IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, COURT – 1, AHMEDABAD

ITEM No.301 - IA/661(AHM)2021
in
CP(IB) 49 of 2017
Along with
ITEM No. 302 - IA/986(AHM)2023
in
IA 37 of 2018
in
CP(IB) 49 of 2017

Under Section 43, 45, 49, 66 & 67 of IB Code, 2016

IN THE MATTER OF:

State Bank of India .....**Applicant**
V/s
Paresh K Patel & Anr .....**Respondents**

Order delivered on: 22/10/2026

C O R A M:
MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

C O M M O N O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

-SD-
SANJEEV SHARMA
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Note: This order of the Bench consisting of Hon'ble Member (Judicial) and Hon'ble Member (Technical), is pronounced in open court on behalf of the Bench by Hon'ble Member (Judicial), under Rule 151 of the NCLT Rules, 2016.

-Sd-
(Paresh Vedani)
Court Officer

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT– I, AHMEDABAD

IA No. 661 of 2021
In
CP (IB) No. 49 of 2017

Along With

IA No. 986 in 2023
In
IA No. 37 of 2018
In
CP (IB) No. 49 of 2017

(An Application filed under Section 43,45,49,66 & 67 of the Insolvency and Bankruptcy Code, 2016)

In the matter of: ***Somnath Textile Private Limited***

State Bank of India
Having address at:
Stressed Assets management Branch,
4th Floor, Old LHO Building, Lal Darwaja,
Bhadra, Ahmedabad-380001.

.... Applicant

VERSUS

1. **Mr. Paresh Kantilal Patel**
   Erstwhile Directors of
   Somnath Textile Private Limited
   Residing at A/504, Vinayak Residency,
   Parvat Patiya, I, Magob, Surat-395010.
   Mobile No. : 98980 16220
   Email Id : patelparesh14877@gmail.com

2. **Mrs. Parul Paresh Patel**
   Erstwhile Directors of
   Somnath Textile Private Limited
   Residing at A/504, Vinayak Residency,
   Parvat Patiya, I, Magob, Surat-395010.

Mobile No. : 91732 99911
Email Id : patelpareshl4877@gmaiLcom

...Respondents

Order pronounced on: 22.10.2026

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E :

For the Applicant : Mr. Vishal Raval, Adv.
For the Respondents : Mr. Ravi Pahwa, Adv.

C O M M O N O R D E R
(*Per*: Bench)

1. The Applicant has filed I.A. No. 661 of 2021 and I.A. No. 986 of 2023 concerning alleged preferential, undervalued and fraudulent or wrongful transactions of the Corporate Debtor. As the applications arise from the same transaction audit, they are disposed of by this common order to avoid repetition.

2. The present Application (IA 661 of 2021) was filed on 23.10.2021 under Sections 43, 45, 49, 66 and 67 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), for avoidance of preferential, extortionate, undervalued or fraudulent transactions. The application was filed by **Mr. Premraj**

Ramratan Laddha Liquidator of Somnath Textile Private Limited.

3. Subsequently, vide order dated 07.07.2023 passed in I.A. No. 1011 of 2026, substitution of the Applicant –was permitted. Accordingly, State Bank of India is reflected as the Applicant, subject to the terms of the substitution order and the statutory requirements applicable to the reliefs sought.

4. In the Application, Respondent Nos. 1 and 2 are the suspended directors of the Corporate Debtor. The Applications seek the following reliefs: -

IA 661 No. of 2021: -

a. *To declare that transactions mentioned in PARA-f (A & B) are preferential, undervalued, defrauding creditors transactions as per provisions of IBC, 2016.*
b. *To reverse the effect of such transaction as per provision of IBC, 2016.*
c. *To direct the respondents to make such contributions to assets of the corporate debtors as this Hon'ble Tribunal may deems fit.*
d. *Pass any other order(s) as this Honble Adjudicating Authority may deem fit and proper in the interest of justice.*

IA 986 No. in 2023: -

a. *To declare that transactions mentioned in PARA F are fraudulent or wrongful trading as per provisions of IBC, 2016.*

b. *To reverse the effect of such transaction as per provision of IBC, 2016*

c. *To direct the respondents to make such contributions to assets of the corporate debtors as this Hon'ble Tribunal may deems fit.*

d. *Pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the interest of justice.*

5. The facts as available in the Application **IA. No. 661 of 2021** are stated below: -

5.1 Somnath Textile Private Limited (hereinafter referred to as the "Corporate Debtor") was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 28.07.2017. Upon expiry of the CIRP period under Section 12 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), the Corporate Debtor was ordered to be liquidated vide order dated 05.02.2018 passed by this Adjudicating Authority in I.A. No. 37 of 2018.

5.2 The Corporate Debtor had defaulted in payment of its creditors, with claims amounting to Rs. 47,95,18,747/-. Accordingly, in compliance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016, a public announcement in Form B was made on 09.02.2018 in The Times of India and Divya Bhaskar (Gujarati).

5.3 The Liquidator filed I.A. No. 262 of 2020 in CP (IB) No. 49 (AHM) of 2017, seeking an extension of the liquidation period. This Adjudicating Authority, vide order dated 15.06.2020, granted an extension of six months from the date of the order.

5.4 The Liquidator made several attempts to realise the assets of the Corporate Debtor and successfully sold its plant and machinery. However, the land and building remained unsold, necessitating a further application for extension. Accordingly, vide order dated 05.01.2021 passed in I.A. No. 934 of 2020, this Adjudicating Authority granted a further extension of six months from 15.12.2020, i.e., up to 14.06.2021.

5.5 The Liquidator engaged HSVJ & Co., Chartered Accountants, on 05.11.2020 to conduct a transaction audit of the Corporate Debtor. The Transaction Audit Report ("TAR") was submitted on 19.03.2021, covering the period from 27.07.2015 to 27.07.2017, to examine transactions potentially falling within the ambit of preferential, undervalued, transactions defrauding creditors, extortionate credit transactions, and fraudulent or wrongful trading under the relevant provisions of the IBC.

5.6 The Transaction Audit Report examined transactions with reference to Sections 43, 45, 49, 50 and 66 of the IBC. The present order shall determine only those

statutory claims and reliefs that were actually pleaded, pressed and require adjudication.

5.7 With respect to potential **preferential transactions** under Section 43, the TAR, particularly Point No. 8, noted that payments had been made to certain creditors while amounts due to other creditors remained outstanding. However, owing to the non-availability of ageing reports, the auditor was unable to conclusively determine whether such payments were made in the ordinary course of business or constituted preferential transactions.

5.8 The report accordingly identified certain transactions warranting further examination under Section 43 of the IBC.

Sr. No.	Name of Creditor	Opening Balance	Repayment during the year	Pay ment mode	Closing Balance
1.	Bhumi textiles	28,79,084	1,15,000	Bank	27,64,084
2.	Dakorji Enterprise	6,08,585	3,91,857	Bank	3,91,857
3.	Fine Sizer	43,91,396	6,99,510	Bank	36,91,886
4.	Kay Kay International	14,84,501	14,13,826	Bank	70,675
5.	Krishna Textile	18,88,291	2,25,000	Bank	16,63,291
6.	Murlidhar Threads	97,729	54,204	Bank	43,525
7.	Nidhi Dyeing & Printing Mills Pvt Ltd.	24,68,491	1,02,755	Bank	23,83,736
8.	Prakash Tex	80,06,997	61,20,950 1,29,050	Cash Bank	17,56,997
9.	Riya Fabrics	1,07,50,032	33,28,674	Bank	74,21,358
10.	Sarthak Yarn	89,68,056	62,55,754	Bank	27,12,302
11.	Shri Muniveer Spinning Mills	17,37,720	16,76,310	Bank	61,410
12.	Sunflower Enterprise	79,13,693	32,92,617	Bank	46,21,076
13.	Thakurji Enterprise	57,869	57869	Bank	0
14.	Vimal Textiles	1,81,72,373	20,00,000 1,37,80,989	Cash Bank	23,91,384

5.9 The Transaction Audit Report further identified the following transactions warranting examination:

i. **Cash payments to creditors**: During the financial year 2015–16, cash payments amounting to ₹81.21

lakh were made to creditors out of total payments of ₹396.44 lakh.

ii. **Loans and advances to related parties:** During the financial year 2015–16, a loan of ₹2.60 lakh was advanced to Vaman Textile Private Limited, in which both directors of the Corporate Debtor had an interest.

iii. **Undervalued transactions and transactions defrauding creditors:** With reference to Sections 45 and 49 of the IBC, the auditor observed that, during the financial year 2015–16, inventories comprising raw materials, work-in-progress (WIP) and finished goods, aggregating to ₹295 lakh, were adjusted/consumed despite there being no sales during the said financial year. The auditor noted that no reasonable justification for such adjustments could be ascertained from the available records or the independent auditor's report.

iv. **Discrepancies in sales returns and inventory adjustments:** The auditor further noted that sales returns were recorded at ₹94.95 lakh in the Annual Financial Statements (AFS) and ₹154.95 lakh in the books of accounts of the Corporate Debtor. However, no corresponding adjustments were made to the inventories in respect of such sales returns.

Sr No.	Inventory	Opening Balance	Consumed/adjusted during the year	Closing Balance
1.	Raw Material	65,57,692	65,57,692	Nil
2.	Work in Progress	1,59,97,621	1,59,97,621	Nil
3.	Finished Goods	94,61,375	69,61,375	25,00,000
	Total	**3,20,169,58**	**2,95,16,958**	**25,00,000**

5.10 The allegations of fraudulent or wrongful trading under Section 66 of the IBC are considered separately in I.A. No. 986 of 2023, in accordance with the order dated 22.03.2023, subject to verification of the application number and the directions contained therein.

5.11 The Liquidator submitted that explanations were sought from the Respondents in respect of the transactions identified in the Transaction Audit Report. However, no response had been received from them. The Liquidator further stated that the findings of the Transaction Audit Report were communicated to the Respondents vide letter dated 12.03.2021, along with the report, and email dated 30.03.2021. Copies of the said letter, proof of postal service and email, along with the Transaction Audit Report, were annexed to the application as **Annexure–VI.**

5.12 In view of the aforesaid circumstances, the Applicant/Liquidator has filed the present application seeking appropriate directions from this Adjudicating

Authority to declare the aforesaid transactions void and to grant appropriate reliefs for avoidance of such transactions in accordance with the applicable provisions of the IBC.

6. In compliance with the order dated 06.12.2021, the Applicant served notice upon the Respondents through email dated 11.12.2021 and by Speed Post. However, the postal articles were returned with the remark "*Addressee Left Without Instructions*". The Applicant was thereafter directed to place on record the physical copy of the affidavit evidencing service of notice upon all the Respondents, along with proof of service.

7. Subsequently, vide order dated 08.03.2022, this Adjudicating Authority recorded that notice had been duly served upon the Respondents. Despite service of notice, none appeared on behalf of the Respondents. Accordingly, the matter was directed to proceed ***ex parte*** against all the Respondents.

8. That the **Additional Affidavit** on behalf of Applicant was filed on 05.05.2023. The same was taken on record, wherein following submission were made in: -

a) Vide order dated 22.03.2023, this Adjudicating Authority directed the Applicant to file separate applications for the reliefs sought under the relevant provisions of the IBC, having regard to the judgment in ***Anuj Jain, IRP for Jaypee Infratech Limited v. Axis Bank Limited*, (2020) 8 SCC 401**. The Applicant thereafter pursued the separate proceedings.

b) In compliance with the aforesaid order, the Applicant filed a separate application under Section 66 of the IBC.

9. The facts as available in the Application **IA. No. 986 in 2023** are stated below: -

9.1 The Applicant/Liquidator submitted that the liquidation process was stayed for a period of 460 days pursuant to the order dated 21.03.2018 passed by this Adjudicating Authority in I.A. No. 99 of 2018 in I.A. No. 37 of 2018 in CP (IB) No. 49 of 2018. The said application was subsequently dismissed vide order dated 22.01.2020. A copy of the order dated 22.01.2020 was annexed as Annexure–III.

9.2 The Applicant further submitted that, after making several attempts to realise the assets of the Corporate Debtor, the remaining properties were successfully sold through an e-auction conducted on 05.06.2021. Accordingly, the Applicant sought a further extension of the liquidation period to complete the liquidation process, which was granted by this Adjudicating

Authority vide order dated 06.07.2021 passed in I.A. No. 430 of 2021, extending the period up to 14.12.2021. A copy of the said order was annexed as Annexure–IV.

9.3 The Applicant submitted that HSVJ & Co., Chartered Accountants, was engaged on 05.11.2020 to conduct a transaction audit of the Corporate Debtor. The audit covered the period from 27.07.2015 to 27.07.2017 to identify transactions potentially falling within the ambit of preferential, undervalued, extortionate credit, transactions defrauding creditors, and fraudulent or wrongful trading under the IBC. The Transaction Audit Report ("TAR") was submitted on 19.03.2021, and a copy thereof was annexed as Annexure–V.

9.4 The Applicant further submitted that the transaction audit examined transactions with reference to Sections 43, 45, 49, 50 and 66 of the IBC. With respect to fraudulent or wrongful trading under Section 66 of the IBC, the TAR, particularly Point No. 8.3, identified discrepancies between the payments reflected in the bank statements and the corresponding entries in the books of accounts of the Corporate Debtor. It was observed that, in certain instances, payments were made to creditors while the ledger accounts of different creditors were debited in the books of the Corporate Debtor. The report identified certain parties in respect of whom such discrepancies were observed.

Sr No.	Party as per Bank Statement	Party Debited in books of Accounts of Corporate Debtor	Total Amount (Rs.)
1.	Kay Kay International	Vimal Textile	78,72,600.00
2.	Shri Muniveer Spinning Mills	Sunflower Enterprise	20,98,066.00
3.	Shri Muniveer Spinning Mills	Sarthak Yarn	1,15,859.00
	Total		**1,00,86,525**

9.5 The Applicant submitted that explanations were sought from the Respondents regarding the transactions identified in the Transaction Audit Report ("TAR"); however, no response was received. The findings of the TAR were communicated to the Respondents vide letter dated 12.03.2021 and email dated 30.03.2021. Copies of the said communications, along with proof of postal service and the TAR, were annexed as **Annexure–VI**.

9.6 The Applicant/Liquidator accordingly filed the present application seeking a declaration that the aforesaid transactions were void and appropriate reliefs for avoidance of such transactions in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC").

9.7 The Applicant submitted that I.A. No. 661 of 2021 was filed on or about 22.09.2021 under Sections 43, 45, 49 and 66 of the IBC. Subsequently, vide order dated 22.03.2023, this Adjudicating Authority, taking into consideration the judgment of the Hon'ble Supreme

Court in *Anuj Jain, IRP for Jaypee Infratech Limited v. Axis Bank Limited & Ors.*, directed the Applicant to file separate applications in respect of the reliefs sought under the aforesaid provisions. A copy of the order dated 22.03.2023 was annexed as **Annexure–VII**.

10. Pursuant to the notices issued by this Adjudicating Authority, the Applicant/Liquidator filed an affidavit of service dated 14.10.2023, recording that the notices sent to Respondent Nos. 1 and 2 were returned undelivered with the postal remark "Addressee Left Without Instructions", though the emails were reflected as delivered on 07.10.2023. Accordingly, vide order dated 16.10.2023, service through newspaper publication was directed.

11. In compliance, the Applicant/Liquidator filed an affidavit on 04.12.2023 confirming publication of the notices on 13.11.2023 in *Financial Express* (English) and *Financial Express* (Gujarati). The Vakalatnama filed on behalf of Respondent Nos. 1 and 2 was taken on record on 30.01.2024. However, as none appeared on their behalf on 20.03.2024, this Adjudicating Authority, noting that service by publication had been recorded vide order dated

13.12.2023, closed their right to file replies and directed the matter to proceed ***ex parte*** against them.

12. That vide order dated 30.07.2024, during the course of hearing, learned counsel for the Applicant/RP submitted that the transactions involving 14 beneficiaries were identified solely on the basis of the Transaction Audit Report, without any further inquiry or independent examination of the books of accounts of the Corporate Debtor. The auditor, in Clause 8.1.1 of the report, had also expressed inability to determine whether the payments constituted preferential transactions due to the non-availability of ageing reports. This Adjudicating Authority observed that no independent verification or supporting material had been placed on record to substantiate the allegations. However, learned counsel sought an accommodation to explain the remaining transactions referred to in the application.

13. That the **Affidavit** has been filed by the Applicant in compliance of order dated 30.07.2024. The same was taken on record on 14.09.2024 vide dairy No. D-7770. Wherein following submissions were made in: -

13.1 As per Note 4 of the financial statements for FY 2016–17, the inventory comprising work-in-progress, finished goods and stock-in-trade, including textile materials such as yarn and silk fabrics, decreased from ₹2,54,58,996/- to ₹25,00,000/- during FY 2015–16, reflecting a difference of ₹2,29,58,996/-.

13.2 The Applicant further submitted that, as per Note 3.7 of the financial statements, no corresponding increase in revenue from operations was reflected. On the contrary, the negative figure of revenue from operations indicated sales returns, which ordinarily ought to have resulted in an increase in inventory.

13.3 The Applicant submitted that no satisfactory explanation was available for the aforesaid discrepancy and alleged that the transactions warranted examination under Sections 43, 45 and 49 of the IBC. A copy of the balance sheet of the Corporate Debtor as at 31.03.2017 was annexed as **Annexure–A.**

14. That in compliance of order dated 03.06.2025 the applicant has filed **written synopsis** with convenience chart. The same was taken on record.

15. That the **Affidavit in compliance** of the order dated 28.07.2025 on behalf of Applicant was filed on 22.11.2025. Wherein following submissions were made in: -

15.1 Vide order dated 28.07.2025, this Adjudicating Authority directed the Applicant to obtain necessary instructions from the Financial Creditor, namely, State Bank of India ("SBI"), regarding the present whereabouts of the ex parte Respondents, the assets held by them, and their business activities.

15.2 In compliance with the aforesaid directions, the Applicant approached SBI and sought the requisite information. SBI thereafter engaged SAFAL Professional & Recovery Services Pvt. Ltd. (hereinafter referred to as the "Agency") to conduct an investigation and procure relevant documentary evidence concerning the Corporate Debtor, M/s. Somnath Textile Private Limited, and its Directors/Guarantors.

15.3 The Agency submitted its first Investigation Report dated 26.09.2025, covering the individuals and entities connected with the Corporate Debtor, namely, Mr. Paresh Kantilal Patel, Mrs. Parulben Paresh Patel, Mrs. Geetaben B. Patel, Mr. Girish Kantilal Patel, Mr. Kantilal Ramdas Patel, Mr. Jignesh Pravinbhai Patel, M/s. Vaman Textiles Pvt. Ltd., M/s. Vaman Fabrics Pvt. Ltd., and M/s. Somnath Textile Pvt. Ltd.

15.4 The Applicant submitted that the Investigation Report identifies the assets held by the Respondents, their locations, and certain assets stated to be available for attachment. The report also contains a detailed table setting out the property owners and the status of the

properties identified during the investigation, which is reproduced herein below for the consideration of this Adjudicating Authority

Sr. No.	Nature of Property	Property Belongs To	Nature of Evidence	Remarks
1	Plot No. 17, Shanti Vihar Housing Co-operative Society, Opp. Dhruv Motors, Puna Kumbharia Road, Magob, Surat – 395010	Kanti R. Patel	Document No. 19372/2024	Gift deed No. 19372/2024 executed by Kanti Bhai Patel in favour of the son of Girish K. Patel. Property attachable.
2	Plot No. 18, Shanti Vihar Housing Co-operative Society, Opp. Dhruv Motors, Puna Kumbharia Road, Magob, Surat – 395010	Paresh K. Patel	Document No. 19623/2008	Sold vide Document No. 9141/2018.
3	Plot No. 15-C, Shanti Vihar Housing Co-operative Society, Opp. Dhruv Motors, Puna Kumbharia Road, Magob, Surat – 395010	Girish K. Patel	Document No. 123538/2007	Punjab National Bank released the property on 01.08.2025 vide Document No. 14874/2025. Property attachable.
4	Survey No. 2411, Village Aithor, Taluka Unjha, District Mehsana	Kanti Bhai R. Patel	7/12 copy, Survey No. 2411	Property attachable.
5	Survey No. 2704, Village Aithor, Taluka Unjha, District	Kantibhai R. Patel; Girish K. Patel;	7/12 copy, Survey No. 2704	Property attachable.

	Mehsana	Paresh K. Patel; Geetaben K. Patel		
6	Survey No. 1392, Village Aithor, Taluka Unjha, District Mehsana	Kantibhai R. Patel; Girish K. Patel; Paresh K. Patel; Geetaben K. Patel	7/12 copy, Survey No. 1392	Property attachable.
7	224, 2nd Floor, Times Square, Opp. Landmark Empire, Near Vakilwadi, Golden Plaza, Magob, Surat – 395010	Gitaben B. Patel	Index copy, Deed No. 11565/2014	Property sold by borrower in 2021; the report mentions 2014.
8	223, 2nd Floor, Times Square, Opp. Landmark Empire, Near Vakilwadi, Golden Plaza, Magob, Surat – 395010	Gitaben B. Patel	Index copy, Deed No. 9208/2015	Property sold by borrower in 2021; the report mentions 9488.
9	Shubh Residency, Plot No. 38/A, Near Priyanka Intercity, Magob Road, Opp. Bhaktidham Mandir, Kadodara Road, Magob, Surat – 395010	Gitaben B. Patel	Index copy, Deed No. 195/2015	Borrower sold the property vide Document No. 10453/2021.
10	G/704, Rishi Vihar Township, Near Madhav Baug, B/H Ganga Hotel, Parvat Patiya, Surat – 395012	Gitaben B. Patel	Index copy, Deed No. 12314	Property sold out in 2015.

15.5 The Applicant submitted that the first Investigation Report dated 26.09.2025, prepared by SAFAL Professional & Recovery Services Pvt. Ltd., was annexed to the application and marked as **Annexure–A1**.

15.6 The Applicant further submitted that the Agency conducted a subsequent investigation and submitted its second Investigation Report dated 17.11.2025. As per the said report, the whereabouts and residential addresses of the individuals/borrowers could not be ascertained. Consequently, their present business activities also remained unverified.

15.7 A copy of the second Investigation Report dated 17.11.2025 was annexed to the application and marked as **Annexure–A2**.

16. That vide order dated 25.11.2025 Adjudicating Authority observed that the Detective Agency's report regarding the whereabouts and assets of the Respondents was cryptic and lacked details of the investigation conducted or the identities of the persons contacted. Accordingly, the report was not taken into consideration. The Liquidator was directed to submit a report detailing the benefits, if any, received by the Corporate Debtor, its directors or promoters, the debts and

liabilities of the Corporate Debtor, and the relevant aspects under Section 32A of the IBC.

17. That the **Affidavit in compliance** of order dated 12.01.2026 was filed by the Respondent No. 1 and 2 on 03.01.2026. The same was taken on record, wherein they furnished the current address along with mobile no. and email id.

18. In the compliance of order dated 09.02.2026 the applicant has filed the **Affidavit in compliance**. Wherein following submission were made in: -

18.1 In compliance with the aforesaid directions, the Applicant submitted that, on 08.01.2026, he, along with the authorised officer of the State Bank of India, visited the residential address of the Respondents, namely, A/504, Vinayak Residency, Parvat Patiya, Magob, Surat – 395010.

18.2 The Applicant further submitted that photographs of the visit, bearing GPS tracking details, were taken and annexed to the compliance affidavit as **Mark–1**.

18.3 The Applicant also referred to his affidavit dated 09.01.2026, wherein the visit to the aforesaid residential address, along with the bank officer, had been reported.

18.4 The Applicant affirmed that the address furnished by the Respondents was true and correct and that the Respondents were residing at the said address along with their family.

19. That vide order dated 18.03.2026 Respondent Nos. 1 and 2, who were proceeded against **ex parte**, appeared before this Adjudicating Authority and submitted that an application seeking ***recall*** of the ***ex parte order*** and setting aside of the order closing their right to file reply had been filed on the previous day. Accordingly, they sought an adjournment to enable them to participate in the proceedings.

20. The **Affidavit-in-Reply** on behalf of Respondent Nos. 1 and 2 was filed on 03.06.2026 vide Inward Diary No. 4437. The proof of deposit of costs amounting to Rs. 40,000/- into the account of the Applicant/Liquidator was also filed on 03.06.2026 vide Inward Diary No. D-4436. Both documents were taken on record. The Respondents, in their Affidavit-in-Reply, made the following submissions: -

20.1 The Respondents, in their reply, challenged the maintainability of the present application filed under Sections 43, 45 and 49 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), contending that the

transactions referred to in the Transaction Audit Report dated 19.03.2021 did not attract the ingredients of the aforesaid provisions and were undertaken in the ordinary course of business.

20.2 With respect to the payments made to 14 creditors, as referred to in Clause 8.1.1 of the Transaction Audit Report, the Respondents contended that the allegations were false, malicious and misconceived. They submitted that the said creditors were engaged in the textile business and had regular business dealings with the Corporate Debtor. Accordingly, the payments were made in the ordinary course of business. The Respondents further relied upon Section 43(3) of the IBC and submitted that the auditor had expressed an inability to determine whether the payments were made in the ordinary course of business or constituted preferential transactions.

20.3 Regarding the loan of ₹2.60 lakh advanced to Vaman Textiles Private Limited during FY 2015–16, as referred to in Clause 8.1.2 of the Transaction Audit Report, the Respondents submitted that the machinery installed for yarn production at the Corporate Debtor's premises was temporarily non-functional. Consequently, yarn was procured from Vaman Textiles Private Limited, and the payment in question was made towards such supplies. Accordingly, the Respondents contended that

the transaction did not constitute a preferential transaction.

20.4 With respect to the reduction in inventory without a corresponding increase in revenue, the Respondents contended that inventory reduction in the textile industry does not necessarily correspond to sales, as it may arise from production-related wastage, shrinkage, process losses, deterioration in quality, changing market trends and inventory write-offs or erosion in value. They further submitted that reduced market demand and operational constraints had resulted in lower revenue during the relevant period. Accordingly, the allegation of diversion or unaccounted transactions was stated to be based on assumptions and unsupported by any substantive material on record.

20.5 In view of the aforesaid submissions, the Respondents contended that the Applicant had failed to establish any case attracting Sections 43, 45 and 49 of the IBC and prayed for dismissal of the present application with exemplary costs.

21. That the **Affidavit in Rejoinder** to the Reply of Respondent No. 1 and 2 was filed by the Applicant. In **IA. No. 661 of 2021** following submissions have been made: -

21.1 The Applicant contended that the Respondents' assertion that the transactions identified in the

Transaction Audit Report dated 19.03.2021 were undertaken in the ordinary course of business was vague and unsupported by documentary evidence. It was submitted that the report, particularly paragraphs 8.1.1, 8.1.2 and 8.2.1 at pages 50–51 of the application, identified payments to certain creditors, loans and advances to related parties, and adjustments in inventory during FY 2015–16, warranting examination under Sections 43, 45 and 49 of the IBC.

21.2 With respect to the payments made to 14 creditors, the Applicant submitted that the Transaction Audit Report identified preferential treatment of certain creditors while other creditors remained unpaid. The Respondents had failed to produce any documentary evidence, including ageing analysis, to establish that the payments were made in the ordinary course of business. The Applicant contended that mere denial of the allegations was insufficient to rebut the findings of the audit report.

21.3 The Applicant further submitted that the Transaction Auditor had examined the books of accounts, bank statements, ledger entries, financial statements and other relevant records of the Corporate Debtor before identifying the impugned transactions as potentially falling within the ambit of preferential transactions under Section 43 of the IBC. It was contended that the Respondents had failed to demonstrate how the

transactions were consistent with the regular business practices of the Corporate Debtor.

21.4 Regarding the loan of ₹2.60 lakh advanced to Vaman Textiles Private Limited, the Applicant disputed the Respondents' explanation that the payment was made towards the supply of yarn. The Applicant submitted that the Respondents had failed to produce the relevant invoices and delivery receipts to substantiate the alleged supply. It was further contended that the liquidation order dated 10.03.2021 passed in I.A. No. 170 of 2021 in CP (IB) No. 309 of 2018 concerning Vaman Textiles Private Limited reflected the association of Paresh Patel and Parul Patel with the Corporate Debtor as suspended directors. According to the Applicant, the transaction involved a related party and remained unsupported by documentary evidence establishing its ordinary commercial purpose. A copy of the said liquidation order was annexed as **Annexure–A1**.

21.5 With respect to the reduction in inventory amounting to ₹2,29,58,996/-, the Applicant submitted that the Respondents' explanation based on reduced demand, deterioration in quality and changing market trends was an afterthought unsupported by the financial records of the Corporate Debtor. It was contended that the Respondents had failed to produce supporting documents, including stock registers, wastage or scrap

registers, records of write-offs, insurance claims or internal communications, to substantiate the alleged inventory losses.

21.6 The Applicant further contended that the absence of any alleged fraudulent intent would not, by itself, exclude a transaction from being preferential under Section 43 of the IBC. In support of this contention, reliance was placed on *GVR Consulting Services Limited v. Pooja Bahry* [2023 SCC OnLine NCLAT 2201], which, according to the Applicant, clarified that proof of fraudulent intent is not a prerequisite for establishing a preferential transaction under Section 43.

21.7 The Applicant also submitted that the Transaction Audit Report had been forwarded to the Respondents by email dated 30.03.2021, inviting their comments and observations. However, no response was received from them.

21.8 Accordingly, the Applicant maintained that the application was maintainable and that the Respondents had failed to substantiate their defence through documentary evidence. The Applicant therefore prayed that appropriate orders be passed in accordance with the provisions of the IBC.

22. In IA 986 of 2023 the following submission has been made:

-

22.1 The Applicant/Liquidator contended that the Respondents' objections regarding the maintainability of the application were vague and misconceived, as no documentary evidence or ageing analysis had been produced in support of their defence.

22.2 With respect to the allegations of fraudulent or wrongful trading under Section 66 of the IBC, the Applicant relied upon the Transaction Audit Report dated 19.03.2021, particularly Paragraph 8.3.1, which identified discrepancies between the payments reflected in the bank statements and the corresponding ledger entries of the Corporate Debtor. Three transactions amounting to ₹78,72,600/-, ₹20,98,066/- and ₹1,15,859/-, aggregating to ₹1,00,86,525/-, were identified. While the bank statements reflected payments benefiting Kay International and Shri Muniveer Spinning Mills, the books of accounts recorded corresponding entries in favour of Vimal Textile, Sunflower Enterprise and Sarthak Yarn. The Applicant contended that such discrepancies could not be dismissed as mere accounting errors.

22.3 The Applicant further submitted that the Transaction Auditor had examined the books of accounts, bank statements, ledger entries and other financial records before identifying the impugned transactions. It was contended that the Respondents had failed to produce any evidence to rebut the findings recorded in

Paragraph 8.3.2 of the report. The Applicant also relied upon the recording of sales returns during FY 2015–16 despite there being no sales during the said year, contending that the same indicated serious accounting discrepancies requiring examination.

22.4 The Applicant alleged that the transactions were undertaken to prejudice the interests of creditors and siphon off the assets of the Corporate Debtor. It was submitted that mere denial of the allegations, without supporting documentary evidence, could not absolve the Respondents of their liability. Reliance was also placed on the order dated 20.04.2026 passed by this Adjudicating Authority in *Bank of India v. Mayur Balubhai Shah and Ors.*, I.A. No. 1007 (AHM) of 2023 in C.P. (IB) No. 407 of 2020, reported as [(2026) ibclaw.in 1191 NCLT].

22.5 The Applicant further submitted that the Transaction Audit Report had been forwarded to the Respondents by email dated 30.03.2021, inviting their comments and observations; however, no response was received. Accordingly, the Applicant maintained that the application was maintainable and prayed that the same be allowed.

23. That vide order dated 01.09.2026 it has been taken on record that the substitution in the cause title has been carried out by the Applicant – State Bank of India in IA No.

661 of 2021 and IA No. 986 of 2023 has been filed by the Applicant.

24. Further, in compliance with the order dated 01.09.2026, the Applicant filed the chronology of events dated 16.09.2026 vide Inward No. D 7886, and the Respondents filed their written submissions dated 16.09.2026. Both were taken on record by this Adjudicating Authority.

25. Chronology of dates and events is briefly stated below:

Sr. No.	Date	Particulars of Events
1.	28.07.2017	The Corporate Debtor, Somnath Textile Private Limited, was admitted into the Corporate Insolvency Resolution Process (CIRP) based on Petition under section 10 filed by the Corporate Debtor.
2.	05.02.2018	The Corporate Debtor was ordered to be liquidated by this Adjudicating Authority in I.A. No. 37 of 2018.
3.	21.03.2018	The liquidation process was stayed pursuant to an order passed in I.A. No. 99 of 2018.
4.	22.01.2020	I.A. No. 99 of 2018 was dismissed, bringing the stay proceedings to an end.
5.	15.06.2020	An extension of six months was granted for completion of the liquidation process in I.A. No. 262 of 2020.
6.	05.11.2020	The Liquidator engaged HSVJ & Co., Chartered Accountants, to conduct a transaction audit of the Corporate Debtor.
7.	05.01.2021	A further extension of six months, from 15.12.2020 up to 14.06.2021, was granted in I.A. No. 934 of 2020.
8.	12.03.2021	The Liquidator issued a letter to the Respondents communicating the findings of the Transaction Audit Report.
9.	19.03.2021	HSVJ & Co. submitted the Transaction Audit Report covering the period from 27.07.2015 to 27.07.2017, identifying transactions requiring examination under Sections 43, 45, 49, 50 and 66 of the IBC.

10.	30.03.2021	The Liquidator forwarded the Transaction Audit Report to the Respondents by email, seeking their comments and observations.
11.	05.06.2021	The remaining properties of the Corporate Debtor were sold through an e-auction.
12.	06.07.2021	A further extension of the liquidation period up to 14.12.2021 was granted in I.A. No. 430 of 2021.
13.	22.09.2021	I.A. No. 661 of 2021 was stated to have been filed under Sections 43, 45, 49 and 66 of the IBC, seeking avoidance of the impugned transactions and consequential reliefs.
14.	06.12.2021	This Adjudicating Authority issued directions regarding service of notice upon the Respondents.
15.	11.12.2021	Notices were sent to the Respondents by email and Speed Post. The postal articles were returned with the remark "Addressee Left Without Instructions".
16.	08.03.2022	This Adjudicating Authority recorded service of notice and directed that the matter proceed *ex parte* against the Respondents.
18.	05.05.2023	An additional affidavit/application was stated to have been filed by the Applicant in relation to the avoidance proceedings.
19.	07.07.2023	The substitution of the Secured Financial Creditor was allowed, and State Bank of India was substituted as the Applicant.
20.	07.10.2023	Email notices to the Respondents were reflected as delivered, as recorded in the subsequent Service Report.
21.	14.10.2023	The Applicant filed an affidavit containing the Service Report, which was taken on record.
22.	16.10.2023	This Adjudicating Authority directed publication of notice in English and vernacular newspapers.
23.	13.11.2023	Notices to the Respondents were published in Financial Express in English and Gujarati.
24.	04.12.2023	The Liquidator filed an affidavit evidencing service through newspaper publication.
25.	13.12.2023	Service upon the Respondents through newspaper publication was recorded by this Adjudicating Authority.
26.	30.01.2024	The Vakalatnama on behalf of Respondent Nos. 1 and 2 was filed/taken on record.
27.	20.03.2024	As none appeared on behalf of the Respondents despite service, their right to file replies was closed and the

		matter was directed to proceed *ex parte*.
29.	30.07.2024	This Adjudicating Authority observed that the transactions involving 14 beneficiaries had been identified solely on the basis of the Transaction Audit Report, without independent verification or supporting material. The Applicant sought time to explain the remaining transactions.
30.	14.09.2024	The Applicant filed an additional affidavit explaining the reduction in inventory of ₹2,29,58,996/- during FY 2015–16, without a corresponding increase in revenue from operations.
31.	03.06.2025	The Applicant filed a written synopsis with a convenience chart in compliance with the directions of this Adjudicating Authority.
32.	28.07.2025	This Adjudicating Authority directed the Applicant to obtain instructions from State Bank of India regarding the whereabouts, assets and business activities of the Respondents.
33.	26.09.2025	SAFAL Professional & Recovery Services Pvt. Ltd., appointed by State Bank of India, submitted its first Investigation Report identifying properties and assets associated with the individuals and entities connected with the Corporate Debtor.
34.	22.11.2025	The Applicant filed an affidavit in compliance with the order dated 28.07.2025, placing the investigation findings on record.
35.	17.11.2025	The Agency submitted its second Investigation Report, stating that the whereabouts and residential addresses of the individuals/borrowers could not be ascertained and their business activities remained unverified.
36.	25.11.2025	This Adjudicating Authority observed that the Detective Agency's report was cryptic and lacked details of the investigation conducted. The Liquidator was directed to submit a report regarding benefits received by the Corporate Debtor, its directors or promoters, the debts and liabilities of the Corporate Debtor, and relevant aspects under Section 32A of the IBC.
37.	03.01.2026	An affidavit was stated to have been filed by Respondent Nos. 1 and 2 furnishing their current address, mobile numbers and email IDs.
38.	08.01.2026	The Applicant, along with an authorised officer of State Bank of India, visited the residential address furnished by the Respondents and took photographs bearing GPS tracking details.
39.	09.01.2026	The Applicant filed an affidavit reporting the visit to the

		residential address of the Respondents.
40.	12.01.2026	This Adjudicating Authority directed the Respondents to furnish an affidavit containing proof of their present communication address, email IDs and mobile numbers.
41.	09.02.2026	This Adjudicating Authority directed the Applicant to verify the correctness of the address furnished by the Respondents.
42.	18.03.2026	Respondent Nos. 1 and 2 appeared and informed the Tribunal that they had filed an application seeking recall of the ex parte proceedings and restoration of their right to file replies. They sought an adjournment to participate in the proceedings.
44.	03.06.2026	Respondent Nos. 1 and 2 filed their Affidavit-in-Reply vide Inward Diary No. 4437. Proof of deposit of costs of ₹40,000/- into the account of the Applicant/Liquidator was also filed taken on record.
45.	01.09.2026	This Adjudicating Authority recorded that the substitution in the cause title had been carried out in I.A. No. 661 of 2021 and that I.A. No. 986 of 2023 had been filed by the Applicant.

26. We have heard Ld. Counsel for the Applicant, Ld. Counsel for the Respondents, carefully examined the Interlocutory Applications, Transaction Audit Report, the reply filed by Respondents, Additional Affidavit, its reply and written statements. Based on the prayers in the Application and pleadings, we frame the following issues for determination: -

A. **Issue No. 1: -** Whether the payments made by the Corporate Debtor to the identified creditors during the relevant period constitute preferential transactions within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016?

B. **Issue No. 2: -** Whether the advance of Rs.2.60 lakh made to M/s. Vaman Textile Private Limited and the inventory adjustments made during the financial year 2015–16 constitute undervalued transactions or transactions defrauding creditors within the meaning of Sections 45 and 49 of the Insolvency and Bankruptcy Code, 2016?

C. **Issue No. 3: -** Whether the reduction in inventory of Rs 2,95,16,958, sales return of Rs ₹154.95 lakh without increase in the inventory, and discrepancies between the payments reflected in the bank statements and the corresponding ledger entries of the Corporate Debtor, involving transactions aggregating to ₹1,00,86,525/-, establish fraudulent or wrongful trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016?

OBSERVATION OF THE TRIBUNAL: -

27. Before deciding on the issues framed, we consider relevant facts of the matter.

27.1 The Corporate Debtor, M/s. Somnath Textile Private Limited, was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 28.07.2017 based on an application under section 10 of the Code filed by the Corporate Debtor. The Corporate Debtor was subsequently ordered to be liquidated vide order dated 05.02.2018.

27.2 The Corporate Debtor defaulted in making payments to creditors and claims of Rs 47,95,18,747 were received from the creditors. During the liquidation process, the

Liquidator engaged HSVJ & Co., Chartered Accountants, on 05.11.2020 to conduct a transaction audit of the Corporate Debtor for the period from 27.07.2015 to 27.07.2017. The Transaction Audit Report dated 19.03.2021 identified certain transactions warranting examination under Sections 43, 45, 49, 50 and 66 of the Insolvency and Bankruptcy Code, 2016 ("IBC").

27.3 The Transaction Audit Report (TAR) dated 19.03.2021 is available on pages 39 to 59 of the Annexure to the Application. Page 62 of the Annexure shows that the Liquidator forwarded the report to Suspended Director seeking comments/feedback on the observations in the Report.

27.4 The present proceedings arise from the allegations concerning payments made to certain creditors, advances to a related party, and adjustments in the inventory of the Corporate Debtor during the financial year 2015–16. The Applicant seeks appropriate reliefs in respect of the transactions alleged to be preferential, undervalued or undertaken with the intent to defraud creditors. The allegations pertaining to fraudulent or wrongful trading under Section 66 of the IBC are the subject matter of the separate application, being I.A. No. 986 of 2023, and considered in this order later.

28. With respect to the alleged preferential transactions under Section 43 of the IBC, the Transaction Audit Report, in paragraph 8.1.1 identified payments made to 14 creditors during the relevant period. It was observed that, during the financial year 2015–16, cash payments amounting to ₹81.21 lakh were made to creditors out of total payments of ₹396.44 lakhs made to these creditors. The cash payments are made to Prakash Tex Rs 61,20,950 and to Vimal Textile of Rs 20,00,000. These two persons have also been paid through banking channel. The Respondents have contended that the creditors were engaged in the textile business and had regular business dealings with the Corporate Debtor, and that the payments were made in the ordinary course of business.

29. The Transaction Audit Report also identified an advance of ₹2.60 lakh made to M/s. Vaman Textile Private Limited during the financial year 2015–16 (paragraph 8.1.2 of the TAR), in which the directors of the Corporate Debtor were stated to have an interest. The Respondents have submitted that the machinery installed at the Corporate Debtor's premises was temporarily non-functional and that yarn was

procured from the said entity, for which the payment was made. The Applicant has disputed this explanation, contending that the Respondents failed to produce the relevant invoices and delivery receipts to establish the alleged supply.

30. In relation to the alleged undervalued transactions and transactions defrauding creditors under Sections 45 and 49 of the IBC, the Transaction Audit Report (paragraph 8.2) recorded that inventory comprising raw materials, work-in-progress and finished goods, aggregating to approximately ₹295 lakh (raw material Rs 65,57,962, work in progress of Rs 1,59,97,621 and finished goods of Rs 69,61,375), was adjusted during the financial year 2015–16 despite there being no sales during the said year. The report further noted discrepancies in the recording of sales returns, which were reflected at ₹94.95 lakh in the annual financial statements and ₹154.95 lakh in the books of accounts, without corresponding adjustments to inventory.

31. The Applicant subsequently submitted that the inventory of the Corporate Debtor had decreased by Rs. 2,29,58,996/-, without a corresponding increase in revenue from

operations. According to the Applicant, the financial records did not satisfactorily explain the reduction in inventory. The Respondents, on the other hand, have contended that the reduction could be attributable to production-related wastage, shrinkage, process losses, deterioration in quality, changing market conditions, inventory write-offs and reduced demand. The Applicant has disputed these explanations on the ground that no supporting records, including stock registers, wastage or scrap registers, write-off records or other contemporaneous documents, were produced to substantiate the same.

32. The Applicant has contended that the Respondents failed to substantiate their defence with documentary evidence, particularly in relation to the payments made to creditors, the advance to M/s. Vaman Textile Private Limited and the reduction in inventory. The Respondents have denied the allegations and maintained that the transactions were undertaken in the ordinary course of business and that the application does not establish the ingredients necessary for relief under Sections 43, 45 and 49 of the IBC.

33. The allegations under Section 66 of the IBC (paragraph 8.3.1 of the TAR) concerns payments to creditors which were shown different as per Bank statement and ledgers of the CD. Parties as per bank statements were Kay Kay International (Vimal Textile as per books) Rs 78,72,600, Shri Muniveer Spinning Mills as per bank statement (Sunflower enterprise as per books of account- Rs 20,98,066, and Shri Muniveer Spinning Mills as per bank statement and Sarthak Yarn as per books of account- Rs 1,15,859 and these entries total to Rs ₹1,00,86,525/-, fall for consideration in the separate proceedings in I.A. No. 986 of 2023.

34. The Transaction Audit Report was communicated to the suspended management before the applications were pursued. The Respondents subsequently appeared and filed replies upon compliance with the costs of Rs 40,000 imposed by this Adjudicating Authority. Their participation and explanations are considered on the merits.

35. We now consider the applicability of sections 43, 44, 45,49, and 66 of the Code to the transactions identified in both the Applications.

36. <u>Findings on Issue No. 1</u> - Whether the payments made by the Corporate Debtor to the identified creditors during the relevant period constitute preferential transactions within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016?

36.1 This Adjudicating Authority has considered the averments made in the application, the Transaction Audit Report dated 19.03.2021, the reply filed on behalf of the Respondents, the submissions advanced by the Applicant, and the material available on record. The issue for consideration is whether the payments made to the identified creditors during the financial year 2015–16, while other creditors of the Corporate Debtor allegedly remained unpaid, constitute preferential transactions within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016 ("IBC").

36.2 Section 43 of the Code is reproduced below:-

Section 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 <u>section 44</u>.

(2) A corporate debtor shall be deemed to have given a preference, if—

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or

operational debt or other liabilities owed by the corporate debtor; and
(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.
(3) For the purposes of sub-section (2), a preference shall not include the following transfer —
(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—
(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:
Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

36.3 It is noted that Clause 8.1.1 of the Transaction Audit Report identifies payments aggregating to ₹396.44 lakh made to 14 creditors during FY 2015–16, including payments of ₹81.21 lakh in cash. The identification of these transactions in the course of the transaction audit, particularly in the context of other outstanding creditor liabilities, warrants examination of the circumstances in which such payments were made and whether those resulted in the impugned beneficiaries being placed in a more advantageous position than they would have occupied in the distribution of assets under Section 53 of the IBC.

36.4 The Respondents have contended that the identified creditors were engaged in the textile business and were

regular business counterparties of the Corporate Debtor, and that the payments were made in the ordinary course of business. However, the mere assertion that the parties were engaged in the same line of business or had regular commercial dealings does not, by itself, establish that the impugned payments were made in the ordinary course of business. The nature of the underlying transactions, the corresponding invoices, ledger accounts, payment records, outstanding liabilities and the established course of dealings between the parties are relevant considerations in determining the true character of the transactions. The Respondents' explanation, therefore, requires scrutiny in the light of the contemporaneous documentary record.

36.5 The Respondents' reliance on the ordinary-course carve out under Section 43(3) of the IBC requires to be considered in accordance with the principles laid down by the Hon'ble Supreme Court in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited*, (2020) 8 SCC 401. The applicability of the exception cannot be determined merely on the basis of a general assertion that the parties were regular business counterparties. The nature and circumstances of the transaction, the commercial dealings between the parties and the requirements of Section 43(3) must be examined before the exclusion

can be applied. Accordingly, the Respondents' plea of ordinary-course transactions cannot be accepted solely on the basis of their assertion, without due consideration of the supporting material.

36.6 The fact that payments were made to certain creditors while other creditor liabilities allegedly remained outstanding is a relevant circumstance for examination The Applicant's case must be assessed by determining whether the impugned transfers were made for the benefit of the identified creditors on account of antecedent debts or liabilities, whether they placed the beneficiaries in a more advantageous position than they would have occupied in the distribution under Section 53, whether the transactions fall within the applicable relevant time, and whether any exclusion under Section 43(3) applies. The burden of establishing the necessary foundational facts remains governed by the applicable law, and the Respondents' explanation must be assessed against the material available on record.

36.7 In view of the foregoing discussion, this Adjudicating Authority holds that the Respondents' contention that the impugned payments were made in the ordinary course of business cannot be accepted merely based on a general assertion, in the absence of sufficient supporting material substantiating such plea. The payments were made to creditors for antecedent

operational debts. As noted above payments are also stated to have been made in cash.

36.8 In view of the foregoing discussion, this Adjudicating Authority holds that the Respondents' contention that the impugned payments were made in the ordinary course of business is rejected. Accordingly, payments of Rs 396.44 lakhs made to identified creditors in preference to the other creditors including financial institution are held to be covered by provisions of section 43 of the Code. In view of the above and considering the provisions of section 44 (1)(a) of the Code, we direct that amounts of Rs 396.44 lakhs be vested in the corporate debtor and the Respondent Nos. 1 and 2 contribute the same to the corporate debtor.

37. <u>Findings on Issue No. 2 -</u> Whether the advance of ₹2.60 lakh made to M/s. Vaman Textile Private Limited, and the inventory adjustments made during the financial year 2015–16 constitute undervalued transactions or transactions defrauding creditors within the meaning of Sections 45 and 49 of the Insolvency and Bankruptcy Code, 2016?

37.1 With regard to the advance of ₹2.60 lakh, the Transaction Audit Report records that the amount was advanced to M/s. Vaman Textile Private Limited, in which the directors of the Corporate Debtor had an interest. The Applicant has contended that the

transaction involved a related party and that the Respondents failed to substantiate the commercial purpose of the payment through relevant invoices and delivery receipts. The Applicant has further relied upon the order dated 10.03.2021 passed in I.A. No. 170 of 2021 in CP (IB) No. 309 of 2018 concerning M/s. Vaman Textile Private Limited, in support of its contention regarding the association of the Respondents with the said entity.

37.2 The Respondents, in their reply, have stated that the machinery installed in the Corporate Debtor for the production of yarn was not functioning for a certain period during FY 2015–16 and that yarn was consequently procured from M/s. Vaman Textile Private Limited, against which the payment of ₹2.60 lakh was made.

37.3 Nevertheless, the existence of a related-party relationship or the absence of supporting documents cannot, by itself, conclusively establish that the advance constituted an undervalued transaction under Section 45 or a transaction defrauding creditors under Section 49 of the IBC. The transaction must be examined to determine whether it involved a gift or transfer for consideration significantly less than the value of the consideration provided by the Corporate Debtor, as contemplated under Section 45, and whether the requirements of Section 49, including the

requisite intent to defraud creditors, are established. The absence of supporting documents assumes significance in assessing the explanation offered by the Respondents, but the statutory ingredients must still be satisfied.

37.4 As regards the inventory adjustments, the Transaction Audit Report records that, during FY 2015–16, inventory comprising raw materials, work-in-progress and finished goods aggregating to ₹295 lakh was adjusted or consumed despite there being no sales during the relevant financial year. The auditor further noted that no reasonable justification for the adjustments could be ascertained from the available records or the independent auditor's report. The report also identifies a discrepancy between sales returns of ₹94.95 lakh reflected in the annual financial statements and ₹154.95 lakh recorded in the books of account, without corresponding inventory adjustments in respect of such sales returns. These discrepancies raise material questions concerning the manner in which the Corporate Debtor's inventory was accounted for and the ultimate disposition of the relevant goods.

37.5 The Applicant, by its additional affidavit dated 14.09.2024, has further pointed out that, as reflected in Note 4 of the financial statements, the inventory comprising work-in-progress, finished goods and stock-in-trade decreased from Rs. 2,54,58,996/- to Rs.

25,00,000/-, reflecting a difference of Rs. 2,29,58,996/-. The Applicant has also relied upon Note 3.7 of the financial statements and contended that the reduction in inventory was not accompanied by a corresponding increase in revenue from operations. According to the Applicant, the discrepancies assume further significance in view of the sales-return figures and the absence of a satisfactory explanation for the reduction in inventory.

37.6 The Respondents have sought to explain the inventory reduction by contending that inventory in a textile business may be consumed during production and may also be affected by wastage, shrinkage, process loss, deterioration in quality, reduced demand, operational constraints and write-offs. While such circumstances may, depending upon the supporting records, explain a reduction in inventory, the Respondents have not, on the material identified in the present record, substantiated their explanation through stock registers, production and consumption records, wastage or scrap registers, write-off records, sales-return documentation or other contemporaneous material correlating the inventory reduction with the alleged operational circumstances. A general explanation concerning the nature of the textile business is insufficient, by itself, to reconcile the substantial inventory reduction and the

discrepancies identified in the Transaction Audit Report.

37.7 This Adjudicating Authority is of the view that the transaction of Rs 2.60 lakhs with Vaman Textiles Private Limited is not properly explained by the Respondents, particularly considering that there was no production and no documents to support receipt of corresponding benefits is submitted. Considering the provisions of section 49(1)(b), this Authority restores the transaction of payment of Rs 2.60 lakh to the Corporate Debtor as if the transaction had not been entered into. The Respondent Nos. 1 and 2 shall contribute this sum to the corporate debtor.

37.8 We are of the view that provisions of section 45 do not apply to reduction of inventory and the applicability of section 66 of the Code is considered later in this order.

38. **Findings on Issue No. 3** - Whether the reduction in inventory of Rs 2,95,16,958, sales return of Rs ₹154.95 lakh without increase in the inventory, and discrepancies between the payments reflected in the bank statements and the corresponding ledger entries of the Corporate Debtor, involving transactions aggregating to Rs. 1,00,86,525/-, establish fraudulent or wrongful trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016?

38.1 As noted above there has been reduction/adjustment in inventory of raw material of Rs 65,57,962, work in progress of Rs 1,59,97,621, and finished goods of Rs 69,61,375 totalling to Rs 2,95,16,958. There has been no sale or production during the year and the Respondents have failed to provide a satisfactory explanation for the reduction of inventory and corresponding sales.

38.2 Further, a sales return of Rs ₹154.95 lakh has been accounted without increase in the corresponding inventory of finished goods.

38.3 Section 66 of the Code dealing with fraudulent or wrongful trading and the section reads as below:

> (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional or the liquidator pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.
>
> (2) On an application made by a resolution professional during the corporate insolvency resolution process or by a liquidator, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-
>
> a. before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and
>
> b. such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.
>
> (3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

> ***Explanation.*** **–** For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

38.4 Section 66(1) of the Code deals with fraudulent trading where, during CIRP or liquidation, the business of the Corporate Debtor is carried on with intent to defraud creditors or for any fraudulent purpose. Section 66(2) deals separately with wrongful trading and contains distinct statutory requirements which must independently be satisfied.

38.5 Thus, in cases of wrongful trading, liability may be fastened where it is established that:

i. The directors knew or ought to have known that there was no reasonable prospect of avoiding insolvency; and

ii. They failed to exercise due diligence in minimizing potential losses to creditors.

38.6 From the records, it is evident that the Respondents were erstwhile **directors/promoters** of the Corporate Debtor during the relevant period when the impugned transactions of depletion of stock took and sales return took place. We note that the application under section 10 was filed by the Corporate Debtor and therefore the suspended directors knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in case of the corporate debtor.

38.7 The material on record demonstrates that: -

i. The Respondents were in control of the affairs and management of the Corporate Debtor;

ii. The transactions held as fraudulent transactions or wrongful trading were executed during their tenure;

iii. No evidence has been produced to show that such transactions were undertaken without their knowledge or authority.

38.8 This Authority finds that the impugned transactions of depletion of stock (reduction of inventory) of the corporate debtor and sales return without addition to inventory took place after the corporate debtor was experiencing financial distress. The unaccounted disappearance of stock resulted into a loss to the corporate debtor and effectively to the creditors. The question whether such diminution was caused by fraudulent conduct attributable to the Respondents must, however, be determined independently on the evidence. Similarly, sales return results into corresponding less receivables/assets but there was no corresponding increase in the stock.

38.9 The Respondents have not produced satisfactory contemporaneous records explaining the reasons for depletion of inventory and non-recording of stock increase due to sales return. In the present case, the conduct of the Respondents demonstrates:

i. Failure to act in the best interest of the Corporate Debtor;

ii. Active depletion of the asset base of the company.

38.10 Such actions amount to a **clear breach of fiduciary duties.** It is a settled principle that **directors cannot take shelter of unsupported claims**, particularly when they have failed to exercise due diligence expected of them. Creditors were prejudiced as the asset pool in the form of stock of goods available for resolution/liquidation was significantly reduced.

38.11 The material facts and chronology of events noted in this order demonstrate that the transactions identified in this Application as fraudulent trading or wrongful trading took place just before the corporate debtor filed application under section 10 seeking initiation of CIRP.

38.12 There exists a direct nexus between the conduct of the Respondents and the losses suffered by the Corporate Debtor. The depletion of stock/ assets and sales return without corresponding stock increase cannot be attributed to market forces or business exigencies, but to deliberate acts of mismanagement and diversion/sale of stock of the corporate debtor that was not accounted in the regular books of account and the proceeds did not come to the corporate debtor.

38.13 In light of the above findings, this Authority is satisfied that, the Respondents were knowingly parties to the fraudulent conduct and they were knowing or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency

resolution process in respect of the Corporate Debtor in this case and this finding by this Adjudicating Authority is reasonable because transactions were undertaken which defrauded creditors and the Respondents did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor.

38.14 Accordingly, this Adjudicating Authority is satisfied that the ingredients of Section 66(2) of the Code stand established. Accordingly, the Respondents, being the persons found liable under Section 66 are liable to make contributions of Rs 2,95,16,958 on account of stock/inventory loss and Rs 154.95 lakhs for sales return without increase in the inventory, to the assets of the Corporate Debtor.

38.15 The object of Section 66 is compensatory and restorative rather than penal. The contribution directed herein is intended only to restore the value wrongfully depleted from the assets of the Corporate Debtor.

38.16 In view of the foregoing discussion and having regard to the totality of circumstances, the contentions raised by the Respondents are found insufficient to rebut the material placed by the Applicant. The present application therefore deserves to be allowed to the extent of the unexplained inventory loss/depletion of Rs 2,95,16,958 and Rs 154.95 lakhs for sales return.

38.17 Regarding the other transaction of Rs 1,00,86,525/- concerning mismatch of payments to parties different from those noted in the books of account. Accounts in the ledger were adjusted of parties other than to whom payments were made. The Applicant has relied upon Paragraph 8.3.1 of the Transaction Audit Report dated 19.03.2021, which identifies discrepancies between the payments reflected in the bank statements and the corresponding entries recorded in the books of account of the Corporate Debtor. The report identifies three transactions amounting to Rs. 78,72,600/-, Rs. 20,98,066/- and Rs. 1,15,859/-, aggregating to Rs. 1,00,86,525/-. As per the Applicant, while the bank statements reflected payments benefiting Kay International and Shri Muniveer Spinning Mills, the corresponding entries in the books of account were recorded in favour of Vimal Textile, Sunflower Enterprise and Sarthak Yarn. The Applicant has contended that these discrepancies cannot be dismissed as mere accounting errors, particularly in the absence of a satisfactory explanation reconciling the payments with the corresponding ledger entries.

38.18 The discrepancies identified in the Transaction Audit Report raise a material question regarding the actual beneficiaries of the payments made from the accounts of the Corporate Debtor and the purpose for which the funds were utilised. A mismatch between the

beneficiary reflected in the bank statement and the entity in whose favour the corresponding ledger entry has been recorded is a circumstance requiring explanation through the underlying payment instructions, bank records, invoices, vouchers, ledger accounts and other supporting documents. In the absence of a satisfactory reconciliation, the discrepancies assume significance in determining whether the transactions were properly recorded and whether the funds of the Corporate Debtor were utilised for its legitimate business purposes or diverted for purposes prejudicial to the interests of its creditors.

39. The Applicant has further submitted that the Transaction Auditor examined the bank statements, books of account, ledger entries and other financial records before identifying the aforesaid discrepancies. It has been contended that the Respondents have failed to produce documentary evidence sufficient to rebut the findings recorded in the transaction audit report. The Applicant has also relied upon the recording of sales returns during FY 2015–16 despite the absence of sales during the said financial year, contending that the accounting discrepancies, when considered together, raises strong doubts on the financial affairs of the

Corporate Debtor being managed by the suspended directors.

40. In view of the foregoing, this Adjudicating Authority finds that the discrepancies identified in Paragraph 8.3.1 of the Transaction Audit Report, involving transactions aggregating to Rs. 1,00,86,525/-, raise material concerns regarding the recording, purpose and actual beneficiaries of payments made from the accounts of the Corporate Debtor. The Applicant's contention that the discrepancies cannot be dismissed as mere accounting errors merits consideration, particularly if the Respondents have failed to substantiate a reconciliation through contemporaneous documentary evidence.

41. Based on the facts of the case and material placed on the record and in absence of any explanation regarding mismatch of entries, we are of the view that payments of Rs 1,00,86,525 was made fraudulently and with the sole objective of taking out/draining money from the corporate debtor. The Respondents have not identified the parties and purpose of making payments and therefore we strongly believe that sole purpose of making payments to unknown

parties was to deplete the assets of the corporate debtor. And, accordingly, the erstwhile directors (respondents) are liable to make contribution of Rs 1,00,86,525 to the assets of the Corporate Debtor.

42. In view of the foregoing discussion and findings in I.A. No. 661 of 2021 and I.A. No. 986 of 2023, this Adjudicating Authority passes the following directions: -

(i) The Applicant's prayer for avoidance of payments made to 14 creditors under Section 43 of the Insolvency and Bankruptcy Code, 2016 ("Code") for Rs 396.44 lakhs is allowed and the Respondents, as per provisions of section 44, are directed to contribute to the corporate debtor.

(ii) The transaction involving the advance of Rs. 2.60 lakh to M/s. Vaman Textile Private Limited is allowed as undervalued (sections 45 and 49 of the Code) and respondents are directed to contribute Rs 2.60 lakhs to the corporate debtor.

(iii) The inventory loss/depletion of Rs 2,95,16,958, sales return of Rs 154.95 lakhs, and mismatch in payments of Rs 1,00,86,525, all totalling to Rs 5,90,03,483 are considered fraudulent under section 66 of the Code.

(iv) The respondents are jointly and severally liable for making payments to the corporate debtor as



determined above along with an interest at the rate of 12.00% per annum computed for the period starting from the date of the transactions to the date of realization.

(v) The aforesaid amounts shall be deposited with the Applicant -SBI within a period of **30 days** from the date of this Order.

(vi) Upon receipt of the aforesaid amounts, the Applicant - SBI shall deal with the same strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable Regulations, and shall distribute the amounts amongst the stakeholders in accordance with the provisions of Section 53 of the Code.

(vii) In the event of default in compliance with this order, the Applicant shall be at liberty to seek enforcement of this order by initiating appropriate execution proceedings in accordance with law before the competent forum.

43. As noted in this order, notices on both the respondents could not be served through dasti mode and registered post. As notices could not be served, the liquidator after seeking permission of this Authority made paper publication about the hearing in the case. We were of the view that any order passed, if any, directing contributions to the corporate

debtor would be meaningless unless the respondents are located. On being directed, the SBI appointed a tracing agency and they found out the addresses of the Respondents and only after they filed replies after paying imposed cost. The case was admitted into CIRP on an application filed by the same respondents who later became untraceable. Huge claims were received in the CIRP/liquidation proceedings. We sought information from the liquidator to understand who benefitted from the process and who lost. This information was not filed.

44. The application **IA No. 661 of 2021** In CP (IB) No. 49 of 2017 Along with **IA 986 in 2023** in CP (IB) No. 49 of 2017 are **partly allowed** and **disposed of** in the above terms. No order as to cost.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

SS

Note: This order of the bench consisting of Hon'ble Member Judicial & Hon'ble Member Technical is pronounced in open court on behalf of the Bench by Hon'ble Member Judicial under Rule 151 of NCLT, Rules, 2016.

-Sd-

Paresh Vedani
(Court Officer)