transaction taken place in ordinary course of business.

41. Indubitably, the corporate debtor was engaged in the business of manufacture and sale of products made from iron and steel industries, in relation to which undervaluation is alleged. The prices in iron & steel industries are not constant and changes on daily basis on account of various factors governing such sector. Further, the price of each item under a category differs on account of composition of steel, width, length, OD etc., and these factors also have bearing on the price of a product, hence, the weighted average of a category is not an appropriate comparable to determine undervaluation. This conclusion is also fortified from the comparative analysis given at Section VI.1 of the Transaction Audit Report which indicates that, in other cases, the selling price is higher than the weighted average price.

42. It is noted that the price charged by the corporate debtor is lower by approx. 6% as compared to weighted average. Further, the price is also dependent on various other factors, like credit period and creditworthiness of buyer in relation to particular credit period. The applicant has failed to notice the trade pattern in which corporate debtor is engaged and has not placed on record any comparable contemporaneous transaction demonstrating the lesser charge of price by the corporate debtor in relation to impugned transactions at sub-para a & b. Further, in relation to transactions at sub-para d to h, the allegation does not account for daily price movement in the products of the corporate debtor and has simply proceeded on the basis of weighted average. Hence, the allegation of undervalued transaction does not hold

good, and no order is called for in relation to transactions at sub-para a to h, except c, of Para 9(vi) above.

43. As regards loss caused to the corporate debtor on account of purchase of goods at a value higher than weighted average sale price as described at sub-para c of 9(vi) above, it is observed that sale to Respondent No. 3, whereby the alleged loss was caused, took place on back to back basis, and there is not much time gap in purchase of goods and sale thereof to Respondent No. 3. There is approx.. variation of 10% in the price paid for purchase and corresponding price charged on sale. Since, the lesser price charged results into a benefit extended by the Corporate Debtor to Respondent No. 3, we are of considered view that Respondent No. 3 is liable to contribute a sum of Rs. 11.57 crores to the corporate debtor in terms of section 48(1)(c) of IBC.

Transactions defrauding creditors u/s 49 of IBC

44. The applicant has impugned transactions in relation to provision for doubtful debts against the receivables from customers, as described at para 9(vii) above, as transactions defrauding creditors u/s 49 of IBC alleging such provision was made to keep such receivables away from the creditors of the CD.

45. Section 49 of IBC reads as under –

> ***49.*** *Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—*
>
> *(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or*

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

the Adjudicating Authority shall make an order—

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section—

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor [1][or a related party of the corporate debtor, as the case may be,] and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

46. For a transaction to fall under Section 49, such transaction has to be undervalued, and was entered deliberately by the corporate debtor. The transactions at Para 9(vii) relates to provisions against the debtors arising from sale of goods accounted for in the books of corporate debtor for the year 2017-18.

47. At the outset, a provision against the debts considered doubtful can not be constituted as an undervalued transaction u/s 45 of the IBC, as such provision is made against the anticipated/estimated diminution in the value of the assets as there is no transfer of asset in nature of debt by making such provision. Further, even if accounting for provision against doubtful debt is considered as undervalued transaction for sake

of arguments, such provision being mandated under the applicable accounting standards under section 133 of Companies Act, 2013 can not said to be created deliberately. At last, the provision against an asset does not result into cessation of any right vested in the debtor in respect of such receivable, as such provision is merely recognition of loss anticipated at the time of realization of such asset, and the debtor has all legal rights available to it proceed for recovery thereof from the creditor. Hence, the question of keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor or such provision adversely affecting the interests of such a person in relation to the claim do not arise. On the contrary, such provision accounting enables a reporting entity to report true and fair view of its financial affairs, which is also a legal requirement under section 129 of Companies Act, 2013.

48. Accordingly, we are of considered view that the transactions impugned at para 9(vii) do not fall within scope of section 49 of IBC, hence, no order can be passed.

Extortionate transaction u/s 50 of IBC

49. The Applicant has impugned overdue charges @ 21% per annum payable to two vendor(s) on their outstanding, as described at para 9(viii) above, as extortionate transaction u/s 50 of IBC. The said overdue charges amounts are only recorded in the books of accounts and not paid to the concerned parties.

50. Section 50 of IBC reads as under –

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

(2) The Board may specify the circumstances in which a transactions which shall be covered under sub-section (1).

Explanation.—For the purpose of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an extortionate credit transaction.

51. Further, Regulation 5 of CIRP Regulations provide *that a transaction shall be considered extortionate under section 50(2) where the terms:*

(1) require the corporate debtor to make exorbitant payments in respect of the credit provided; or

(2) are unconscionable under the principles of law relating to contracts.

52. The Applicant has only stated that the Transaction Auditor has observed that the transactions mentioned under this paragraph are extortionate transaction which appears to be significantly unreasonable. However, no material has been placed on record how overdue charges, the levy of which is normal business practice, is unconscionable. Further, it has also not been explained as to how levy of such overdue charges @ 21% p.a. is exorbitant, while it is customary to levy late payment charges ranging from 12% p.a. to 30% p.a.

53. Accordingly, we are of considered view that the transactions impugned at para 9(viii) do not fall within scope of section 50 of IBC, hence, no order can be passed.

Fraudulent or Wrongful Trading u/s 66 of IBC

54. The Applicant has impugned write offs of debtors, described at Para 9(ix) above, as Fraudulent u/s 66(1) of IBC and the Applicant has also pleaded the same falling u/s 66(2) of IBC also. The corporate debtor has written off book debts receivable from Respondent no. 13, 14 and 68 in the financial year 2017-18, and the said write off is impugned as fraudulent.

55. It is stated by the Applicant that, during the review period the Corporate Debtor has written off an amount of Rs. 248.97 crores against Harsh Steel Trade Private Limited, Netra Mercantile Private Limited & Vyash Vanijya Private Limited. Further, it was observed that in the review period no sales transactions were entered into with these parties.

56. Accordingly, it is stated by the Applicant that, in the opinion of the Transaction Auditor, certain suspicious transactions have been found and red flags have been raised as to their execution. It appears that these transactions are fraudulent transactions under section 66 of the Code.

57. It is also stated by the Applicant in relation to these parties that :

a. Harsh Steel Trade Pvt. Ltd. was identified as potential indirect related party by the Transaction Auditors. The Corporate Debtor had made payments amounting to Rs. 4.07 crores in the F.Y. 2016-17 whereas as on April 1, 2016 the receivable balance form Harsh Steel Trade Pvt Ltd was of Rs. 171.09 crore.

The whole of the amount was written off as doubtful debt in the FY 2016-17.

b. Netra Mercantile Private Limited was also identified as potential indirect related party by the Transaction Auditors. An amount of Rs. 73.71 crore receivable by the Corporate Debtor was written off.

c. Vyash Vanijya Private Limited was identified as potentially indirect related party of the Corporate Debtor. It was observed that during the review period the Corporate Debtor had written off amount of Rs. 20.10 crore receivable.

58. The Transaction Auditors observed that the above parties had potential indirect relationship with the Corporate Debtor, no balance confirmation received from the identified parties, the parties were non-existent at the respective registered address, no supporting documentation pertaining to transactions with these identified parties were provided, significant adverse financial indicators of the parties, adverse media information available.

59. It is further stated by the Applicant that the Corporate Debtor have been writing off the value of the assets of the Corporate Debtor, whereas the term loan and working capital facilities availed by the Corporate Debtor were secured by the charge on the current assets. Thus the above transactions depleted the value of the Company based on which the Auditor gave an adverse opinion in the audited financial statement for FY 2016-2017 on the capacity of the Company to continue as a going concern.

60. Learned Counsel for the Respondent submitted that mere write off debt of the debt, which is consider as irrecoverable, cannot be impugned as fraudulent transaction as the right to

recover those amounts remains with the Corporate Debtor despite such write off. For this purpose reliance is placed on the decision in the case of ***Salim Akbarali nanji Vs. Union of India and Others (2006) 5 Supreme Court Case 302***, wherein it is held at Para 17 that "*The submission proceeds on the assumption that the bad debts written off cannot be recovered. In fact and in law it is not so. Despite writing off the debt is still recoverable by the Bank. The affidavit filed by the Bank also discloses the steps which are being taken to realize the dues from the debtor. Some amounts have been recovered over the years though the figure does not appear very impressive. Even so, steps are being taken to recover the dues whenever possible and Respondent No.6 Bank has furnished particulars of the various proceedings pending for recovery of such debts. The write off is only an internal accounting procedure to clean up the balance sheet, and it does not affect the right of the creditor to proceed against the borrower to realize his dues………….*". It is also held at Para 27 that "………….*One cannot however, jump to the conclusion that only because some of the debts have become bad, there is lack of proper management of the Bank, or that the conduct of the Bank is dishonest or mala-fide. In a given case, there may be evidence of such mis- management or dishonest conduct, but in the absence of any such accusation one cannot draw an adverse inference against the Bank. In the instant case, though some of the debts have to be written off, with little chance of substantial recovery, we cannot lose sight of the fact that the Bank has generated considerable operating profits and has built up a substantial general reserve over the years, against which the debts written off have been adjusted.*"

61. Indubitably in the present case this balances were recoverable from these parties and were written off in the books of Corporate Debtor in FY 2016-17. The Respondent No.72 has placed on record certain communication to evidenced that the legal notices were issued to these parties. However, neither the Applicant nor the Respondent Director have placed on record the total volume of transaction entered into with these parties by the Corporate Debtor over years and out of which how much was realized and how much turned bad. It was the primary responsibility of the Applicant to do so as the Applicant had books of account of the Corporate Debtor for the relevant years before him. It is noted that the transaction auditor has also not reported these facts in its report.

62. Ordinarily, the credit transactions involve risk whereby the amounts recoverable from the counter party may turnout to be bad for genuine business reasons, one of which can certainly be adverse financial indicators.

63. The transaction auditor pointed out that Respondent No.13 is indirectly related to the Corporate Debtor and its revenue from sale of goods decreased significantly from INR 363.80 crores in FY 2015-16 to INR 1.41 crore in FY 2016-17 accordingly, the auditor has concluded that, basis these observations, they are unable to comment on the financial viability of said party.

64. The transaction auditor has pointed out that Respondent No.14 is also indirectly related to the Corporate Debtor and had incurred losses in FY 2015-16 resulting into its net worth turning negative in FY 2017-18. The transaction Auditor had concluded that, basis these observations, they are unable to comment on the financial viability of said party.

65. The transaction auditor has also pointed out that the revenue from sale of goods in the year FY 2015-16 was Rs. 3717.20 crores as per financial statement of Respondent No.68 and it fell to 0 in the next year. Further the Union Bank of India had filed a FIR against said Respondent in April 2019 for misusing credit facilities.

66. The transaction auditor as well as the Applicant has proceeded to hold such write off as fraudulent on the ground that these parties may be linked with the Suspended Board and on the date of inquiry were found non-existent. However, the inability of the financial auditor to express its opinion on the financial viability of these entities on the basis of substantial erosion in their business in FY 2016-17 in itself justify the non recoverability of amounts due from Respondent No.68 for which the Respondent Directors would have decided to provide for in the books of account. The fact of relatedness is based on some common directorship in the past. In the absence of total volume of business done with these parties over the years, the mere fact of write off on stand alone basis cannot be considered as a ground for impugning the such write offs as fraudulent, more so when the transaction auditor has itself observed substantial erosion in the business of these parties. As accounting standards mandates accounting of foreseeable losses or diminishing the value of assets on estimate basis, it cannot be said that such right of per-se was coupled with an intend to keep away the assets from the Creditor with intend to defraud them.

67. Accordingly, we are of considered view that it cannot be said that the business of the Corporate Debtor has been carried on

with intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose, merely because some of its book debts have turned bad. Further Section 66(2) is attracted when the Director fails to exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor. As is noted above, there was substantial erosion in the business of these parties in FY 2015-16 itself thus eroding the chances of recoverability of outstanding debts from them, it cannot be said that the loss on account of such write off could have been minimized after the default committed by the Corporate Debtor in October 2015 towards Financial Creditor.

68. Accordingly, we are of considered view that no order can be passed in terms of Section 66 of IBC in relation to transaction listed at Para 9(ix) above.

69. In view of the aforesaid discussions, we pass the following direction :

a) transfer of receivable from Respondent No. 72 against payable to Respondent no. 45, since the said transfer is within look back period, is against antecedent debt, and can not said to be in ordinary course of business, the said transfer is liable to be set-aside in terms of section 43 of IBC;

b) The transactions stated to sub-para a to h & j to r of Para 9(v) are set-aside and the concerned respondents parties are directed to remit the amount stated against their name at para 9(iv) above within 30 days of this order.

c) Respondent No. 3, is directed to contribute a sum of Rs. 11.57 crores to the corporate debtor in terms of section 48(1)(c) of IBC.

70. In terms of the above, MA 4064 of 2019 is partly allowed and disposed of.

-Sd/-	**-Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)