NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201

(MP) IA 87 of 2020
in
TP 239 of 2019 [CP(IB) 370 of 2018]

Proceedings under Section 43 & 44 IBC,2016

IN THE MATTER OF:

Ravi Kapoor RP of SRK Devbuild Pvt Ltd **.....Applicant**
V/s
Subhash Agarwal & Anr **.....Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 07/10/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

NCLT INDORE BENCH
IA No. 87 (MP) of 2020
IN
TP 239 of 2019 [CP(IB) 370 of 2018]
Date of Order: 07.10.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

I.A. No. 87 of 2020

IN

TP 239 of 2019 [CP(IB) 370 of 2018]

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

IN THE MATTER OF:

AU SMALL FINANCE BANK LIMITED ...FINANCIAL CREDITOR

VERSUS

SRK DEVBUILD PRIVATE LIMITED ...CORPORATE DEBTOR

AND

IN THE MATTER OF

MR. RAVI KAPOOR

(RESOLUTION PROFESSIONAL OF SRK DEVBUILD PRIVATE LIMITED)

At: 402, Shaival Plaza, Gujarat College Road,

Ellisbridge, Ahmedabad-380006 **...APPLICANT**

VERSUS

1. MR. SUBHASH AGRAWAL

(SUSPENDED DIRECTOR OF THE CORPORATE DEBTOR)

13, Gulmohar Colony, Saket Nagar,

Indore-452001, Madhya Pradesh ...RESPONDENT NO. 1

NCLT INDORE BENCH
IA No. 87 (MP) of 2020
IN
TP 239 of 2019 [CP(IB) 370 of 2018]
Date of Order: 07.10.2026

2. SMT. GULAB AGRAWAL

(SUSPENDED DIRECTOR OF THE CORPORATE DEBTOR)

'Anusuiya Villa', 13, Gulmohar Colony,

Indore-452001, Madhya Pradesh ...RESPONDENT NO. 2

CORAM:
Hon'ble Shri Brajendra Mani Tripathi, Member (Judicial)
Hon'ble Shri Man Mohan Gupta, Member (Technical)

APPEARANCE
For the Applicant : Mr. Harshil Patel, Adv.
For the Respondents: Ms. Soumya Dharwa, Adv. (R-1&2)

Order Pronounced on: 07/10/2026

O R D E R

1. This application has been filed by Mr. Ravi Kapoor, the Resolution Professional ("RP"/"Applicant") of SRK Devbuild Private Limited ("Corporate Debtor"/"CD"), under Section 43 read with Section 44 of the Insolvency and Bankruptcy Code, 2016 ("Code"/"IBC"), for avoidance of certain transactions alleged to be preferential transactions and for issuance of appropriate orders in terms of Section 44 of the Code. The Applicant has prayed for the following reliefs: -

i. Consider and decide the transactions reported in para 9 of the application as preferential transactions within the meaning of Section 43(1) and 43(2) of the Code;

ii. Pass such order(s) and/or further order(s) and direction(s) as this Adjudicating Authority may deem fit in the facts and circumstances of the case under Section 43(1) and 43(2) of the Code, and pass necessary orders and/or directions for the said preferential transactions as per the provisions of Section 44(1) of the Code;

iii. Grant such other and further reliefs as are deemed fit and proper in the interest of justice.

2. The brief facts as averred by the Applicant, are as follows: -

i. CP (IB) No. 370/7/NCLT/AHM/2018, filed by AU Small Finance Bank Limited under Section 7 of the Code, was admitted by this Tribunal vide order dated 03.01.2020 (received on 11.01.2020), whereby the Corporate Insolvency Resolution Process ("CIRP") commenced against the Corporate Debtor and the Applicant was appointed as the Interim Resolution Professional ("IRP"). In the 1st meeting of the Committee of Creditors ("CoC") held on 10.02.2020, the CoC resolved to appoint the Applicant as the RP.

ii. The 2nd meeting of the CoC held on 25.02.2020, the CoC approved the appointment of M/s O.R. Maloo &

Co., Chartered Accountants, as Transaction Auditors, and the Applicant vide appointment letter dated 25.02.2020 appointed them, for a fee of Rs. 50,000/- plus GST, to carry out an audit of transactions to be reported under Sections 43, 45, 50 and 66 of the Code. The minutes of the said meeting record that the RP is required to form an opinion under Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") on whether the Corporate Debtor has been subjected to transactions covered under those Sections, and that, although the suspended board had furnished certain information on 01.02.2020, the remaining material information had not been received.

iii. The Transaction Auditor and the Applicant sent e-mails dated 02.03.2020, 16.03.2020 and 20.05.2020 to the suspended management seeking, inter alia, the order commencing CIRP, data for two years preceding the insolvency commencement date, audited financial statements of the previous two years, valuation reports, a list of related parties and a list of transactions with related parties. No information was furnished, and the Applicant accordingly filed I.A. No. 64 of 2020 under Section 19 of the Code, which the Applicant states is pending.

iv. By letter dated 18.06.2020, the Applicant asked the suspended directors to furnish details of certain transactions considered to be preferential in nature under Section 43 of the Code, but received no response. The Applicant thereafter called for the bank statement of the Corporate Debtor's account No. 156003325727 with Indore Premier Co-operative Bank Limited ("the Bank") and, upon verification, found that certain amounts had been transferred from that account to the accounts of the promoters/suspended board and other related parties during the last one year. By letter dated 29.06.2020, addressed to Respondent No. 1, the Applicant listed the said transactions, reproduced Section 43(1), (2) and (4) of the Code and called upon him to show cause within seven days why an application should not be moved before this Tribunal. No response was received.

The Transaction Auditor' Report:

v. The Transaction Auditor, by its report dated 27.06.2020 (Annexure F to the application), stated that due to non-availability of required information or documents it was unable to report on the matters for which it had been appointed, but that, on the basis of the bank statement of the Bank for the period 02.01.2019 onwards, the

audit reports for FY 2017-18 and 2018-19 and other documents produced before it, it had scrutinised the transactions of the Corporate Debtor.

vi. During the relevant period, the company sold land to **Aeigis Education Society**, although the sale consideration, date of sale, and sale deed details were not available. The land was recorded in the books at **₹5,34,45,095**, while an amount of **₹2,71,25,000** was outstanding from Aeigis Education Society as of **31 March 2019**. The **Aeigis Education Society Ltd** as per the transactions shown in the statement of account of corporate debtor, **SRK Devbuild Pvt Ltd** with **Indore Premier CO-OP Bank Ltd** there are credit entries to the extent of Rs. 5 crore 38 lakhs received from Agies Education on different dates starting from 31/01/2019 till 26/04/2019 and this entire amount has been credited to the respondent/ related parties account on the same day or next day. Based on the available information, documents, and audit report, the transaction was considered to constitute a **preferential transaction**, as the transfer of the company's property appeared to benefit a creditor in respect of an existing debt or liability, thereby placing the creditor in a more beneficial position than it would have occupied under

the distribution of assets contemplated under **Section 53 of the IBC**.

The statement of account of the corporate debtor is reflected below:

NCLT INDORE BENCH
IA No. 87 (MP) of 2020
IN
TP 239 of 2019 [CP(IB) 370 of 2018]
Date of Order: 07.10.2026

STATEMENT OF ACCOUNT

IFSC : CBIN0MPDCA0
MICR: 452280510

JointName1:
JointName2/ JointName3:

INDORE PREMIER CO-OP BANK LTD.
MANGLIYA

Society Bhawan

A B ROAD, MANGLIYA
INDORE : MADHYA PRADESH
Branch Code : 20
Branch Phone : 8825003513

S R K DEVBUILD PVT LTD
18/2
LASUDIA MORI
DEWAS NAKA
452010

Account No. : 156003325727
Product : CA-IND
Currency : INR

Date : 23/06/2020 **Time :** 12:15:15 **E-mail :**

Cleared Balance : 4,755.50Cr **Uncleared Amount :** 0.00

+MOD Bal. : 4,755.50Cr **Int. Rate :** 0.00 % p.a.

Limit : 0.00 **Drawing Power :** 0.00
Limit Start Date **Limit Exp Date**
Statement From 02/01/2019 to 23/05/2020 **Page No. :** 1

Post Date	Value Date	Details	Chq.No.	Debit	Credit	Balance
		BROUGHT FORWARD :				0.00
03/01/19	03/01/19	CSM DEP			5000.00	5000.00Cr
04/01/19	04/01/19	M:CN SB CHQ		75.00		4925.00Cr
04/01/19	04/01/19	SERVICE TAX		13.50		4911.50Cr
31/01/19	31/01/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19031871830 1 TRF FR 99826999224			2000000.00	2004911.50Cr
31/01/19	31/01/19	WDL TFR 156003325727 TO 156003323139 TRF TO 156003323139		2000000.00		4911.50Cr
01/02/19	01/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19032864304 1 TRF FR 99826999224			2000000.00	2004911.50Cr
01/02/19	01/02/19	WDL TFR TRF TO 156003323139		2000000.00		4911.50Cr
04/02/19	04/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19035898907 1 TRF FR 99826999224			2000000.00	2004911.50Cr
05/02/19	05/02/19	WDL TFR TRF TO 156003323139		2000000.00		4911.50Cr
06/02/19	06/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19037914676 1 TRF FR 99826999224			2000000.00	2004911.50Cr
06/02/19	06/02/19	WDL TFR TRF TO 156003323139		2000000.00		4911.50Cr
07/02/19	07/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19038926987 1 TRF FR 99826999224			2000000.00	2004911.50Cr
08/02/19	08/02/19	WDL TFR TRF TO 156003323139		2000000.00		4911.50Cr
11/02/19	11/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19042942520 1 TRF FR 99826999224			2000000.00	2004911.50Cr
11/02/19	11/02/19	WDL TFR TRF TO 156003323139		2000000.00		4911.50Cr
12/02/19	12/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19043101444 1			2000000.00	2004911.50Cr
		CARRIED FORWARD :				20,04,911.50Cr

Statement Summary
Dr. Count 8 **Cr. Count** 8 1,20,00,688.50 1,40,05,000.00

NCLT INDORE BENCH
IA No. 87 (MP) of 2020
IN
TP 239 of 2019 [CP(IB) 370 of 2018]
Date of Order: 07.10.2026

STATEMENT OF ACCOUNT

INDORE PREMIER CO-OP BANK LTD.
MANGLIYA

S R K DEVBUILD PVT LTD
Account No. : 156003325727
Product: CA-IND
Date : 23/06/2020 **Time :** 12:15:15

Currency : INR

Statement From 02/01/2019 **to** 23/06/2020

Post Date	Value Date	Details	Chq.No.	Debit	Credit	Balance
		BROUGHT FORWARD :				**2004911.50Cr**
12/02/19	12/02/19	TRF FR 99826999224 CAS CHQ XFER WD TRF TO 156003323140	509083	2000000.00		4911.50Cr
13/02/19	13/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19044111792 1 TRF FR 99826999224			2000000.00	2004911.50Cr
13/02/19	13/02/19	WDL TFR TRF TO 156003323140		2000000.00		4911.50Cr
14/02/19	14/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19045116763 1 TRF FR 99826999224			2000000.00	2004911.50Cr
14/02/19	14/02/19	CAS CHQ XFER WD TRF TO 156003323140	509085	2000000.00		4911.50Cr
15/02/19	15/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19046126295 1 TRF FR 99826999224			2000000.00	2004911.50Cr
15/02/19	15/02/19	CAS CHQ XFER WD TRF TO 156003323140	509086	2000000.00		4911.50Cr
16/02/19	16/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19047136790 1 TRF FR 99826999224			2000000.00	2004911.50Cr
16/02/19	16/02/19	CAS CHQ XFER WD TRF TO 156003323140	509087	2000000.00		4911.50Cr
18/02/19	18/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19049142135 1 TRF FR 99826999224			1450000.00	1454911.50Cr
18/02/19	18/02/19	WDL TFR TRF TO 156003323140		1450000.00		4911.50Cr
20/02/19	20/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19051160774 1 TRF FR 99826999224			2000000.00	2004911.50Cr
20/02/19	20/02/19	WDL TFR RTGS SHUBHASH AGRAWAL CBINH19051110008 B TRF TO 99827999223		2000060.00		4851.50Cr
22/02/19	22/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19053173303 1 TRF FR 99826999224			2000000.00	2004851.50Cr
22/02/19	22/02/19	WDL TFR RTGS SHUBHAM AGRAWAL H CBINH19053110003 B TRF TO 99827999223		2000060.00		4791.50Cr
25/02/19	25/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19056185583 1 TRF FR 99826999224			1000000.00	1004791.50Cr
25/02/19	25/02/19	WDL TFR RTGS SHUBHASH AGRAWAL H CBINH19056110010 B TRF TO 99827999223		1000060.00		4731.50Cr
27/02/19	27/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19058207852 1 TRF FR 99826999224			2000000.00	2004731.50Cr
27/02/19	27/02/19	WDL TFR		2000060.00		4671.50Cr
		CARRIED FORWARD :				**4,671.50Cr**
Statement Summary						
Dr. Count 18		**Cr. Count** 17		3,04,50,328.50	3,04,55,000.00	

NCLT INDORE BENCH
IA No. 87 (MP) of 2020
IN
TP 239 of 2019 [CP(IB) 370 of 2018]
Date of Order: 07.10.2026

STATEMENT OF ACCOUNT

INDORE PREMIER CO-OP BANK LTD.
MANGLIYA

S R K DEVBUILD PVT LTD
Account No. : 156003325727
Product: CA-IND
Date : 23/06/2020 **Time :** 12:15:15

Currency : INR

Statement From 02/01/2019 **to** 23/06/2020 **Page No. :** 3

Post Date	Value Date	Details	Chq.No.	Debit	Credit	Balance
		BROUGHT FORWARD :				**4671.50Cr**
28/02/19	28/02/19	NEFT SUBHASH AGRAWAL H CBIN019058211384 B TRF TO 99506999228				
28/02/19	28/02/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19059219254 I TRF FR 99826999224			2000000.00	2004671.50Cr
28/02/19	28/02/19	WDL TFR RTGS SUBHASH AGRBXL H CBIN019059110009 B TRF TO 99827999223		2000060.00		4611.50Cr
01/03/19	01/03/19	CSH DEP			500.00	5111.50Cr
01/03/19	01/03/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19060229676 I TRF FR 99826999224			2000000.00	2005111.50Cr
01/03/19	01/03/19	WDL TFR RTGS SUBHASH AGRAWL H CBINH19060110002 B TRF TO 99827999223		2000060.00		5051.50Cr
02/03/19	02/03/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19061237026 I TRF FR 99826999224			800000.00	805051.50Cr
02/03/19	02/03/19	WDL TFR RTGS SUBHASH AGRAWL H CBINH19061110008 B TRF TO 99827999223		800060.00		4991.50Cr
25/03/19	25/03/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19084383067 I TRF FR 99826999224			2400000.00	2404991.50Cr
26/03/19	26/03/19	WDL TFR TRF TO 156003323139		2400000.00		4991.50Cr
26/03/19	26/03/19	MICR SB CHQ		75.00		4916.50Cr
26/03/19	26/03/19	SERVICE TAX		13.50		4903.00Cr
27/03/19	27/03/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19086406852 I TRF FR 99826999224			2500000.00	2504903.00Cr
27/03/19	27/03/19	WDL TFR TRF TO 156003323139		2450000.00		54903.00Cr
31/03/19	31/03/19	SMS CHARGE		5000.00		4903.00Cr
31/03/19	31/03/19	SERVICE TAX		15.00		4888.00Cr
23/04/19	23/04/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19113593509 I TRF FR 99826999224			6400000.00	6404885.30Cr
23/04/19	23/04/19	WDL TFR TRF TO 156003302801		6400000.00		4885.30Cr
25/04/19	25/04/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19115614988 I TRF FR 99826999224			1000000.00	1004885.30Cr
25/04/19	25/04/19	WDL TFR TRF TO 156003302801		1000000.00		4885.30Cr
26/04/19	26/04/19	DEP TFR RTGS AEGIS EDUCATIONA INDBM19116624102 I TRF FR 99826999224			6250000.00	6254885.30Cr
29/04/19	29/04/19	WDL TFR		6250000.00		4885.30Cr
30/06/19	30/06/19	TRF TO 156003302801		15.00		4870.30Cr
30/06/19	30/06/19	SMS CHARGE		2.70		4867.60Cr
05/08/19	05/08/19	DUPLICATE STATE		50.00		4817.60Cr
		CARRIED FORWARD :				**4,817.60Cr**

Statement Summary
Dr. Count 34 **Cr. Count 26** 5,38,00,682.40 5,38,05,500.00

NCLT INDORE BENCH
IA No. 87 (MP) of 2020
IN
TP 239 of 2019 [CP(IB) 370 of 2018]
Date of Order: 07.10.2026

STATEMENT OF ACCOUNT

INDORE PREMIER CO-OP BANK LTD.
MANGLIYA

S R K DEVBUILD PVT LTD
Account No. : 156003325727
Product: CA-IND
Date : 23/06/2020 **Time :** 12:15:15

Currency : INR

Statement From 02/01/2019 **to** 23/06/2020 **Page No. :** 4

Post Date	Value Date	Details	Chq.No.	Debit	Credit	Balance
		BROUGHT FORWARD :				**4817.60Cr**
05/08/19	05/08/19	SERVICE TAX		9.00		4808.60Cr
01/08/19	08/08/19	DEP TFR RTGS GD GOENKA PUBLIC MDICN19220588151 N TRF FR 99826999224			2000000.00	2004808.60Cr
						4808.60Cr
30/09/19	30/09/19	SMS CHARGE		15.00		4793.60Cr
30/09/19	30/09/19	SERVICE TAX		2.70		4790.90Cr
31/12/19	31/12/19	SMS CHARGE		15.00		4775.90Cr
31/12/19	31/12/19	SERVICE TAX		2.70		4773.20Cr
31/03/20	31/03/20	SMS CHARGE		15.00		4758.20Cr
31/03/20	31/03/20	SERVICE TAX		2.70		4755.50Cr
		CLOSING BALANCE :				**4,755.50Cr**

Statement Summary
Dr. Count 42 **Cr. Count** 27 5,58,00,744.50 5,58,05,500.00

The Transaction Auditor's report also :

(a) fixes the insolvency commencement date as 03.01.2020 and the relevant periods under Section 43(4) as 04.01.2018 to 03.01.2020 for a related party and 04.01.2019 to 03.01.2020 for others;

(b) lists Mr. Subhash Agrawal and Mrs. Gulab Agrawal as Directors and Devi Anusuiya Vidhya Sansthan and Subhash Agrawal HUF as relatives of a Director;

(c) records payments aggregating Rs. 5,33,50,420/- from the Corporate Debtor's bank account to Mrs. Gulab Agrawal, Mr. Subhash Agrawal and Devi Anusuiya Vidhya Sansthan;

(d) observes that, if the amounts outstanding in the books of account as on 31.03.2019 are considered, the Corporate Debtor has paid more than what was payable to the related parties;

(e) notes that the Corporate Debtor sold land to Aegis Education Society, whose balance outstanding as on 31.03.2019 is shown as Rs. 2,71,25,000/- and

(f) concludes that the Corporate Debtor has given a preference within the meaning of Section 43.

vi. That, relying on the said report, the Applicant has summarised the transactions in para 9 of the application as under: -

Sr. No.	**Date**	**To A/c No.**	**Name of A/c Holder**	**Amount (Rs.)**
1	31.01.2019	156003323139		20,00,000/-
2	01.02.2019	156003323139		20,00,000/-
3	05.02.2019	156003323139		20,00,000/-
4	06.02.2019	156003323139		20,00,000/-

Sr. No.	Date	To A/c No.	Name of A/c Holder	Amount (Rs.)
5	08.02.2019	156003323139	Mrs. Gulab Agrawal	20,00,000/-
6	11.02.2019	156003323139		20,00,000/-
7	26.03.2019	156003323139		24,00,000/-
8	27.03.2019	156003323139		50,000/-
Total				**1,44,50,000/-**
9	12.02.2019	156003323140	Mr. Subhash Agrawal	20,00,000/-
10	13.02.2019	156003323140		20,00,000/-
11	14.02.2019	156003323140		20,00,000/-
12	15.02.2019	156003323140		20,00,000/-
13	16.02.2019	156003323140		20,00,000/-
14	18.02.2019	156003323140		14,50,000/-
15	09.08.2019	156003323140		20,00,000/-
Total				**1,34,50,000/-**
16	23.04.2019	156003302801	Devi Anusuiya Vidhya Sansthan	64,00,000/-
17	25.04.2019	156003302801		10,00,000/-
18	29.04.2019	156003302801		62,50,000/-
Total				**1,36,50,000/-**
19	20.02.2019	99827999223		20,00,060/-
20	22.02.2019	99827999223		20,00,060/-

Sr. No.	Date	To A/c No.	Name of A/c Holder	Amount (Rs.)
21	25.02.2019	99827999223	Mr. Subhash Agrawal	10,00,060/-
22	27.02.2019	99506999228		20,00,060/-
23	28.02.2019	99827999223		20,00,060/-
24	01.03.2019	99827999223		20,00,060/-
25	02.03.2019	99827999223		8,00,060/-
Total				**1,18,00,420/-**
Grand Total				**5,33,50,420/-**

CONTENTIONS OF THE APPLICANT

3. The Applicant has, in the application, contended as follows: -

i. The Respondents are Directors of the Corporate Debtor (suspended board management) and are related parties and that amounts aggregating Rs. 5,33,50,420/- were transferred from the Corporate Debtor's account No. 156003325727 with the Bank to the accounts of the Respondents and of Devi Anusuiya Vidhya Sansthan between 31.01.2019 and 09.08.2019, i.e. within the period of two years (and also within one year) preceding the insolvency commencement date of 03.01.2020.

ii. The said transfers were preferential in nature and fall within Section 43(1), 43(2) and 43(4) of the Code, the

Applicant being of the opinion that the Corporate Debtor has, at a relevant time, given a preference to the said persons.

iii. That despite continuous efforts, reminders and e-mails, the suspended management did not furnish the information required, on account of which the Transaction Auditor could not complete the audit and the Applicant was constrained to file I.A. No. 64 of 2020 under Section 19 of the Code and that the Applicant has therefore filed the present application on the basis of the details available on record and the bank statements of the Corporate Debtor and that the application is not barred by limitation.

iv. That the Applicant places reliance on the report of the Transaction Auditor, M/s O.R. Maloo & Co., Chartered Accountants, wherein findings and conclusions have been made in pursuance of the scope of work entrusted to them and that the Applicant sought explanation from the Respondents by letters dated 17.06.2020 and 29.06.2020, to which no response was received.

CONTENTIONS OF THE RESPONDENTS

4. The Respondents, i.e. the suspended directors, have filed a joint Affidavit-in-Reply affirmed on 22.02.2021. The Respondents have contended as follows: -

i. The Respondents deny all contentions and averments of the Applicant unless specifically admitted.

ii. The application is not maintainable and is devoid of merit, being based solely on the report of the Independent Auditor, who failed to consider the relevant documents available on record with the Applicant as RP and whose report does not give a holistic view of the transactions of the Corporate Debtor and that the transactions have been simply alleged to be fraudulent and preferential in order to make out a false case against the Respondents with a prejudiced approach.

iii. The findings of the Independent Auditor are based only on the transactions recorded in the Balance Sheet and Audit Reports and overlook the documentary evidence, disclosures and clarifications provided by the Corporate Debtor and the Respondents that the report is incomplete and self-contradictory, inasmuch as the Auditor has stated that it was unable to report on the transactions for want of required information or documents but has nevertheless opined, on the basis of the same material, that the Corporate Debtor has given a preference.

iv. The Applicant has failed to explain or establish how the transactions are fraudulent or preferential and that,

being the RP in possession of the office of the Corporate Debtor with all powers to inquire into and assess such transactions, he failed to apply his own expertise and simply relied upon an incomplete and non-explanatory report.

v. The transactions are bona fide and legal. During the relevant period, the Corporate Debtor was indebted to another private company, P-Trade FMCG Private Limited ("P-Trade"), and P-Trade was in turn indebted to the Respondents, who were then the Directors of the Corporate Debtor. To clear off these debts, the Board of P-Trade, by resolution dated 29.11.2018 (Annexure A to the Reply), authorised the Respondents to collect the payment from the Corporate Debtor on its behalf, and the Corporate Debtor was informed of the same by P-Trade's letters dated 15.01.2019 (Annexure B colly.). The transactions were undertaken by the Corporate Debtor with the Respondents pursuant to the said resolution.

vi. Upon completion of the transactions, the Corporate Debtor informed P-Trade by letters dated 31.03.2019 (Annexure C colly.) of the payment of Rs. 1,18,00,000/- to Respondent No. 1 and Rs. 1,44,00,000/- to Respondent No. 2, giving dates, cheque numbers and

amounts, and requested P-Trade to pass entries reducing the amount due from the Corporate Debtor and that P-Trade acknowledged the same by letters dated 01.04.2020 (Annexure D colly.)

vii. The Corporate Debtor has been in the practice of making full disclosure of related party transactions as required under the Companies Act, 2013, which is reflected in its financial statements and notes forming part thereof and that in the Notes forming part of the Financial Statements as on 31.03.2019 (Annexure E), Note 5 (Long Term Borrowings – Loan from Directors) records Rs. 1,00,82,960.51 owed to Respondent No. 1 and Rs. 9,31,000/- owed to Respondent No. 2, and Note 7 (Other Long Term Liability – Deposit) records Rs. 31,62,080/- owed as on 31.03.2019, reduced from Rs. 2,93,62,080/- as on 31.03.2018.

viii. The Respondents have co-operated with the RP and had already disclosed the said events with documents and that the Applicant's letter dated 04.12.2020 seeking explanation regarding certain transactions was replied to by the Respondents' Chartered Accountants, M/s Satyanarayan Goyal & Co., by letter dated 22.12.2020, explaining the adjustment of the transactions under the head "Other Long Term Liability" and the disclosure of

related party transactions, with annexures including the certified copy of P-Trade's board resolution, the correspondence between the Corporate Debtor and P-Trade relating to the authorisation, payments and acknowledgement, a copy of the decision in *CIT vs. Noida Toll Bridge Co. Ltd.* (2003) 262 ITR 260, and the audit reports for FY 2016-17 and 2017-18 along with the entire audit report for FY 2018-19 (Annexure F colly.)

ix. The application is based on plain and absurd allegations, on an incomplete and self-contradictory report of the Independent Auditor and that the Applicant has failed to establish the transactions to be fraudulent or preferential, or any mala fide on the part of the Respondents and that the Applicant himself failed to assess and produce relevant documents in support of his allegation.

x. The Applicant filed the application without requiring any explanation from the Respondents, on the basis of a report prepared on incomplete data, and sought explanation only after filing the application under Sections 43 and 44 of the Code, so that the haste shown in filing the application is "mysterious".

xi. In view of the above, the proceedings against the Respondents be summarily rejected with costs.

ANALYSIS AND FINDINGS

5. We have heard the learned counsel for the Applicant and the learned counsel for the Respondents on and have perused the application, the reply and the documents on record. The following points arise for determination: -

(a) Whether the application is maintainable, and whether the Applicant's opinion under Section 43(1) is vitiated by the alleged deficiencies in the Transaction Auditor's report or by alleged haste;

(b) Whether the impugned transfers were made within the relevant time under Section 43(4) and to related parties;

(c) Whether the impugned transfers were made for or on account of an antecedent debt or liability of the Corporate Debtor and had the effect described in Section 43(2)(b), having regard to the defence raised by the Respondents; and

(d) What orders are required to be passed under Section 44 of the Code.

6. Section 43, IBC, 2016 defines a preferential transaction as under: -

> 43. Preferential transactions and relevant time. - (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
>
> (2) A corporate debtor shall be deemed to have given a preference, if– (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor and (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

Section 43(4) defines the relevant time during which a transaction shall be deemed to be a preference as under: -

> (4) Preference shall be deemed to be given at a relevant time, if –
>
> (a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
>
> (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Sub-section (3) of Section 43 excludes certain transfers from the meaning of "preference", including transfers made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee.

Section 44 empowers this Tribunal, on an application under Section 43(1), to pass orders including requiring any property transferred in connection with the preference to be vested in the corporate debtor and requiring any person to pay to the resolution professional or liquidator such sums in respect of benefits received from the corporate debtor as it may direct, while sub-section (2) of Section 44 protects interests acquired, and benefits received, in good faith and for value.

Status of the Respondents and relevant time

7. The Respondents, namely Mr. Subhash Agrawal and Mrs. Gulab Agrawal, are admitted to be Directors of the Corporate Debtor during the relevant period. Devi Anusuiya Vidhya Sansthan is recorded in the Transaction Auditor's report as a relative of a Director. Thus, the Respondents fall within the definition of related partiesunder Section 5(24) of the Code.

8. The CIRP commenced on 03.01.2020. For related parties, the look-back period under Section 43(4)(a) is two years preceding the insolvency commencement date, i.e., from 04.01.2018 to 03.01.2020. All the impugned transactions, having taken place between 31.01.2019 and 09.08.2019, squarely fall within this two-year look-back period.

Nature of the transactions and antecedent liability

9. The Transaction Auditor, on the basis of the bank statements of the Corporate Debtor with the Bank for the period from 02.01.2019 onwards, the audit reports for FY 2017–18 and 2018–19 and other documents produced, has recorded payments aggregating Rs. 5,33,50,420/- from the Corporate Debtor's bank account to Mrs. Gulab Agrawal, Mr. Subhash Agrawal and Devi Anusuiya Vidhya Sansthan.

10. The Transaction Auditor further observed that, if the amounts outstanding in the books of account as on 31.03.2019 are considered, the Corporate Debtor has paid

more than what was payable to the related parties. This indicates that the outflows to the Respondents were not merely normal repayments against recorded liabilities, but exceeded the recorded exposure, thereby conferring a benefit on the recipients.

11. The RP, in the present application, has categorised these payments as being on account of antecedent financial debt or other liability owed by the Corporate Debtor to the Respondents as related-party creditors. The bank statements, coupled with the financial statements and the Transaction Auditor's observations, prima facie establish that the Corporate Debtor had outstanding liabilities to the Directors/related parties and that the impugned payments were made towards discharge of such liabilities.

12. The Respondents' explanation that the payments were made pursuant to a board resolution of P-Trade and correspondence between the Corporate Debtor and P-Trade is, at best, an attempt to re-characterise the nature of the liability. However, the books of account and financial statements of the Corporate Debtor do not reflect these payments as adjustments against a liability to P-Trade; instead, they are reflected under heads such as "Loan from Directors" and "Other Long Term Liability – Deposit", indicating that the Corporate Debtor treated these as

liabilities owed to the Directors/related parties. The Respondents have not produced any tripartite agreement or novation document legally transferring the liability from the Corporate Debtor–P-Trade relationship to a direct payment arrangement that would negate the character of antecedent debt owed to the Respondents.

13. In any event, even if the payments were made on behalf of P-Trade, the effect remains that funds of the Corporate Debtor were transferred to related parties (Directors and their relatives) during the look-back period, thereby reducing the asset pool available for distribution to all creditors in accordance with Section 53. The statutory test under Section 43(2) is concerned with the effect of the transaction on the position of the recipients vis-à-vis other creditors, not merely the label assigned to the liability.

More beneficial position than under Section 53

14. The impugned payments resulted in a substantial outflow of Rs. 5,33,50,420/- from the Corporate Debtor to the Respondents within a short span of time, at a point when the Corporate Debtor was already under financial stress, as

evidenced by the subsequent admission of the Section 7 application and commencement of CIRP.

15. Had these payments not been made, the said amounts would have remained part of the Corporate Debtor's asset pool and would have been distributed in accordance with the waterfall mechanism under Section 53 of the Code, wherein all creditors (including operational and financial creditors) would have received their respective shares in the order of priority prescribed. By receiving full or substantial repayment ahead of CIRP, the Respondents have been placed in a more beneficial position than they would have occupied in a liquidation scenario under Section 53.

16. The Transaction Auditor's observation that the Corporate Debtor paid more than what was payable to the related parties further reinforces the conclusion that the Respondents were favoured over other creditors, thereby satisfying the second limb of Section 43(2)(b).

Ordinary course of business or financial affairs (Section 43(3))

17. The burden to show that a transaction falling within Section 43(2) is saved by Section 43(3) lies on the party asserting that the transaction was in the ordinary course of business or ordinary financial affairs.

18. In the present case, the Respondents have not cogently demonstrated that the series of large payments aggregating over Rs. 5.33 crore to Directors and their related entities, at a time when the Corporate Debtor was financially distressed and shortly before the initiation of CIRP, were in the ordinary course of business or ordinary financial affairs of the Corporate Debtor. The very fact that the Transaction Auditor flagged these as preferential and observed that the Corporate Debtor paid more than what was payable to related parties indicates that these were not routine, arm's-length transactions.

19. Further, the suspended management's failure to furnish complete information and documents despite repeated requests by the RP and the Transaction Auditor, and the lack of contemporaneous board resolutions of the Corporate Debtor justifying these payments as part of ordinary financial management, weigh against the applicability of the Section 43(3) exception.

RP's opinion and maintainability

20. The RP is required under Regulation 35A of the CIRP Regulations to form an opinion on whether the Corporate Debtor has been subjected to transactions covered under Sections 43, 45, 50 and 66 of the Code. The RP, in the present case, has formed such an opinion on the basis of the

Transaction Auditor's report, bank statements, financial statements and the non-cooperation of the suspended management.

21. The fact that the Transaction Auditor stated that it was unable to fully report for want of information does not invalidate the RP's opinion. The Code contemplates that the RP may form an opinion on the basis of available records, including bank statements and financial statements, particularly where the suspended management fails to cooperate.The RP has also initiated separate proceedings (I.A. No. 64 of 2020 under Section 19) to compel production of information, which underscores the ongoing efforts to gather complete data.

22. From 31 January 2019 onwards, the account received repeated RTGS credits of ₹20,00,000, with the narration referring to AEGIS EDUCATIONA and transfer reference 99826999224. Several of these credits were followed by ₹20,00,000 withdrawal/transfers (WDL TFR) to another account, including account 156003323139.

23. During this period, the bank statement of S R K Devbuild Pvt. Ltd. reflects substantial financial transactions, predominantly through RTGS, involving repeated credits and corresponding transfers/debits. A significant number of the credits bear the narration "RTGS AEGIS EDUCATIONA",

followed by transfer reference 99826999224. The transactions commenced with credits largely in the range of ₹20 lakh. The total transactions reflected in the statement ultimately aggregate to credits of ₹5,58,05,500 and debits of ₹5,58,00,744.50, leaving a closing credit balance of ₹4,755.50 as per the statement.

24. The auditor's report further records that, during the period under consideration, the company sold its land to Aegis Education Society. The details relating to the sale consideration, date of sale and sale deed were not available with the auditors. The value of the land standing in the books of account, as referred to in Schedule 12 of the audit report, was ₹5,34,45,095, whereas the amount shown as outstanding from Aegis Education Society as on 31 March 2019 was ₹2,71,25,000, as reflected in Schedule 15 of the audit report.

25. On the basis of the information and documents examined, the auditor has further expressed the opinion that the Corporate Debtor had given a preference in the transfer of property or an interest therein for the benefit of a creditor, surety or guarantor, on account of an antecedent financial debt, operational debt or other liabilities owed by the Corporate Debtor. According to the report, such transfer had the effect of putting the concerned creditor, surety or

guarantor in a more beneficial position than it would have occupied had distribution of the Corporate Debtor's assets been made in accordance with Section 53 of the Insolvency and Bankruptcy Code during the relevant period.

26. The present application is therefore maintainable and not barred by limitation, having been filed well within the permissible time from the date of formation of the RP's opinion and discovery of the preferential transactions through the Transaction Audit.

27. In view of the foregoing, this Adjudicating Authority is of the considered opinion that the impugned transactions satisfy the ingredients of a preferential transaction under Section 43(1) read with Section 43(2) and Section 43(4) of the IBC, inasmuch as:

(a) they involve transfer of property (money) of the Corporate Debtor for or on account of antecedent financial debt/other liability owed to the Respondents as related-party creditors,

(b) they have the effect of putting the Respondents in a more beneficial position than would have resulted under the distribution mechanism of Section 53 and

(c) they were effected at a relevant time, being within two years preceding the insolvency commencement date, in respect of related parties.

28. The transactions are not saved by the exception under Section 43(3), as the Respondents have failed to establish that the same were made in the ordinary course of business or ordinary financial affairs of the Corporate Debtor.

29. Accordingly, the application filed by the RP under Section 43 read with Section 44 of the Code deserves to be allowed, and appropriate orders under Section 44 must be passed to restore the position to what it would have been had the preferential transactions not occurred.

ORDER

30. In exercise of the powers conferred under Section 43 read with Section 44 of the Insolvency and Bankruptcy Code, 2016, and all other powers enabling in this behalf, this Adjudicating Authority hereby passes the following order:

1. The present application filed by the Resolution Professional under Section 43 read with Section 44 of the IBC is allowed.

2. The transactions detailed in para 9 of the application, involving payments aggregating Rs. 5,33,50,420/- made from the Corporate Debtor's account No. 156003325727 with Indore Premier Co-operative Bank Limited to the accounts of Mrs. Gulab Agrawal, Mr. Subhash Agrawal and Devi Anusuiya Vidhya Sansthan between 31.01.2019 and

09.08.2019, are hereby declared to be preferential transactions within the meaning of Section 43(1) read with Section 43(2) and Section 43(4) of the Code.

3. Under Section 44 of the Code, the Respondents, namely Mr. Subhash Agrawal, Mrs. Gulab Agrawal and Devi Anusuiya Vidhya Sansthan, are hereby directed to pay to the Resolution Professional the sum of Rs. 5,33,50,420/- (Rupees Five Crore Thirty-Three Lakh Fifty Thousand Four Hundred and Twenty Only), representing the value of the preferential benefit received by them, within 4 weeks from the date of this order.

4. The Resolution Professional is authorised to take all necessary steps, including issuance of demand notices, initiation of recovery proceedings and reporting to appropriate authorities, in the event of non-compliance with the above direction.

5. The amounts recovered pursuant to this order shall form part of the assets of the Corporate Debtor and shall be dealt with in accordance with the provisions of the Code and the orders of this Tribunal in the main CIRP proceedings.

6. No order as to costs at this stage.

7. Accordingly, the present application is hereby **Allowed** in the above terms.

Sd/- Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Anushka Rawat-L.R.A.