IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, COURT-II

I.A (IBC) No. 1273 of 2023

IN

C.P (IB) No. 402/07/HDB/2020

[Under Section 43 r/w Section 44 of the Insolvency and Bankruptcy Code, 2016.]

IN THE MATTER OF M/S. DQ ENTERTAINMENT (INTERNATIONAL) LIMITED.

Between:

1. **MR. VENKA REDDY BATHINA, LIQUIDATOR,**
M/s. DQ Entertainment (International) Limited,
Plot No. 644, Aurora Colony, Road No. 3,
Banjara Hills, Hyderabad – 500034,
Telangana, India.

.... Applicant/Liquidator

Versus

1. **MR. TAPAAS CHAKRAVARTI**
(Suspended Director of the Corporate Debtor)
Plot No. 724/A/1, Road No. 37,
Jubilee Hills, Hyderabad – 500033,
Telangana.

.... Respondent No. 1/R1

2. **MRS. RASHIDA HATIM ADENWALA**
(Erstwhile Director of the Corporate Debtor)
H. No. 1-31-955/50, Plot No. 50, Mansarovar Villas-II,
Sai Sagar Heights, Tirumalagiri,
Hyderabad – 500015, Telangana.

..... Respondent No. 2/R2

3. MR. SRINIVASARAGHAVAN SUNDAR

(Erstwhile Director of the Corporate Debtor)
Plot No. 97, Vasavi Colony, Near Community Hall,
Karkhana, Secunderabad – 500015, Telangana.

..... Respondent No. 3/R3

4. MR. GOUTAM AUKNOOR

(Erstwhile Director of the Corporate Debtor)
Old No. 42, New No. 70, III Main Road,
K.B. Nagar, Adyar, Chennai – 600020,
Tamil Nadu.

..... Respondent No. 4/R4

5. MR. SANJAY CHOUDHARY

Erstwhile Chief Financial Officer (KMP/CFO) of
M/s. DQ Entertainment (International) Limited,
Flat No. 212, Sri Gayatri Elegant, Sy. No. 51,
Karkhana, Kakaguda, Vasavi Nagar,
Secunderabad – 500015, Telangana.

..... Respondent No. 5/R5

Date of Order:20.08.2026

Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsels Present

For Applicant	:	Mr. M. Maharshi Viswaraj, Ld. Counsel.
For Respondent Nos. 1 & 2.	:	Mr. Shreyan Reddy, Ld. Counsel.
For Respondent Nos .3 & 4	:	Mr. G. Bhupesh, Ld. Counsel.

1. The present Interlocutory Application was originally filed by **CS. Dr. Ahalada Rao Vummenthala, Resolution Professional of M/s. DQ Entertainment (International) Limited**, under Sections 43 and 44 of the IBC[1]. Subsequently, pursuant to the Order dated **11.06.2024** passed in the present Interlocutory Application**, Mr. Venka Reddy Bathina, Liquidator of M/s. DQ Entertainment (International) Limited**, was substituted as the Applicant. The present Application is accordingly being prosecuted by the Applicant/Liquidator against **Mr. Tapaas Chakravarti, Suspended Director of the Corporate Debtor; Mrs. Rashida Hatim Adenwala, Erstwhile Director of the Corporate Debtor; Mr. Srinivasaraghavan Sundar, Erstwhile Director of the Corporate Debtor; Mr. Goutam Auknoor, Erstwhile Director of the Corporate Debtor; and Mr. Sanjay Choudhary, Erstwhile Chief Financial Officer (KMP/CFO) of M/s. DQ Entertainment (International) Limited** (hereinafter collectively referred to as the "Respondents"), seeking the following reliefs:
   i) To pass an order directing the Respondents to make good the losses caused to the Creditors of the Corporate Debtor.
   ii) Direct the Respondent Nos. 1 to 5, the members of the suspended Board/management of the Corporate Debtor, to contribute a sum of **Rs. 1,35,21,000/-** to the Corporate Debtor CIRP Account towards transactions carried out under Section 43 of the Act.
   iii) Direct the Respondent Nos. 1 to 5, the members of the suspended Board/management of the Corporate Debtor, to contribute a sum of **Rs. 1,19,26,000/-** to the Corporate Debtor towards transactions carried out under Section 45 of the Act.

CASE OF THE APPLICANT

2. The Applicant states that the Financial Creditor filed a petition under Section 7 of the IBC against the Corporate Debtor. It is averred that this Adjudicating Authority, vide order dated 17.06.2022 in CP (IB) No.

[1] Insolvency and Bankruptcy Code, 2016.

402/7/HDB/2020, admitted the petition, initiated CIRP and appointed Mr. Madhusudhan Rao Gonugunta as the Interim Resolution Professional. The Applicant further avers that the CoC, in its first meeting held on 16.07.2022, with 68.40% voting share, resolved to appoint the Applicant as the Resolution Professional. It is further stated that the CIRP period was extended from time to time.

3. The Applicant submits that, in terms of Sections 43 and 44 read with Section 25(2)(j) of the Code, upon examination of the transactions and records of the Corporate Debtor made available by the suspended management at its registered office, the Resolution Professional formed an opinion that certain transactions fell within the ambit of Sections 43 and 45 of the Code. Pursuant to the decisions of the CoC taken in its meetings held on 26.09.2022 and 07.10.2022, M/s. Sarath & Associates, Chartered Accountants, was appointed as the Transaction Auditor to examine the transactions of the Corporate Debtor for the period from 01.04.2017 to 17.06.2022 under Sections 43, 45, 50 and 66 of the Code, and the Transaction Audit Report along with the observations of the Resolution Professional was annexed as Annexure-1.

4. The Applicant submits that the Transaction Auditor, upon examining the books of account and other relevant records of the Corporate Debtor, identified certain transactions as preferential transactions falling within the ambit of Section 43 of the IBC. It is further averred that the identified transactions include advance repayment of Rs. 50.00 lakhs to Mr. Tapaas Chakravarthi on 17.04.2017, payment of consultation charges of Rs. 45.21 lakhs to R&A Associates, a firm in which a director is a partner, and payment of consultation charges of Rs. 40.00 lakhs to Mr. Ramana Murthy during FY 2017-18.

5. The Applicant submits that the Transaction Auditor, upon examining the books of account and other relevant records of the Corporate Debtor, identified certain undervalued transactions falling within the ambit of Section 45 of the IBC. It is averred that the identified transactions include

the sale of fixed assets (monitors and computers) having a net block value of Rs. 99.50 lakhs to Noor Agencies for Rs. 6.50 lakhs during FY 2018-19 and adjustment of a vehicle (Audi Car) having a net block value of Rs. 19.76 lakhs against an advance of Rs. 14.50 lakhs received from a Director on 31.07.2020. The Applicant further avers that the said vehicle transaction falls within the ambit of Section 45 as an undervalued transaction.

6. The Applicant submits that, in view of the transactions identified in the Transaction Audit Report dated 12.06.2023, the business of the Corporate Debtor was not conducted in the normal course, and proper adherence to the sound and accepted principles of accounting and business practices had not taken place. It is averred that the Respondents, being the Directors/CFO/Management of the Corporate Debtor, failed to conduct the affairs of the Corporate Debtor properly and failed in the discharge of their statutory duties. The Applicant further avers that, upon analysing the Transaction Audit Report and supporting documents, the transactions flagged therein were determined to be preferential and undervalued.

7. The Applicant contends that the instant application has been filed to bring the preferential and undervalued transactions to the notice of this Adjudicating Authority and to seek appropriate orders for avoidance of such transactions, contribution by the Respondents/Ex-Management, and reporting of the transactions to the Insolvency and Bankruptcy Board of India. It is further averred that the Respondents failed to exercise due diligence in minimizing losses to the creditors, siphoned off huge advances from the Corporate Debtor, and carried out preferential and undervalued transactions aggregating to Rs. 2,47,97,000/-, causing losses to the creditors, for which necessary directions and action in accordance with law are sought.

CASE OF THE RESPONDENT NOS. 1 & 2.

8. Respondents submit that the Transaction Audit Report dated 12.06.2023 prepared by M/s. Sarath & Associates, Chartered Accountants, pursuant to the transaction audit conducted for the period from 01.04.2017 to

17.06.2022, records that, although certain transactions were examined under Section 43 of the Code, the said transactions do not fall within the relevant look-back period prescribed under the Code and, therefore, do not qualify as preferential transactions. It is further stated that the Transaction Auditor referred to the order of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, whereby the period from 15.02.2020 to 28.02.2022 was directed to be excluded for limitation in judicial and quasi-judicial proceedings.

9. The Respondents further contend that the observations in the Transaction Audit Report relate to transactions undertaken during 2017 and 2018, whereas the Corporate Debtor was admitted into CIRP on 17.06.2022. Referring to Section 43 of the Code, the Respondents submit that the look-back period for related party transactions is two years preceding the insolvency commencement date. It is further contended that the judgment in *Suo Motu Writ Petition (C) No. 3 of 2020* is inapplicable to the present case, as the exclusion granted therein does not extend the look-back period under Section 43 of the Code. Accordingly, the Respondents contend that the alleged transactions do not qualify as preferential transactions and that the present Application is liable to be rejected.

10. Respondent submits that the allegation regarding the advance repayment of Rs. 50,00,000/- to Respondent No. 1 on 17.04.2017 as a preferential transaction is false and based on misconceived facts. It is contended that Respondent No. 1, being a first-generation entrepreneur, had advanced monies to the Corporate Debtor from time to time by raising hand loans from his friends and family to meet the working capital requirements and day-to-day urgent needs of the Corporate Debtor, which was facing financial liquidity issues and cash flow mismatches since 2013. The Respondents further contend that it was agreed that the advances would be reimbursed as and when the Corporate Debtor received funds from its customers.

11. It is further submitted that, as on 01.04.2017, Respondent No. 1 had advanced Rs. 2,02,78,056/- to the Corporate Debtor, out of which Rs. 50,00,000/- was repaid towards his personal loans. It is further submitted that remuneration of Rs. 2,47,00,000/- remained unpaid due to cash flow issues and that, as on 31.03.2022, Rs. 1,73,75,934/- remained payable to him, exclusive of accumulated salaries. Accordingly, the Respondents contend that the repayment does not constitute a preferential transaction under Section 43 of the Code.

12. In respect of the payment of Rs. 45.21 lakhs to R&A Associates during FY 2017-18, alleged by the Applicant to be a preferential transaction under Section 43 of the Code, the Respondents submit that the said payments were made towards professional services rendered by R&A Associates. It is submitted that R&A Associates had been appointed as Secretarial and Legal Consultants/Corporate Law Consultants pursuant to the Special Resolution passed at the 4th Annual General Meeting held on 23.09.2011, at a remuneration of Rs. 2,40,000/- per month, subject to an overall limit of Rs. 3,50,000/- per month.

13. The Respondents further submit that, pursuant to the shareholders' approval, R&A Associates raised monthly invoices of Rs. 3,50,000/- plus GST and was paid Rs. 42,00,000/- during FY 2017-18 for the services rendered. It is further submitted that the Secretarial Auditor confirmed that the payments were made in accordance with the shareholders' approval. Accordingly, the Respondents contend that the said payments do not constitute a preferential transaction under Section 43 of the Code and deny the Applicant's claim.

14. Concerning the consultation charges of Rs. 40.00 lakhs paid to Mr. Ramana Murthy during FY 2017-18, the Respondents submit that the Corporate Debtor was attempting to raise funds during the relevant period and advance amounts were paid to consultants to enable them to commence their work, as consultants or intermediaries would not commence work unless advances were paid. Accordingly, the Respondents contend that the

said transaction also does not amount to a preferential transaction under Section 43 of the Code, and the Applicant's claim in this regard is denied.

15. In respect of the sale of computers, monitors and server blades to Noor Agencies for Rs. 6.50 lakhs during FY 2018-19, alleged by the Applicant to be an undervalued transaction under Section 45 of the Code, the Respondents submit that the assets, having a gross value of Rs. 19,87,15,000/-, were fully depreciated and had a residual value of 5%, amounting to Rs. 99.50 lakhs, as reflected in the financial statements. It is further submitted that the assets had become redundant after eight to ten years and were lying as scrap with no value and were accordingly sold to Noor Agencies for Rs. 6.50 lakhs as scrap. Accordingly, the Respondents contend that the said transaction does not constitute an undervalued transaction under Section 45 of the Code and deny the Applicant's claim.

16. Concerning the sale of the Audi vehicle, having a net block value of Rs. 19.76 lakhs, for Rs. 14.50 lakhs on 31.07.2020, alleged by the Applicant to be an undervalued transaction under Section 45 of the Code, the Respondents submit that, owing to the financial liquidity issues of the Corporate Debtor, offers were obtained from three vendors, whereupon Respondent No. 1 offered the highest price and purchased the vehicle. It is further submitted that the sale consideration was adjusted against the advance amounts payable by the Corporate Debtor to Respondent No. 1. Accordingly, the Respondents contend that the said transaction does not constitute an undervalued transaction under Section 45 of the Code and deny the Applicant's claim.

17. The Respondents submit that the transactions referred to by the Applicant do not fall within Sections 43 and 45 of the Code, as they are outside the prescribed look-back period and were undertaken in the ordinary course of business. They deny the allegations of failure to exercise due diligence, payments to related parties and siphoning of advances, and contend that the transactions were undertaken in accordance with sound business practices and without any intention to defraud the Corporate Debtor or its

creditors. The Respondents further submit that the Applicant has failed to establish that the impugned transactions are preferential or undervalued transactions under the Code and that the claim of Rs. 2,47,97,000/- is unsubstantiated. Accordingly, the Respondents contend that the Application is misconceived and liable to be dismissed.

18. The counter and written submissions filed by Respondent Nos. 3 and 4, as well as the written submissions filed by Respondent Nos. 1 and 2, substantially reiterate the contentions already set out hereinabove in the counter of Respondent Nos. 1 and 2. Since the said contentions are substantially repetitive, the same are not being reproduced again for the sake of brevity. The submissions, to the extent relevant, shall be considered while dealing with the respective transactions.

FINDINGS AND DECISION

19. We have heard the Learned Counsel for the Applicant and the Respondents and carefully perused the material and documents placed on record. Upon due consideration of the submissions and the material available on record, we proceed to consider the issues arising for determination.

20. The Corporate Debtor, M/s. DQ Entertainment (International) Limited, was admitted into CIRP vide order dated 17.06.2022 passed by this Adjudicating Authority in C.P. (IB) No. 402/07/HDB/2020, on a petition filed under Section 7 of the Code, and Mr. Madhusudhan Rao Gonugunta was appointed as the IRP. In the first meeting of the CoC held on 16.07.2022, Dr. Ahalada Rao Vummenthala was appointed as the RP of the Corporate Debtor. The CIRP period was thereafter extended from time to time.

21. The present Interlocutory Application was initially filed by CS. Dr. Ahalada Rao Vummenthala, Resolution Professional of the Corporate Debtor, under Sections 43 and 44 of the Code. Subsequently, pursuant to the order dated 11.06.2024 passed in the present Interlocutory Application, Mr. Venka Reddy Bathina, Liquidator of the Corporate Debtor, was substituted as the

Applicant. Accordingly, the present Application is being prosecuted by the Applicant/Liquidator against the Respondents herein.

22. The Applicant averred that, pursuant to the decisions of the CoC taken in its meetings held on 26.09.2022 and 07.10.2022, the RP appointed M/s. Sarath & Associates, Chartered Accountants, as the Transaction Auditor to conduct the transaction audit of the Corporate Debtor for the period from 01.04.2017 to 17.06.2022 and to examine the transactions falling under Sections 43, 45, 50 and 66 of the Code.

23. The questions that arise for consideration are whether the impugned transactions constitute preferential transactions within the meaning of Section 43 of the Code, whether the impugned transactions constitute undervalued transactions within the meaning of Section 45 of the Code, and whether the facts and circumstances of the case warrant grant of relief under Section 44 of the Code.

24. Section 43 contemplates that a transaction shall be treated as preferential if the Corporate Debtor has transferred its property or interest therein, for the benefit of a creditor, surety or guarantor, in respect of an antecedent debt or liability, within the prescribed look-back period, and such transfer has the effect of placing the beneficiary in a more beneficial position than it would have occupied in the event of liquidation under Section 53 of the Code, provided such transaction is not protected as one made in the ordinary course of business.

25. The Hon'ble Supreme Court in ***Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020) 8 SCC 401*** has authoritatively held that the aforesaid conditions must be cumulatively satisfied, and the Adjudicating Authority is required to examine the substance of the transaction, rather than its form, to determine whether it falls within the mischief of Section 43.

26. Before examining the individual transactions alleged to be preferential, it is necessary to determine the relevant period contemplated under Section 43(4) of the Code. Section 43(4) provides that a preference shall be deemed

to have been given at a **"relevant time"** if 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 to a person other than a related party during the period of **one year preceding the insolvency commencement date**. The **insolvency commencement date was the reference date** for calculating the applicable look-back period.

Preferential Transactions.

I. ***Transactions with Mr. Tapaas Chakravarti (Respondent No. 1) – Rs. 50,00,000/- dated 17.04.2017.***

27. The Applicant averred that the Transaction Auditor, upon examination of the books of account and other relevant records of the Corporate Debtor, identified the advance repayment of Rs. 50,00,000/- made to Mr. Tapaas Chakravarti on 17.04.2017 as a preferential transaction falling within the ambit of Section 43 of the Code.

28. The Respondents, however, contended that the said transaction does not fall within the relevant period prescribed under Section 43(4)(a) of the Code. It was contended that the CIRP commenced on 17.06.2022 and, therefore, the two-year look-back period for a transaction with a related party would apply. It was further contended that the transaction dated 17.04.2017 is much before the said period and, therefore, cannot be treated as a preferential transaction under Section 43 of the Code.

29. We have considered the rival contentions and perused the material available on record. The CIRP of the Corporate Debtor commenced on 17.06.2022. Section 43(4)(a) of the Code prescribes a period of two years preceding the insolvency commencement date in respect of a transaction made with a related party. Accordingly, the relevant period for the purpose of Section 43, in the present case, would be from 17.06.2020 to 17.06.2022. The impugned payment of Rs. 50,00,000/- was admittedly made on 17.04.2017 and, therefore, falls outside the statutory look-back period prescribed under Section 43(4)(a) of the Code.

30. In view of the above, the impugned payment of Rs. 50,00,000/- made to Respondent No. 1 on 17.04.2017, being outside the relevant period prescribed under Section 43(4)(a) of the Code, cannot be treated as a preferential transaction within the meaning of Section 43 of the Code. Accordingly, it is not necessary to examine the other ingredients of Section 43 in respect of the said transaction.

II. Transactions with R&A Associates (Firm in which Director is partner) – Rs. 45,21,000/- on multiple dates during FY 2017-18.

31. The Applicant contends that payment of consultation charges aggregating Rs. 45.21 lakhs made to R&A Associates on multiple dates during Financial Year 2017-18 constitutes a preferential transaction under Section 43 of the Code. It is submitted that R&A Associates is a related party of the Corporate Debtor, as Respondent No. 2 is a partner in the said firm and was also a Director of the Corporate Debtor at the relevant time. The Applicant relies on the Transaction Audit Report dated 12.06.2023 in support of this claim.

32. Respondents submit that the payments fall outside the two-year look-back period under Section 43(4)(a). The Corporate Debtor was admitted into CIRP on 17.06.2022 and, therefore, only transactions between 17.06.2020 and 17.06.2022 can be examined. The payments made in FY 2017-18 are clearly beyond this period. Without prejudice, the Respondents further contend that the payments were made in the ordinary course of business. By a Special Resolution passed at the 4th Annual General Meeting held on 23.09.2011, the shareholders appointed R&A Associates as Corporate Law Consultants at a remuneration of Rs. 2,40,000 per month, which could be increased from time to time subject to an overall limit of Rs. 3,50,000 per month. The payments of Rs. 45.21 lakhs in FY 2017-18 were made against regular monthly invoices within this approved limit and were also confirmed by the Secretarial Auditor.

33. It is not in dispute that R&A Associates is a related party within the meaning of Section 5(24) of the Code. Consequently, the applicable look-back period under Section 43(4)(a) is two years preceding the insolvency

commencement date. The Corporate Debtor having been admitted into CIRP on 17.06.2022, the relevant period is from 17.06.2020 to 17.06.2022.

34. The impugned payments aggregating Rs. 45.21 lakhs were made during Financial Year 2017-18 and therefore fall outside the statutory look-back period prescribed under Section 43(4)(a) of the Code. Once the temporal requirement of Section 43(4) is not satisfied, the payments cannot be treated as preferential transactions under Section 43 of the Code; therefore, it is unnecessary to examine the remaining ingredients of Section 43 or the ordinary-course defence raised by the Respondents.

III. Consultation charges of Rs. 40.00 Lakhs to Mr. Ramana Murthy on multiple dates in FY 2017-18.

35. The Applicant contends that payment of consultation charges aggregating Rs. 40.00 lakhs made to Mr. Ramana Murthy on multiple dates during Financial Year 2017-18 constitutes a preferential transaction under Section 43 of the Code. The Applicant relies on the Transaction Audit Report dated 12.06.2023 prepared by M/s. Sarath & Associates, Chartered Accountants, which flagged the said payments as preferential transactions under Section 43 of the Code."

36. Respondents submit that the alleged payments fall outside the statutory look-back period under Section 43(4) of the Code. The Corporate Debtor was admitted into CIRP on 17.06.2022. The applicable period under Section 43(4)(b) is one year preceding the insolvency commencement date, i.e., from 17.06.2021 to 17.06.2022. The payments made in FY 2017-18 are clearly beyond this period. Without prejudice, the Respondents contend that the payments were made in the ordinary course of business as advances to a consultant engaged for fund-raising, it being commercial practice that such consultants commence work only upon receipt of advance. Hence, the transactions do not attract Section 43.

37. There is no material placed on record to establish that Mr. Ramana Murthy is a related party within the meaning of Section 5(24) of the Code. Consequently, the applicable look-back period under Section 43(4)(b) is one

year preceding the insolvency commencement date. The Corporate Debtor was admitted into CIRP on 17.06.2022. The relevant period is therefore from 17.06.2021 to 17.06.2022.

38. The impugned payments aggregating Rs. 40.00 lakhs were made during Financial Year 2017-18 and are, therefore, clearly outside the statutory look-back period. Once the temporal requirement of Section 43(4) is not satisfied, the payments cannot be treated as preferential transactions under Section 43 of the Code. It is, therefore, unnecessary to examine the remaining ingredients of Section 43 or the ordinary-course defence raised by the Respondents.

39. It is also pertinent to note that, apart from the Transaction Audit Report dated 12.06.2023, no supporting documents relating to the underlying transactions have been placed on record. The Audit Report records the transactions based on the books of account and information made available to the Auditor; however, no underlying agreements, invoices, vouchers, correspondence or other contemporaneous material have been produced to establish the nature, basis and circumstances of the impugned payments. In the absence of such supporting material, the impugned transactions cannot be established merely based on the observations contained in the Transaction Audit Report.

<u>Undervalued Transactions.</u>

40. Having considered the preferential transactions referred to hereinabove, we now proceed to examine the transactions alleged to be undervalued transactions under Section 45 of the Code. The Applicant contends that the fixed assets comprising monitors and computers having a net block value of Rs. 99.50 Lakhs were sold to Noor Agencies for Rs. 6.50 Lakhs during FY 2018–19, and that the Audi Car having a net block value of Rs. 19.76 Lakhs was adjusted against the advance received from the Director for Rs. 14.50 Lakhs on 31.07.2020. According to the Applicant, both the aforesaid transactions involved transfer of assets for consideration substantially

lower than their respective values and, therefore, constitute undervalued transactions falling within the ambit of Section 45 of the Code.

41. The Applicant seeks avoidance of the impugned transactions under Section 45 of the IBC. The determination of whether the transactions are undervalued is governed by Section 45(2)(b) of the Code. Therefore, for a transaction to be characterised as an undervalued transaction under Section 45(2)(b), the Applicant is required to establish: (i) transfer of an asset belonging to the Corporate Debtor; (ii) receipt of consideration significantly lower than the value of the asset transferred; and (iii) that the transaction was not entered into in the ordinary course of business. For ready reference, the Section 45(2)(b) of IBC is extracted herein below:

> *"**Section 45: Avoidance of undervalued transactions**.*
>
> **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) 1[**] 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."*

42. At this stage, it is necessary to examine whether the transactions referred to hereinbelow fall within the relevant period prescribed under Section 46 of the Code. Section 45(1) expressly provides that an undervalued transaction must have been made during the relevant period under Section 46. Section 46(1) prescribes a look-back period of one year preceding the

insolvency commencement date for transactions entered into with any person, and two years preceding the insolvency commencement date for transactions entered into with a related party. Accordingly, before examining the other ingredients of Section 45, it is necessary first to determine whether the transactions referred to hereinbelow fall within the prescribed look-back period under Section 46 of the Code.

I. Sale of Fixed Assets (Monitors and Computers) by the Corporate Debtor to Noor Agencies for Rs. 6.50 Lakhs as against the Net Block Value of Rs. 99.50 Lakhs during FY 2018–19.

43. The Applicant contends that the fixed assets comprising monitors and computers, having a net block value of Rs. 99.50 Lakhs, were sold by the Corporate Debtor to M/s. Noor Agencies for Rs. 6.50 Lakhs during FY 2018–19, and that the said transaction constitutes an undervalued transaction under Section 45 of the Code. The Transaction Auditor, upon examination of the books of account and other relevant records, identified the said transaction as an undervalued transaction, observing that the assets having a net WDV of Rs. 99.50 Lakhs were sold for Rs. 6.50 Lakhs, resulting in a net loss of Rs. 93.50 Lakhs. The Auditor further recorded that, according to the management, the systems were old and had no value, whereas the books reflected a net WDV of Rs. 99.50 Lakhs.

44. The Respondents, on the other hand, submit that the computers and computer storage having a gross value of Rs. 19,87,15,000/- had been fully depreciated and that the amount of Rs. 99.50 Lakhs represented the residual value of 5% reflected in the financial statements. It is further submitted that the computers, monitors and server blades had become redundant after eight to ten years and were lying as scrap, and were accordingly sold to M/s. Noor Agencies for Rs. 6.50 Lakhs as scrap. Hence, the Respondents contend that the transaction does not constitute an undervalued transaction under Section 45 of the Code.

45. We have considered the rival submissions and perused the material available on record. Section 45(1) of the Code requires that an undervalued transaction must have been made during the relevant period prescribed under Section 46. Section 46(1)(i) provides that, in an application for avoidance of a transaction at undervalue, the transaction must have been made within the period of one year preceding the insolvency commencement date, where such transaction was entered into with any person. In the present case, there is no material on record to establish that M/s. Noor Agencies was a related party of the Corporate Debtor within the meaning of Section 5(24) of the Code. Accordingly, the transaction is required to be considered under the one-year look-back period prescribed under Section 46(1)(i). The Corporate Debtor was admitted into CIRP on 17.06.2022, whereas the transaction in question was undertaken during FY 2018–19. The transaction is, therefore, clearly beyond the one-year look-back period prescribed under Section 46(1)(i) of the Code.

46. Accordingly, irrespective of the rival contentions regarding the value of the assets and the consideration for which the same were sold, the transaction having been undertaken beyond the relevant period prescribed under Section 46(1)(i), the same does not fall within the ambit of an avoidable undervalued transaction under Section 45 of the Code. In view thereof, we do not need to examine the remaining requirements under Section 45(2)(b) of the Code; accordingly, the transaction relating to the sale of monitors and computers to M/s. Noor Agencies for Rs. 6.50 Lakhs cannot be treated as an undervalued transaction within the meaning of Section 45 of the Code.

II. Sale of Fixed Asset (Audi Vehicle) by the Corporate Debtor to its Director (Respondent No. 1) for Rs. 14.50 Lakhs as against the Net Block Value of Rs. 19.76 Lakhs on 31.07.2020.

47. The Applicant contends that the Audi Car, having a net block value of Rs. 19.76 Lakhs, was adjusted against the advance received from the Director for Rs. 14.50 Lakhs on 31.07.2020, and that the said transaction

constitutes an undervalued transaction under Section 45 of the Code. The Transaction Auditor also identified the said transaction as undervalued, observing that the vehicle, with a net block value of Rs. 19.76 Lakhs, was adjusted against the advance received from the Director for Rs. 14.50 Lakhs.

48. Per contra, the Respondents submit that the vehicle was sold on account of the financial difficulties faced by the Corporate Debtor and that three prospective purchasers were approached, out of whom Respondent No. 1 offered the highest price of Rs. 14.50 Lakhs. It is further submitted that the sale consideration was adjusted against the advance received from the Director and, therefore, the transaction was neither undervalued nor intended to confer any undue benefit.

49. We have considered the rival submissions and perused the material available on record. The transaction in question was entered into with Respondent No. 1, who was a Director of the Corporate Debtor at the relevant time and, therefore, a related party within the meaning of Section 5(24) of the Code. Accordingly, the two-year relevant period prescribed under Section 46(1)(ii) of the Code is applicable. The transaction dated 31.07.2020 falls within the said period, as the insolvency commencement date is 17.06.2022. Thus, the transaction satisfies the statutory look-back requirement and is liable to be examined on the touchstone of Section 45(2)(b) of the Code.

50. Section 45(2)(b) contemplates a transaction where the Corporate Debtor transfers an asset for a consideration significantly less than the value of the consideration provided by it, and such transaction is not in the ordinary course of its business. In the present case, apart from relying upon the net block value of Rs. 19.76 Lakhs reflected in the books of account and the sale consideration of Rs. 14.50 Lakhs, the Applicant has not placed any independent valuation report or other cogent material to establish that the actual value of the vehicle as on the date of the transaction was significantly higher than the consideration received. The net block value reflected in the

books, by itself, cannot be treated as conclusive evidence of the fair market value of the vehicle.

51. In the absence of any material establishing that the consideration of Rs. 14.50 Lakhs was significantly less than the actual value of the vehicle, this Tribunal is of the considered view that the Applicant has failed to establish the essential ingredients of an undervalued transaction under Section 45(2)(b) of the Code. Accordingly, the transaction relating to the adjustment of the Audi Car against the advance received from the Director cannot be treated as an undervalued transaction within the meaning of Section 45 of the Code.

52. Further, the Applicant has placed reliance only on the Transaction Audit Report dated 12.06.2023. However, the underlying primary records, including any valuation report or other cogent evidence, sale documents, quotations, correspondence relating to the sale, books of account, ledger extracts, vouchers and other contemporaneous records relied upon by the Transaction Auditor, have not been placed on record. In the absence of such material, this Tribunal is unable to independently verify the findings recorded in the Transaction Audit Report or determine whether the consideration received for the vehicle was significantly less than its actual value to constitute an undervalued transaction under Section 45(2)(b) of the Code.

Accordingly, I.A. IBC No.1273 of 2023 stands **dismissed.**

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)