

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

ITEM No.301
IA 475 of 2018
In
CP(IB) 14 of 2018

Under Section 43(1), 45(1) & 66(1) of IBC 2016

IN THE MATTER OF:

Shailen Shah

.....Applicant

V/s

Wind World Wind Resources Development Pvt Ltd & Ors

.....Respondents

Order delivered on: 15/06/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

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

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

**I.A. No. 475 of 2018
In
CP (IB) No. 14 of 2018**

*(Application filed under Section 25(2)(j) read with Section 43 (1), 45
(1) and 66 (1) of the Insolvency and Bankruptcy Code, 2016)*

In the matter of: Wind World (India) Limited

Mr. Ravi Sethia

Resolution Professional of
Wind World (India) Limited

Having office at:

Building No. 10, 8th Floor,
Tower C DLF Cyber City, Phase II,
Gurgaon, Haryana, India, 122002

...Applicant/Resolution Professional

Versus

**1. Wind World Wind Resources
Development Private Limited**

A company registered under the Provisions of the
Companies Act, 1956

Having its registered office at:

Wind World Towers Plot No. A/9,
Veera Industrial Estate,
Veera Desai Road, Andheri (West),
Mumbai, Maharashtra, 400053

2. SREI Equipment Finance Limited

Company registered under the Provisions of the
Companies Act, 1956

Having address at:

Vishwakarma, 86C
Topsia Road, Kolkata 700046

3. Wind World Wind Farms (Hindustan) Pvt Ltd

Company registered under the Provisions of the Companies Act, 1956

Having address at:

Wind World Tower, Plot No. A-9,
Veera Industrial Estate,
Veera Desai Road, Andheri (West),
Mumbai, Maharashtra, 400053

4. Mr. Yogesh Mehra

Suspended director Of
Wind World India Limited

Residing at:

201, Hare Krishna Presidency Society,
North South Road No. 8,
JVPD Scheme, Vileparle (W).
Mumbai - 400 049

5. Mr. Ajay Mehra

Suspended director Of
Wind World India Limited

Residing at:

301, Hare Krishna, Plot No. 14,
Presidency Society, N.S. Road No. 8,
JVPD Scheme, Vileparle (W).
Mumbai 400049

... Respondents

Order Pronounced On: 15.06.2026

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 : Ms. Neha Naik, Adv.

For the Respondents : Mr. Rashesh Sanjanwala, Sr. Adv.
a. w. Ms. Aishwarya Nabh, Adv.
for R-1 & R-3 a.w. Mr. Parth
Shah, Adv. for R-4 & R-5

ORDER
(Per: Bench)

1. This application has been filed by the Mr. Ravi Sethia, the Resolution Professional (hereinafter as, “the **Applicant**”) of M/s. Wind World (India) Limited (hereinafter as, “the **Corporate Debtor**”) under Section 25(2)(j) read with Section 43 (1), 45 (1) and 66 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter as, “**the Code**”) seeking following reliefs:

- A. *Issue necessary directions to the Respondents above-named to compensate the Corporate Debtor for the losses incurred in respect of the transactions set out in the instant application;*
- B. *Pass any such further orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.*

2. **Facts of the Case:**

2.1. It is submitted that the present Application has been preferred under Section 25(2)(j) of the Insolvency and Bankruptcy Code, 2016 seeking appropriate directions in relation to certain transactions entered into by Wind World (India) Limited, being the Corporate Debtor, during the relevant period, which transactions are alleged to fall within the ambit of Sections 43, 45 and 66 of the Insolvency and Bankruptcy Code, 2016.

- 2.2. It is submitted that this Tribunal had admitted the insolvency application filed against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 vide order dated 20.02.2018 and commenced the Corporate Insolvency Resolution Process in respect of the Corporate Debtor. Pursuant thereto, the Interim Resolution Professional was appointed and thereafter confirmed as the Resolution Professional of the Corporate Debtor by the Committee of Creditors.
- 2.3. It is submitted that, in discharge of his duties under Section 25 of the Insolvency and Bankruptcy Code, 2016, the Resolution Professional appointed Grant Thornton India LLP as Transaction Auditors for conducting a review and forensic examination of the transactions entered into by the Corporate Debtor during the relevant period from 20.02.2016 till 10.02.2018 for the purpose of identifying preferential transactions under Section 43, undervalued transactions under Section 45, transactions defrauding creditors under Section 66 and fraudulent or wrongful trading under the provisions of the Code.
- 2.4. It is submitted that the Transaction Auditors submitted their final report dated 20.10.2018 to the Resolution Professional and the contents thereof were subsequently shared with the members of the Committee of Creditors on 05.11.2018. The said report identified certain transactions entered into by the

Corporate Debtor which, according to the Transaction Auditors, were potentially in contravention of the provisions of the Insolvency and Bankruptcy Code, 2016, particularly Sections 43, 45 and 66 thereof.

- 2.5. It is submitted that one of the transactions identified by the Transaction Auditors pertains to potential anomalies noticed in the sale of cranes by the Corporate Debtor to SREI Equipment Finance Limited. The said transaction involved sale of cranes by the Corporate Debtor to Respondent No.2, namely SREI Equipment Finance Limited, for a total consideration of INR 18.22 Crores.
- 2.6. It is submitted that the sale transaction was undertaken with a view to facilitate a loan transaction by and between SREI Equipment Finance Limited and Wind World Wind Resources Development (P) Ltd. , being Respondent No.1.
- 2.7. It is submitted that pursuant to the aforesaid transaction, the Corporate Debtor repurchased the very same cranes after obtaining finance from SREI Equipment Finance Limited.
- 2.8. It is further submitted that the cranes were hypothecated and charged in favour of SREI Equipment Finance Limited as security towards the loan availed by Respondent No.1. The Transaction Auditors observed that although the sale proceeds amounting to INR 18.22 Crores were received by the Corporate Debtor on or about 04.10.2016, the entire

amount was thereafter paid over to Respondent No.1, which in turn transferred the said amount to SREI Equipment Finance Limited towards repayment obligations, with an understanding that the Corporate Debtor would continue to retain possession and use of the cranes.

2.9. It is submitted that the Transaction Auditors observed that the aforesaid arrangement effectively resulted in SREI Equipment Finance Limited receiving repayment outside the approved mechanism under the Master Restructuring Agreement and further enabled utilisation of proceeds received by the Corporate Debtor for repayment of dues owed by Respondent No.1 to its lenders. Accordingly, the Transaction Auditors opined that the said transaction may potentially fall within the ambit of Section 43 of the Insolvency and Bankruptcy Code, 2016 as a preferential transaction.

2.10. It is submitted that another transaction identified by the Transaction Auditors pertains to undercharging of income receivable by the Corporate Debtor from Wind World Wind Farms (Hindustan) Private Limited, arrayed as Respondent No.3. It is submitted that in October, 2005, the Corporate Debtor had entered into an agreement with Wind World Wind Farms (India) Private Limited (nd Respondent No.3 for providing operation and maintenance services in respect of wind farms belonging to Respondent No.3 for a tenure of twenty years, namely from Financial Year 2006-07 till

Financial Year 2025-26, with an escalation clause of 5% on yearly basis.

2.11.It is submitted that during Financial Year 2014-15, the consideration payable under the said agreement was revised downward from INR 0.94 Crores to INR 0.30 Crores annually.

2.12.It is further submitted that such downward revision was made despite the agreement continuing for the remaining tenure and consequently resulted in reduction of income receivable by the Corporate Debtor for operation and maintenance services for the period from Financial Year 2014-15 till Financial Year 2025-26.

2.13.It is submitted that the Transaction Auditors, upon examination of the aforesaid transaction, observed that the Corporate Debtor had entered into an arrangement whereby it deferred receipt of its current years' income to future years and thereby effectively undercharged the transaction consideration by approximately INR 3.00 Crores over the remaining contractual period. The Transaction Auditors further opined that the said transaction may potentially fall within the scope and ambit of Section 45 of the Insolvency and Bankruptcy Code, 2016 as an undervalued transaction.

2.14.It is submitted that the Transaction Auditors had further made certain observations in relation to personal expenses incurred by the promoters of the Corporate Debtor, namely Mr. Yogesh Mehra and Mr.

Ajay Mehra, arrayed as Respondent Nos.4 and 5 respectively.

2.15. It is submitted that the said expenses were allegedly borne and paid out of the funds of the Corporate Debtor and therefore appeared to be in contravention of Section 66 of the Insolvency and Bankruptcy Code, 2016.

2.16. It is submitted that, in response to the aforesaid observations, Respondent Nos.4 and 5 stated that the amounts in question pertained to expenses incurred in relation to disputes initiated by Enercon GmbH against the Corporate Debtor and the said Respondents by virtue of their being former directors of the Corporate Debtor.

2.17. It is however submitted that the Corporate Debtor, being under a statutory obligation to safeguard its assets, ought not to have borne such expenses on behalf of the said Respondents. It is further submitted that Respondent No.4 had made payment of approximately INR 55,20,243/- to the account of the Corporate Debtor through cheque bearing No.723824 dated 15.11.2018 drawn on Axis Bank.

2.18. It is submitted that in view of the aforesaid facts and circumstances, the Applicant/Resolution Professional has approached this Tribunal seeking appropriate directions against the Respondents in respect of the transactions identified and set out in the Transaction Audit Report and for consequential reliefs as deemed fit

and proper in the facts and circumstances of the present case.

3. That, the R-1/Wind World Wind Resources Development Private Limited filed its Affidavit-in-Reply on 06.10.2022 vide Inward No. D-5415 stating the following:

3.1. It is submitted that Respondent No.1 has denied and disputed each and every averment, allegation and contention raised in the Application except those specifically admitted therein. It is further submitted that the Application is not maintainable inasmuch as the Applicant has failed to make specific pleadings and averments against Respondent No.1 and has merely relied upon the observations contained in the Transaction Audit Report dated 29.10.2018 prepared by Grant Thornton India LLP.

3.2. It is submitted that Respondent No.1 has restricted its Reply only to the allegations concerning the transaction alleged to fall under Section 43 of the Insolvency and Bankruptcy Code, 2016 in so far as the same pertains to Respondent No.1. It is further submitted that prior to filing the paragraph-wise Reply, Respondent No.1 raised certain preliminary objections with regard to the maintainability of the Application.

3.3. It is submitted that the Resolution Professional has preferred a composite Application in respect of multiple alleged transactions, which according to Respondent No.1

is contrary to law. It is submitted that the Applicant has neither made specific averments in relation to each transaction nor sought separate reliefs and prayers qua the individual transactions referred to in the Application.

- 3.4. It is submitted that the Application under Reply is merely a reproduction and reiteration of the contents of the Transaction Audit Report and therefore reflects complete non-application of mind by the Applicant. It is submitted that a mere reproduction of the Transaction Audit Report cannot be construed as an Application in compliance with the requirements of Section 43 of the Insolvency and Bankruptcy Code, 2016.
- 3.5. It is submitted that reliance was placed upon Regulation 35A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which provides that a Resolution Professional is required to form an opinion as to whether the Corporate Debtor has been subjected to transactions covered under Sections 43, 45, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 within seventy-five days from the Insolvency Commencement Date.
- 3.6. It is submitted that according to Respondent No.1, in the present case, the Resolution Professional failed to independently form any opinion as contemplated under Regulation 35A(1) within seventy-five days from the Insolvency Commencement Date, namely 20.02.2018, and

instead merely appointed an external agency for carrying out the transaction audit and reproduced the findings thereof verbatim in the Application without any independent determination or application of mind.

- 3.7. It is submitted that reliance was further placed upon Regulation 35A(2) of the CIRP Regulations, which requires a Resolution Professional, upon formation of such opinion, to make a determination with regard to the suspect transactions on or before the one hundred and fifteenth day from the Insolvency Commencement Date. It is submitted that no such determination has been placed on record by the Resolution Professional in the present case.
- 3.8. It is submitted that Respondent No.1 also relied upon Circular No. IP/003/2018 dated 03.01.2018 issued by the Insolvency and Bankruptcy Board of India, wherein it was clarified that an Insolvency Resolution Professional shall not outsource any of his duties and responsibilities under the Insolvency and Bankruptcy Code, 2016. It is submitted that although assistance of professionals may be availed, the Resolution Professional cannot abdicate or outsource his statutory functions completely.
- 3.9. It is submitted that Respondent No.1 contended that by solely relying upon the Transaction Audit Report, the Applicant has cast aspersions upon Respondent No.1 without undertaking any independent assessment or

determination and therefore the Application deserves dismissal with exemplary costs.

- 3.10. It is submitted that Respondent No.1 further contended that the provisions of Section 43 of the Insolvency and Bankruptcy Code, 2016 can be invoked only upon satisfaction of the statutory ingredients contemplated therein, namely: (i) transfer of property or interest thereof of the Corporate Debtor; (ii) such transfer being for the benefit of a creditor, surety or guarantor; (iii) such transfer being in respect of an antecedent financial or operational debt or other liability owed by the Corporate Debtor; and (iv) such transfer placing the beneficiary in a more beneficial position than it would have occupied in the waterfall mechanism under Section 53 of the Code.
- 3.11. It is submitted that Respondent No.1 asserted that the Applicant has failed to establish the aforesaid mandatory ingredients of Section 43 of the Insolvency and Bankruptcy Code, 2016 and has not undertaken any exercise for analysing the debt position of the Corporate Debtor or determining whether any creditor had in fact been placed in a preferential position over other creditors.
- 3.12. It is submitted that Respondent No.1 contended that the impugned transaction concerning sale of cranes was undertaken by the Corporate Debtor with SREI Equipment Finance Limited and not with Respondent No.1. It is submitted that the Applicant has failed to

demonstrate how Respondent No.1 derived any preferential benefit under Section 53 of the Insolvency and Bankruptcy Code, 2016 from the said transaction.

3.13.It is submitted that Respondent No.1 further contended that the Transaction Auditor had incorrectly observed that Respondent No.1 was given preference over other vendors and lenders. It is submitted that the Applicant failed to determine whether Respondent No.1 qualified as a creditor, surety or guarantor of the Corporate Debtor and further failed to establish existence of any antecedent debt owed by the Corporate Debtor to Respondent No.1.

3.14.It is submitted that Respondent No.1 specifically contended that instead of Respondent No.1 being a creditor of the Corporate Debtor, the Corporate Debtor itself appeared to be a creditor of Respondent No.1. It is submitted that even assuming that sale proceeds of the cranes were transferred to Respondent No.1, the same could not have placed Respondent No.1 in a beneficial position since SREI Equipment Finance Limited was the sole charge holder over the cranes and therefore the sole beneficiary, if any, of the said transaction under Section 53 of the Insolvency and Bankruptcy Code, 2016.

3.15.It is submitted that Respondent No.1 further contended that the Application contains bald and unsupported allegations without documentary evidence and that even the findings in the Transaction Audit Report are based

merely on assumptions without any substantiating material on record.

- 3.16. It is submitted that Respondent No.1 specifically averred that the Applicant has failed to plead the exact amounts and dates of the alleged transactions sought to be covered under Section 43 of the Insolvency and Bankruptcy Code, 2016. It is further submitted that the Applicant has also failed to plead whether the transactions fall within the “look-back period” contemplated under Section 43(4) of the Insolvency and Bankruptcy Code, 2016 and whether the alleged beneficiaries are related parties within the meaning of Section 5(24) of the Code.
- 3.17. It is submitted that Respondent No.1 placed reliance upon the judgment of the Hon’ble Supreme Court in Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited reported in (2020) 8 SCC 401 and particularly relied upon the principles laid down therein regarding the tests and parameters required to determine preferential transactions under Section 43 of the Insolvency and Bankruptcy Code, 2016.
- 3.18. It is submitted that Respondent No.1 further contended that this Tribunal vide order dated 24.08.2022 had already dismissed the Application filed by the Resolution Professional seeking approval of the Resolution Plan and consequently the present Application could not survive

independently after conclusion of the Corporate Insolvency Resolution Process.

3.19. It is submitted that Respondent No.1 therefore asserted that the Application is misconceived, not maintainable, devoid of merits, contrary to law and liable to be dismissed.

3.20. It is submitted that in the paragraph-wise Reply, Respondent No.1 denied the allegations contained in Paragraphs 1, 3, 4, 6 and 7 of the Application and reiterated the preliminary objections raised in the Reply. It is submitted that Paragraph 2 of the Application was stated to be a matter of record.

3.21. It is submitted that Respondent No.1 specifically denied the allegations concerning Paragraph 4(a) of the Application and contended that Respondent No.1 is a wholly owned subsidiary of the Corporate Debtor. It is submitted that the management comments recorded in the Transaction Audit Report itself noted that the Corporate Debtor was in need of working capital finance and the lenders forming part of the Joint Lenders Forum were unwilling to extend finance directly to the Corporate Debtor. Consequently, SREI Equipment Finance Limited sanctioned a loan to Respondent No.1 and the proceeds thereof were transferred to the Corporate Debtor for meeting its working capital requirements.

- 3.22. It is submitted that Respondent No.1 further contended that due to adverse market conditions in the renewable energy sector, Respondent No.1 was unable to service the loan and therefore the Corporate Debtor entered into a sale and lease back transaction to regularise the loan account. It is submitted that the final proceeds of the transaction were ultimately utilised for the benefit of the Corporate Debtor itself and the cranes continued to remain in possession and beneficial use of the Corporate Debtor without payment of any consideration to Respondent No.1.
- 3.23. It is submitted that Respondent No.1 therefore asserted that no preference had been granted to Respondent No.1 and that the loan disbursed by SREI Equipment Finance Limited did not constitute an antecedent financial debt owed by the Corporate Debtor to Respondent No.1 and hence the provisions of Section 43 of the Insolvency and Bankruptcy Code, 2016 were not attracted.
4. That, the R-4/ Mr. Yogesh Mehra and R-5/ Mr. Ajay Mehra filed its Affidavit-in-Reply on 07.10.2022 vide Inward No. D-5431 stating the following: -
- 4.1. It is submitted that the Answering Respondents have denied and disputed each and every averment and allegation made in the Application except those specifically admitted therein. It is further submitted that the Application is not maintainable inasmuch as the

Applicant has failed to make any specific pleadings or averments against the Answering Respondents and has merely relied upon the findings recorded in the Transaction Audit Report dated 29.10.2018 prepared by Grant Thornton India LLP.

- 4.2. It is submitted that the Answering Respondents further contended that the Applicant has failed to specify whether the amounts sought to be recovered from the Answering Respondents are alleged to arise on account of fraudulent transactions under Section 66(1) or wrongful trading under Section 66(2) of the Insolvency and Bankruptcy Code, 2016 and that the scope and ingredients of both provisions are distinct and incapable of being clubbed together.
- 4.3. It is submitted that the Answering Respondents further stated that pursuant to commencement of the Corporate Insolvency Resolution Process on 20.02.2018, the Applicant had taken over the complete records and books of account of the Corporate Debtor and therefore the Answering Respondents were not in possession of the relevant records necessary to furnish detailed submissions in relation to the impugned transactions. The Answering Respondents accordingly reserved their right to file an additional and detailed Reply upon receipt of the relevant records.

- 4.4. It is submitted that the Answering Respondents clarified that the present Reply concerns only those allegations made by the Applicant pertaining to Section 66 of the Insolvency and Bankruptcy Code, 2016 and that the Answering Respondents sought liberty to adopt and rely upon the contents of the Replies filed by Respondent Nos.1 and 3 insofar as the allegations concerning preferential and undervalued transactions are concerned.
- 4.5. It is submitted that by way of preliminary objections, the Answering Respondents contended that the Resolution Professional has filed a composite Application covering multiple alleged transactions, which according to the Answering Respondents is contrary to law. It is further submitted that the Applicant has failed to make specific averments in relation to each alleged transaction and has also failed to seek separate reliefs qua the individual transactions referred to in the Application.
- 4.6. It is submitted that the Answering Respondents further contended that the Application is merely a reproduction and reiteration of the contents of the Transaction Audit Report and therefore demonstrates complete non-application of mind on the part of the Applicant. It is submitted that a mere reproduction of the findings of the Transaction Audit Report cannot be construed as a valid Application under Section 66 of the Insolvency and Bankruptcy Code, 2016.

- 4.7. It is submitted that reliance was placed upon Regulation 35A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which mandates that the Resolution Professional shall first form an opinion regarding existence of transactions covered under Sections 43, 45, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 within seventy-five days from the Insolvency Commencement Date.
- 4.8. It is submitted that according to the Answering Respondents, the Applicant failed to independently form such opinion within the statutory period from 20.02.2018 and merely appointed an external agency for conducting the transaction audit and reproduced the contents thereof verbatim in the Application without any independent opinion, determination or application of mind.
- 4.9. It is submitted that reliance was further placed upon Regulation 35A(2) of the CIRP Regulations which requires the Resolution Professional, after formation of opinion, to make a determination regarding the suspect transactions on or before the one hundred and fifteenth day from the Insolvency Commencement Date. It is submitted that no material has been placed on record to demonstrate that any such determination was undertaken by the Applicant.
- 4.10. It is submitted that the Answering Respondents also relied upon Circular No. IP/003/2018 dated 03.01.2018 issued

by the Insolvency and Bankruptcy Board of India, which clarified that an Insolvency Resolution Professional shall not outsource any of his duties and responsibilities under the Insolvency and Bankruptcy Code, 2016, though assistance of professionals may be availed.

- 4.11. It is submitted that the Answering Respondents contended that the Applicant, by solely relying upon the Transaction Audit Report, has cast aspersions upon the Answering Respondents without undertaking any independent examination or determination and therefore the Application deserves dismissal with exemplary costs.
- 4.12. It is submitted that the Answering Respondents further contended that Section 66(1) of the Insolvency and Bankruptcy Code, 2016 can be invoked only where the business of the Corporate Debtor has been carried on with dishonest intention to defraud creditors or for fraudulent purposes. It is submitted that the essential ingredient under Section 66(1) is "intent" to defraud and therefore an application under Section 67 of the Insolvency and Bankruptcy Code, 2016 can succeed only if there is material demonstrating dishonest intention on the part of the directors in conducting the business affairs of the Corporate Debtor.
- 4.13. It is submitted that the Answering Respondents further contended that under Section 66(2) of the Insolvency and Bankruptcy Code, 2016, liability can arise only where,

prior to commencement of the Corporate Insolvency Resolution Process, a director knew or ought to have known that there was no reasonable prospect of avoiding commencement of CIRP and failed to exercise due diligence in minimising potential losses to creditors.

- 4.14. It is submitted that according to the Answering Respondents, the Applicant has failed to plead or establish dishonest intention, fraudulent conduct, absence of due diligence or knowledge attributable to the Answering Respondents and therefore the Application is liable to be rejected.
- 4.15. It is submitted that the Answering Respondents further elaborated that the following essential ingredients are required to be established for invoking Section 66 of the Insolvency and Bankruptcy Code, 2016, namely: (i) carrying on of business operations to defraud creditors; (ii) existence of dishonest intention to defraud creditors; and (iii) absence of due diligence in minimising losses to creditors. It is submitted that according to the Answering Respondents, none of the aforesaid ingredients have been pleaded or substantiated in the present case.
- 4.16. It is submitted that the Answering Respondents specifically contended that the Applicant has merely placed reliance upon the Transaction Audit Report without identifying the precise role of each Answering

Respondent in the alleged transactions or demonstrating any fraudulent conduct attributable to them individually.

- 4.17. It is submitted that the Answering Respondents further contended that under the Companies Act, 2013, directors enjoy limited liability and therefore, by making vague and unsupported allegations, the Applicant is impermissibly attempting to bypass the doctrine of limited liability without establishing the statutory requirements necessary for fastening personal liability upon directors.
- 4.18. It is submitted that the Answering Respondents further stated that any challenge to transactions under Section 66 of the Insolvency and Bankruptcy Code, 2016 must necessarily be accompanied by specific pleadings identifying the role, knowledge and intention of each director and that vague allegations unsupported by documentary evidence are liable to be rejected in law.
- 4.19. It is submitted that the Answering Respondents contended that the allegations contained in the Application are unsupported by documentary evidence and that even the findings recorded in the Transaction Audit Report are based only upon statements of the Transaction Auditor without any corroborating evidence.
- 4.20. It is submitted that the Answering Respondents further contended that the Applicant has failed to narrate the exact amounts and dates of the alleged transactions sought to be covered under Section 66 of the Insolvency

and Bankruptcy Code, 2016 and has also failed to specify the relevant look-back period applicable to the impugned transactions.

- 4.21. It is submitted that the Answering Respondents therefore contended that the Application is devoid of merits, unsupported by evidence, contrary to law and liable to be dismissed.
- 4.22. It is submitted that in the paragraph-wise Reply, the allegations contained in Paragraphs 1, 3, 4, 6 and 7 of the Application were denied and disputed, whereas Paragraph 2 was stated to be a matter of record. The Answering Respondents further reiterated and reaffirmed all preliminary objections raised in the Reply.
- 4.23. It is submitted that with regard to Paragraph 5 of the Application pertaining to legal expenses incurred in connection with disputes initiated by Enercon GmbH against the Corporate Debtor and Indian Promoters, the Answering Respondents stated that the law firm M/s. Manilal Kher Ambalal & Co. was engaged for conducting litigation on behalf of the Corporate Debtor as well as the Indian Promoters and that the payments in question were made towards such legal services.
- 4.24. It is submitted that the Answering Respondents further contended that they were impleaded in the said disputes solely by virtue of their status as directors of the Corporate Debtor and consequently the Corporate Debtor

was duty bound to safeguard their interests and indemnify them in relation to such proceedings.

- 4.25. It is submitted that the Answering Respondents specifically averred that, without prejudice to their rights and contentions, Respondent No.4 had already repaid an amount of INR 55,20,243/- to the Corporate Debtor through cheque bearing No.723822 dated 15.11.2018, which fact has also been acknowledged by the Applicant in the Application itself. It is submitted that despite such repayment, the Applicant proceeded to impugn the transaction without justification.
5. That, the R-3/ Wind World Wind Farms (Hindustan) Private Limited filed its Affidavit-in-Reply on 06.10.2022 vide Inward No. D-5416 stating the following: -
- 5.1. It is submitted that Respondent No.3 has denied and disputed each and every averment, allegation and contention raised in the Application except those specifically admitted therein. It is further submitted that the Application is not maintainable inasmuch as the Applicant has failed to make any specific pleadings or averments against Respondent No.3 and has merely relied upon the findings recorded in the Transaction Audit Report dated 29.10.2018 prepared by Grant Thornton India LLP.
- 5.2. It is submitted that Respondent No.3 clarified that the present Reply concerns only those allegations pertaining

to the transaction alleged to fall under Section 45 of the Insolvency and Bankruptcy Code, 2016 and that prior to filing the paragraph-wise Reply, Respondent No.3 sought leave to raise preliminary objections concerning maintainability of the Application.

- 5.3. It is submitted that Respondent No.3 contended that the Resolution Professional has preferred a composite Application in relation to several alleged transactions, which according to Respondent No.3 is contrary to law. It is submitted that the Applicant has neither made specific pleadings with regard to the individual transactions nor sought separate reliefs and prayers qua the alleged transactions.
- 5.4. It is submitted that Respondent No.3 further contended that the Application under Reply is merely a reproduction and reiteration of the Transaction Audit Report and therefore reflects complete non-application of mind on the part of the Applicant. It is submitted that mere reproduction of the contents of the Transaction Audit Report cannot constitute a valid Application under Section 45 of the Insolvency and Bankruptcy Code, 2016.
- 5.5. It is submitted that reliance was placed upon Regulation 35A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which mandates that a Resolution Professional shall first form an opinion regarding

existence of transactions covered under Sections 43, 45, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 within seventy-five days from the Insolvency Commencement Date.

- 5.6. It is submitted that Respondent No.3 contended that in the present case, the Applicant failed to independently form such opinion within seventy-five days from the Insolvency Commencement Date, namely 20.02.2018, and merely appointed an external agency for conducting the transaction audit and reproduced the findings thereof verbatim in the Application without any independent opinion, determination or application of mind.
- 5.7. It is submitted that reliance was further placed upon Regulation 35A(2) of the CIRP Regulations, which requires the Resolution Professional, after formation of opinion, to make a determination regarding the suspect transactions on or before the one hundred and fifteenth day from the Insolvency Commencement Date. It is submitted that no such determination has been placed on record by the Applicant.
- 5.8. It is submitted that Respondent No.3 also relied upon Circular No. IP/003/2018 dated 03.01.2018 issued by the Insolvency and Bankruptcy Board of India, which clarifies that an Insolvency Resolution Professional shall not outsource any of his duties and responsibilities under the

Insolvency and Bankruptcy Code, 2016 though assistance of professionals may be availed.

- 5.9. It is submitted that Respondent No.3 contended that by solely relying upon the Transaction Audit Report, the Applicant has cast aspersions upon Respondent No.3 without undertaking any independent determination and therefore the Application deserves dismissal with exemplary costs.
- 5.10. It is submitted that Respondent No.3 further contended that Section 45 of the Insolvency and Bankruptcy Code, 2016 can be invoked only where it is established that the Corporate Debtor has entered into transactions involving either a gift to a person or transfer of assets for consideration significantly lower than the value of such assets. It is submitted that none of the essential ingredients contemplated under Section 45 have been satisfied in the present case.
- 5.11. It is submitted that Respondent No.3 further contended that a transaction can be classified as an undervalued transaction only where there is transfer of an asset of the Corporate Debtor for consideration significantly lower than the value at which such asset was acquired by the Corporate Debtor and that the Applicant has failed to establish existence of any such transaction.
- 5.12. It is submitted that Respondent No.3 further stated that the allegations contained in the Application are

unsupported by documentary evidence and that even the Transaction Audit Report is based merely upon assumptions and statements of the Transaction Auditor without any substantiating material on record.

5.13. It is submitted that Respondent No.3 contended that the Applicant has failed to narrate the exact amounts and dates of the alleged transactions sought to be covered under Section 45 of the Insolvency and Bankruptcy Code, 2016 and has also failed to plead whether the alleged transactions fall within the relevant look-back period prescribed under Section 46 of the Insolvency and Bankruptcy Code, 2016.

5.14. It is submitted that Respondent No.3 further contended that the Applicant has failed to identify and establish whether the alleged beneficiaries are related parties within the meaning of Section 5(24) of the Insolvency and Bankruptcy Code, 2016 and therefore, in absence of such foundational pleadings, it is impossible to determine whether the alleged transactions fall within the purview of Section 45 of the Code.

5.15. It is submitted that Respondent No.3 specifically contended that the impugned amendment to the Operation and Maintenance Agreement was entered into in August, 2014 and therefore falls outside the relevant look-back period contemplated under Section 46 of the Insolvency and Bankruptcy Code, 2016. It is submitted

that the Applicant itself has admitted that the amendment transaction was undertaken in the year 2015 and consequently the provisions of Section 45 are not attracted.

- 5.16. It is submitted that Respondent No.3 further contended that the revision in Operation and Maintenance charges was undertaken in the ordinary course of business and therefore constitutes an exception under Section 45 of the Insolvency and Bankruptcy Code, 2016. It is submitted that no independent valuation exercise has been undertaken by any expert for determining value of the original contract or for establishing any alleged undervaluation under Section 46(2) of the Insolvency and Bankruptcy Code, 2016.
- 5.17. It is submitted that Respondent No.3 therefore contended that the essential ingredients required for invoking Section 45 of the Insolvency and Bankruptcy Code, 2016 are absent and accordingly the Application is liable to be rejected as being devoid of merits and legal sanctity.
- 5.18. It is submitted that in the paragraph-wise Reply, the allegations contained in Paragraphs 1, 3 and 4 of the Application were denied and disputed, whereas Paragraph 2 was stated to be a matter of record. Respondent No.3 further reiterated and reaffirmed the preliminary objections raised in the Reply.

- 5.19. It is submitted that Respondent No.3 specifically denied the allegations contained in Paragraph 4(b) of the Application and stated that Respondent No.3 is a subsidiary of the Corporate Debtor and had established 128 MW wind farms in the States of Karnataka and Rajasthan during the years 2006-07 at an approximate project cost of INR 680 Crores, financed through term loans aggregating to approximately INR 488.6 Crores availed from a consortium of seven banks led by Punjab National Bank.
- 5.20. It is submitted that Respondent No.3 further stated that the Corporate Debtor had been facing working capital challenges since Financial Year 2013-14 and one of the restructuring proposals involved refinancing the projects of Respondent No.3. It is submitted that the Corporate Debtor approached IDBI Bank for refinancing and IDBI Bank agreed to refinance the project by sanctioning a term loan of INR 300 Crores. It is further submitted that IDBI Bank was not only a lead banker of the Corporate Debtor but also of Respondent No.3.
- 5.21. It is submitted that Respondent No.3 relied upon the Information Memorandum issued by IDBI Bank for sanction of Rupee Term Loan of INR 300 Crores, wherein it was specifically recorded that the Operation and Maintenance contracts with Wind World (India) Limited had been renegotiated with effect from 01.08.2014 and that revised fees would be applicable from 01.08.2014 till

remaining life of the project. It is submitted that under the revised arrangement, Operation Fees of INR 4.2 Crores and Maintenance Fees of INR 1.8 Crores per annum were payable in respect of 123.8 MW wind farms and 50% of the revised fees amounting to INR 3 Crores would be paid in the same year while the balance 50% would be paid in three instalments during the last three years of the project period from Financial Year 2024 to Financial Year 2026.

5.22. It is submitted that Respondent No.3 further contended that the aforesaid restructuring and revision in Operation and Maintenance charges was undertaken solely to improve immediate cash flows and working capital availability of the Corporate Debtor. It is submitted that the lower Operation and Maintenance revenues during the initial years were intended to be compensated in the final three years of the project in line with the cash flow projections prepared by IDBI Bank while sanctioning the Rupee Term Loan of INR 300 Crores.

5.23. It is submitted that Respondent No.3 further stated that owing to the refinancing arrangement and infusion of working capital funds by Respondent No.3 into the Corporate Debtor during Financial Years 2014-15 and 2015-16, the Corporate Debtor received cash inflows aggregating to more than INR 160 Crores during the relevant period, which would not have been possible if the Operation and Maintenance charges had not been amended.

- 5.24. It is submitted that Respondent No.3 therefore asserted that the impugned arrangement was entered into exclusively with the intention of infusing crucial working capital into the Corporate Debtor and not for conferring any undue benefit upon Respondent No.3 and accordingly the provisions of Section 45 of the Insolvency and Bankruptcy Code, 2016 are not attracted.
6. In compliance with order dated 21.01.2026, the R-1/ Wind World Wind Resources Development Private Limited filed its Written Submissions on 24.02.2026 vide Inward No. D-1736 relying on the following case laws:
- i. ANUJ JAIN (IRP OF JAYPEE INFRATECH LTD.) V. AXIS BANK LTD. (2020) 8 SCC 401
 - ii. JITENDRA LOHIA V. NIKHIL CHOWDHURY & ORS., IA (I.B.C)/208(KB)2021,
7. In compliance with order dated 21.01.2026, the R-3/ Wind World Wind Farms (Hindustan) Pvt Ltd filed its Written Submissions on 24.02.2026 vide Inward No. D-1737 relying on the following case law:
- i. Mr. Shalabh Kumar Daga RP of M/s Silver Proteins Private Limited vs. Mr. Himanshu J Domadia and Ors., IA 154/NCLT/AHM/2022 in CP (IB)/554(AHM) 20
8. Furthermore, the Applicant filed amended Memo of Parties on 09.03.2026 vide Inward No. D-1896 to amend the name of the Applicant by replacing Erstwhile RP “Mr. Shailen Shah” with present RP namely “Mr. Ravi Sethia”.

9. In compliance with order dated 21.01.2026, the Applicant/Mr. Ravi Sethia filed its Written Submissions on 18.03.2026 vide Inward No.D-2387.
10. That, in compliance with order dated 21.01.2026, the R-4/ Mr. Yogesh Mehra and R-5/ Mr. Ajay Mehra filed its Written Submissions on 26.02.2026 vide Inward No.D-1891 relying on the following case law:
 - i. Regen Powertech Pvt. Ltd. v. Wind Construction Pvt. Ltd. (Company Appeal (AT)(CH)(Ins) No. 349/2022
 - ii. Mrs. Renuka Devi Rangaswamy v. Regen Powertech Pvt. Ltd. & Ors. (Comp. App. (AT)(CH)(Ins) No. 357/2022)
 - iii. Rana Sarkar v. Bimal Agarwal, RP (Company Appeal (AT)(Ins) No. 1129 of 2022
 - iv. Nalinesh Kumar Paurush v. Arvind Mittal, RP (Company Appeal (AT)(Ins) No. 346 of 2024
 - v. Gopal Kalra v. Akhilesh Kumar Gupta, Liquidator (Company Appeal (AT)(Ins) No. 567 of 2024)

11. Observation and Directions of this Tribunal: -

11.1. This Tribunal has heard the Learned Counsel appearing for the Applicant/Resolution Professional as well as the Learned Senior Counsel and Learned Counsel appearing for the respective Respondents. This Tribunal has also perused the pleadings, replies, written submissions, documents placed on record and the Transaction Audit Report relied upon by the Applicant.

11.2. Before adverting to the individual transactions impugned in the present Application, this Tribunal deems it appropriate to first examine the preliminary objections raised by the Respondents concerning the maintainability of the present proceedings.

12. **Re: Objection regarding maintainability of composite application**

12.1. The first and foremost objection raised by all the Respondents is that the present Application is not maintainable on the ground that the Applicant has filed a composite application covering alleged preferential, undervalued and fraudulent transactions under Sections 43, 45 and 66 of the Insolvency and Bankruptcy Code, 2016. The Respondents have contended that separate applications ought to have been filed in relation to each transaction and separate reliefs ought to have been sought qua each Respondent.

12.2. This Tribunal is unable to accept the aforesaid contention. The provisions of the Insolvency and Bankruptcy Code, 2016 nowhere prescribe that separate applications are mandatorily required to be filed for each suspect transaction identified during CIRP. The avoidance jurisdiction vested in the Adjudicating Authority is intended to comprehensively examine transactions which have the effect of siphoning, dissipating, diverting or diminishing the value of assets of the Corporate Debtor.

12.3. This Tribunal further takes note of the observation made by the Hon'ble NCLAT in the case of ***GVR Consulting Services Pvt. Ltd. v. Pooja Bahry, (2023) ibclaw.in 261 NCLAT*** wherein the Hon'ble NCLAT has observed that filing of composite application under Section 43, 44, 45, 46, 66, 67 and 60(5) of the Code does not lead to any infirmity in the Application. The relevant extract of the said judgement is as follows:

*“54. What has been emphasized by the Hon'ble Supreme Court is that ingredients of Section 43, 45 and 66 are different and Resolution Professional is expected to keep such requirement in view while making motion to the Adjudicating Authority. **When we look into the Application which has been filed in the present case the Resolution Professional has in the avoidance application in his application has dealt with preferential transaction undertaken by the Corporate Debtor and undervalued transaction undertaken by the Corporate Debtor as well as fraudulent transaction in different heads i.e. 'i', 'ii' and 'iii' thus allegations and averments were separately made and filing of composite application does not lead to any infirmity in the Application. We are not persuaded to accept the submission of the Appellant that since the composite Application was filed it ought to have been rejected.**”*

55. In view of the foregoing discussions, we are of the view that the Adjudicating Authority has rightly allowed the Application filed by the Resolution Professional and declared the preferential transactions undertaken in favour of the Appellants and directed the Appellants to refund the amount within three months. We having entertained the Appeal and also passed an Interim Order on 19th April, 2022, we grant further three months to Appellants to refund the amount as directed by the Adjudicating Authority in paragraph 65 and 66. Subject to above, all the Appeals are dismissed.”

12.4. Moreover, in the present case, the transactions impugned by the Applicant arise out of a common factual matrix concerning the affairs of the Corporate Debtor during the

period preceding commencement of CIRP and relate to alleged diversion of value and depletion of assets of the Corporate Debtor through interconnected arrangements involving related parties, promoters and group concerns. Merely because the Applicant has consolidated such transactions in a single application cannot render the proceedings non-maintainable.

12.5. This Tribunal further observes that procedural technicalities cannot be permitted to defeat substantive adjudication, particularly in proceedings under the Insolvency and Bankruptcy Code, 2016 where the primary object is preservation and maximisation of value of assets of the Corporate Debtor for the benefit of creditors.

13. **Re: Objection that the Application is mere reproduction of Transaction Audit Report**

13.1. The Respondents have vehemently contended that the present Application is liable to be dismissed as it merely reproduces the findings contained in the Transaction Audit Report prepared by Grant Thornton India LLP and allegedly demonstrates complete non-application of mind on the part of the Resolution Professional.

13.2. This Tribunal finds no merit in the aforesaid objection. The statutory duties cast upon a Resolution Professional under Section 25(2)(j) of the Code specifically require the Resolution Professional to file applications for avoidance of transactions wherever suspect transactions are identified.

For the purpose of carrying out forensic examination of accounts and complex financial dealings of the Corporate Debtor, the Resolution Professional is entitled to seek assistance of professionals, including forensic and transaction auditors.

13.3. The Insolvency and Bankruptcy Board of India Circular dated 03.01.2018 relied upon by the Respondents merely clarifies that the Resolution Professional cannot completely abdicate or outsource his statutory functions. The said Circular does not prohibit appointment of transaction auditors or forensic experts for assistance in identification of suspect transactions.

13.4. In the present case, the Transaction Audit Report constitutes material based on examination of books of account, financial statements, contractual documents and fund flow analysis of the Corporate Debtor. The Resolution Professional, after considering the findings contained therein, has chosen to invoke the jurisdiction of this Tribunal under Sections 43, 45 and 66 of the Code. Therefore, it cannot be said that the Resolution Professional has mechanically reproduced the report without application of mind.

13.5. This Tribunal further observes that the correctness, legality and implications of the transactions identified in the Transaction Audit Report are ultimately subject to judicial scrutiny by this Tribunal and therefore the mere

reliance upon such report cannot be a ground to reject the proceedings at threshold.

14. **Re: Objection concerning Regulation 35A of CIRP Regulations**

14.1. Another principal defence raised by the Respondents is that the Resolution Professional allegedly failed to form an opinion within seventy-five days and determination within one hundred and fifteen days as contemplated under Regulation 35A of the CIRP Regulations.

14.2. In this regard, this Tribunal is of the considered view that the timelines prescribed under Regulation 35A are directory and procedural in nature. The object of Regulation 35A is to ensure expeditious identification of suspect transactions during CIRP. However, non-adherence to such timelines cannot extinguish the substantive jurisdiction of this Tribunal to examine transactions detrimental to the Corporate Debtor.

14.3. The similar view was observed in the case of ***Aditya Kumar Tibrewal (RP) v. Om Prakash Pandey and Ors., (2022) ibclaw.in 278 NCLAT***, wherein the Hon'ble NCLAT has held that Regulation 35A- Application by Resolution Professional for avoidance of transactions under Sections 43, 45, 49, and 66 is not mandatorily required to be filed within 135 days of insolvency commencement; the timeline in Regulation 35A is directory, not mandatory.

14.4.If the contention of the Respondents is accepted, even transactions involving clear diversion and depletion of assets of the Corporate Debtor would escape judicial scrutiny merely because of delay in procedural timelines. Such interpretation would defeat the very object and scheme of the Insolvency and Bankruptcy Code, 2016.

14.5.This Tribunal therefore holds that the avoidance proceedings cannot be dismissed merely on account of alleged non-compliance of procedural timelines under Regulation 35A.

15. **Re: Objection that the present proceedings cannot survive after rejection of Resolution Plan**

15.1.Respondent No.1 has further contended that since this Tribunal had dismissed the Resolution Plan vide order dated 24.08.2022, the present Application itself cannot survive.

15.2.This Tribunal is unable to accept the aforesaid contention. Proceedings under Sections 43, 45 and 66 are independent and substantive proceedings intended to reverse transactions detrimental to the Corporate Debtor and recover value wrongfully diverted from the Corporate Debtor. The reversal of transactions results into contribution to the corporate debtor and enhances the assets and its value. Approval, pending or rejection of resolution plan has no effect on the applicability of sections 44, 48 and 67 of the Code.

15.3. Avoidance applications are not dependent upon approval of a Resolution Plan. Even in liquidation proceedings, avoidance applications continue to survive since the purpose thereof is restoration of value to the estate of the Corporate Debtor for equitable distribution amongst stakeholders.

15.4. Therefore, rejection of the Resolution Plan does not render the present Application infructuous.

16. **Findings with respect to preferential transaction concerning sale and lease back of cranes:**

16.1. The first transaction under challenge pertains to sale of cranes by the Corporate Debtor to Respondent No.2/SREI Equipment Finance Limited for consideration of INR 18.22 Crores followed by repurchase and continued usage of the same cranes by the Corporate Debtor. The Transaction Auditor has observed that the said transaction was entered into to facilitate repayment obligations of Respondent No.1.

16.2. From the record, it emerges that although the Corporate Debtor received sale consideration of INR 18.22 Crores on or about 04.10.2016, the said amount was thereafter transferred to Respondent No.1 and which was ultimately remitted by Respondent No.1 to Respondent No.2/SREI Equipment Finance Limited towards repayment obligations.

- 16.3. Simultaneously, the Corporate Debtor continued to retain possession, control and beneficial use of the cranes even after the purported sale transaction. The cranes were further hypothecated in favour of Respondent No.2.
- 16.4. The transaction comprises of various steps as: The crane belonged to the Corporate Debtor. Respondent No.1 was to repay loan to Respondent No.2. The corporate debtor sold crane to SREI and got money. This money was given by the CD to its related party/subsidiary Respondent No. 1 who in turn paid to SREI. The CD leased back the crane and continued to utilise the same. The net effect of the transaction was that the CD paid money to Respondent No.2 through Respondent No.1.
- 16.5. The sequence of events clearly establishes that the transaction was not a genuine commercial sale simpliciter but was structured as a financing arrangement involving assets of the Corporate Debtor for the purpose of servicing liabilities connected with Respondent No.1.
- 16.6. Respondent No.1 has contended that the Corporate Debtor was facing acute working capital shortage and lenders forming part of the Joint Lenders Forum were unwilling to extend finance directly to the Corporate Debtor. It has therefore been argued that Respondent No.1 obtained finance from Respondent No.2 and transferred the funds to the Corporate Debtor for meeting its working capital requirements.

- 16.7. It has further been contended that the sale and lease back arrangement was entered into only to regularise the loan account and the proceeds were ultimately utilised for benefit of the Corporate Debtor itself.
- 16.8. This Tribunal has carefully examined the aforesaid defence. Merely because a transaction is projected as being undertaken for liquidity support does not automatically insulate it from scrutiny under Section 43 of the Code. What is required to be examined is the true effect and consequence of the transaction.
- 16.9. In the present case, the assets of the Corporate Debtor were utilised in a manner whereby repayment obligations linked with Respondent No.1 were effectively serviced through the sale proceeds generated from assets belonging to the Corporate Debtor. Simultaneously, the Corporate Debtor continued to retain possession and use of the cranes, thereby demonstrating that the transaction lacked genuine commercial substance of an outright sale.
- 16.10. The transaction therefore resulted in creation of security interest and repayment advantage in favour of Respondent No.2, on behalf of Respondent No.1, through utilisation of assets belonging to the Corporate Debtor. The transaction benefitted Respondent No.2 and Respondent No.1 in preference to other creditors.
- 16.11. Respondent No.1 has further contended that Section 43 is not attracted since Respondent No.1 was not a creditor,

surety or guarantor of the Corporate Debtor and that in fact the Corporate Debtor itself appeared to be creditor of Respondent No.1.

- 16.12. This Tribunal is unable to accept the said submission in the facts of the present case. The transaction cannot be viewed in isolated compartments by artificially segregating the roles of Respondent No.1 and Respondent No.2. The material on record clearly demonstrates that the transaction constituted a composite arrangement involving related entities whereby assets of the Corporate Debtor were utilised for servicing liabilities and regularisation of loan arrangements connected with Respondent No.1.
- 16.13. Even assuming that Respondent No.2 was the direct beneficiary of the security structure, the arrangement undeniably conferred benefit upon Respondent No.1 by facilitating discharge and regularisation of liabilities linked with it.
- 16.14. Respondent No.1 has also contended that the Applicant failed to establish how the transaction placed any person in a more beneficial position than it would have occupied under Section 53 of the Code.
- 16.15. This Tribunal finds that the transaction clearly enabled Respondent No.2/SREI Equipment Finance Limited to obtain repayment and security advantage outside the ordinary insolvency distribution mechanism contemplated

under Section 53. The transaction had the effect of encumbering and monetising assets of the Corporate Debtor for selective repayment arrangements.

- 16.16. The Hon'ble Supreme Court in **Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited, [2020] ibclaw.in 06 SC** has held that the real nature, effect and consequence of the transaction must be examined while determining preferential transactions. Applying the principles laid down therein, this Tribunal is satisfied that the transaction in question squarely falls within the ambit of Section 43.
- 16.17. Respondent No.1 has further contended that the Application contains vague allegations without exact dates, amounts or documentary support.
- 16.18. This Tribunal finds the said contention factually incorrect. The Applicant has specifically identified the sale consideration of INR 18.22 Crores, the date of transfer, the subsequent routing of funds and the nature of the transaction. The Respondents themselves have substantially admitted the transaction structure though they have attempted to justify the same on commercial grounds.
- 16.19. Accordingly, this Tribunal holds that the transaction concerning sale and lease back of cranes constitutes a

preferential transaction liable to be avoided under Section 43 of the Insolvency and Bankruptcy Code, 2016.

17. **Findings with respect to undervalued transaction concerning revision of O&M charges**

- 17.1. The second transaction pertains to downward revision of Operation and Maintenance charges payable by Respondent No.3 to the Corporate Debtor under the long-term agreement executed in October, 2005.
- 17.2. The material placed on record reveals that the original agreement provided annual consideration of approximately INR 0.94 Crores with escalation clause of 5% per annum till Financial Year 2025-26. However, during Financial Year 2014-15, the charges were drastically reduced to approximately INR 0.30 Crores annually.
- 17.3. The Transaction Auditor has observed that the said arrangement effectively resulted in undercharging of approximately INR 3 Crores over the remaining contractual period.
- 17.4. Respondent No.3 has contended that the amendment was executed in August, 2014 and therefore falls outside the look-back period contemplated under Section 46 of the Code.
- 17.5. Respondent No.3 has further contended that the revision in charges was undertaken in ordinary course of business

as part of refinancing exercise with IDBI Bank and therefore falls within exceptions contemplated under the Code.

- 17.6. This Tribunal has carefully examined the said defence. The long-term agreement was executed in October 2014 and was to have effect till financial year 2014-2015. The amendment reducing the annual contribution was made in August 2014. The CIRP was initiated in 2018.
- 17.7. We are inclined to agree with the contention of the Respondents that the amendment made in August 2014 did not fall within the relevant period prescribed in Section 46 of the Code. The transaction date was beyond the look-back period though reduction has the effect of the reducing the consideration during the CIRP period. As the amendment was made much prior to the initiation of CIRP we also agree with the contention that the amendment was made in the ordinary course of business of the corporate debtor and exclusion provided in section 45 apply.
- 17.8. Accordingly, this Tribunal holds that the transaction concerning revision of Operation and Maintenance charges does not constitute an undervalued transaction falling within the ambit of Section 45 of the Insolvency and Bankruptcy Code, 2016.
18. **Findings with respect to transactions concerning personal legal expenses - Section 66**

- 18.1. The next allegation pertains to utilisation of funds of the Corporate Debtor for payment of legal expenses concerning disputes initiated by Enercon GmbH against the Corporate Debtor and the erstwhile promoters/directors namely Respondent Nos.4 and 5.
- 18.2. Respondent Nos.4 and 5 have contended that they were impleaded in such proceedings solely by virtue of being directors of the Corporate Debtor and therefore the Corporate Debtor was duty bound to indemnify and protect them.
- 18.3. This Tribunal is unable to accept the aforesaid defence in entirety. Directors undoubtedly act on behalf of the company and certain indemnification obligations may arise in appropriate circumstances. However, utilisation of corporate funds for defending personal liabilities and proceedings concerning promoters/directors cannot be treated as automatic or unrestricted entitlement.
- 18.4. The material on record reveals that substantial legal expenses pertaining to the promoters/directors were borne out of funds of the Corporate Debtor at a time when the Corporate Debtor itself was under severe financial stress and facing insolvency.
- 18.5. Respondent Nos.4 and 5 have contended that the Applicant has failed to establish fraudulent intent, dishonest conduct or wrongful trading as required under Section 66 of the Code.

- 18.6. This Tribunal observes that fraudulent intent is ordinarily gathered from surrounding circumstances, conduct of parties and manner in which affairs of the Corporate Debtor were conducted. Direct evidence of intent is seldom available.
- 18.7. In the present case, diversion and utilisation of funds of the Corporate Debtor for legal expenses substantially attributable to personal defence of promoters/directors at a time of financial distress clearly demonstrates failure to discharge fiduciary obligations owed towards creditors and stakeholders.
- 18.8. Respondent Nos.4 and 5 have further contended that the Applicant failed to specifically identify individual roles attributable to each director.
- 18.9. This Tribunal finds that Respondent Nos.4 and 5 were admittedly promoters and persons in control of affairs of the Corporate Debtor during the relevant period. The transactions concerning legal expenses were directly connected with them and were incurred for their benefit. Therefore, the plea that no specific role has been attributed is devoid of substance.
- 18.10. Respondent Nos.4 and 5 have further contended that Respondent No.4 has already repaid INR 55,20,243/- to the Corporate Debtor and therefore the transaction no longer survives.

- 18.11. This Tribunal is of the view that repayment during pendency of proceedings does not erase the nature and character of the underlying transaction. On the contrary, the repayment itself substantiates the Applicant's allegation that the amount ought not to have been borne by the Corporate Debtor in the first place.
- 18.12. The conduct of Respondent Nos.4 and 5 demonstrates misuse of corporate resources and failure to exercise due diligence expected from directors during period of financial distress.
- 18.13. The utilisation of the funds of the corporate debtor to meet the personal legal expenses of the Respondents can be considered as expenses for fraudulent purposes as per section 66(1) of the Code and the directors/respondent nos. 4 and 5 did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor.
- 18.14. Accordingly, this Tribunal holds that the impugned transactions concerning utilisation of Corporate Debtor's funds for personal legal expenses attract the provisions of Section 66 of the Insolvency and Bankruptcy Code, 2016.
19. In view of the aforesaid detailed discussion, this Tribunal is satisfied that the Applicant has successfully established that the transactions impugned in the present proceedings are preferential and fraudulent transactions within the meaning of Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 respectively.

20. The present Application therefore deserves to be partly allowed with consequential directions for restoration and recovery of value lost to the Corporate Debtor on account of the aforesaid transactions.
21. In view of the detailed observations and findings recorded hereinabove, the present I.A. No. 475 of 2018 filed under Section 25(2)(j) read with Sections 43, 45 and 66 of the Insolvency and Bankruptcy Code, 2016 is hereby partly **Allowed**.
22. This Tribunal hereby declares that the transaction concerning sale and lease back of cranes entered into between the Corporate Debtor and Respondent No.2/SREI Equipment Finance Limited, including the consequential routing and utilisation of sale proceeds through Respondent No.1, constitutes a preferential transaction within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016 and is therefore liable to be avoided.
23. Consequently, the transaction and all consequential arrangements, encumbrances, security interests, benefits and obligations created pursuant thereto, to the extent they concern the assets of the Corporate Debtor, stand set aside and avoided under the provisions of the Insolvency and Bankruptcy Code, 2016.
24. Respondent Nos.1 and 2 are hereby jointly and severally directed to restore and reimburse to the Corporate Debtor the value and benefit lost on account of the aforesaid

preferential transaction within 30 days from the passing of this order. The amount shall include the sum of INR 18.22 Crores along with interest thereon at the rate of 9% per annum from the date of the transaction till actual realization.

25. Respondent Nos.1 and 2 are further directed to forthwith release, discharge and extinguish all charges, encumbrances, hypothecation rights and security interests created over the cranes and/or assets of the Corporate Debtor pursuant to the impugned transaction within 15 days from the date of this order.
26. Respondent Nos.1 and 2 are restrained from claiming any right, title, interest or security over the said cranes or any proceeds arising therefrom on the basis of the impugned transaction.
27. It is further directed that in the event the cranes or any part thereof has been alienated, disposed of, transferred or otherwise encumbered during pendency of the proceedings, Respondent Nos.1 and 2 shall jointly and severally compensate the Corporate Debtor by paying the fair market value of such assets as on the date of this order together with interest at the rate of 9% per annum within 30 days from the passing of this order.
28. This Tribunal further declares that utilisation of funds of the Corporate Debtor towards legal and personal expenses incurred for Respondent Nos.4 and 5 constitutes wrongful

and fraudulent conduct falling within the ambit of Section 66 of the Insolvency and Bankruptcy Code, 2016.

29. Respondent Nos.4 and 5 are hereby jointly and severally directed to compensate the Corporate Debtor for all amounts utilised towards their personal legal expenses and liabilities together with interest at the rate of 9% per annum from the respective dates of payment till realization within 30 days from the passing of this order.
30. Insofar as the amount of INR 55,20,243/- stated to have been repaid by Respondent No.4 is concerned, the Applicant/Resolution Professional shall verify and reconcile the said payment from the books of account and appropriate credit shall be granted only upon due verification.
31. Respondent Nos.4 and 5 are further directed to extend complete co-operation and furnish all books of account, bank statements, vouchers, invoices, correspondence and supporting documents relating to the impugned transactions before the Applicant/Resolution Professional within a period of four weeks from the date of this order.
32. The Applicant/Resolution Professional is directed to take immediate consequential steps for recovery, restoration and protection of the assets and value of the Corporate Debtor in terms of the present order.
33. The banks, financial institutions, statutory authorities and registration authorities concerned shall extend necessary

cooperation to the Applicant/Resolution Professional for implementation and enforcement of the present directions.

34. In the event of non-compliance of the directions contained hereinabove, the Applicant/Resolution Professional shall be at liberty to initiate appropriate proceedings in accordance with law including proceedings for enforcement, recovery and initiation of appropriate action against the defaulting Respondents.
35. Accordingly, in view of the aforesaid observations, findings and directions, the present I.A. No. 475 of 2018 in CP (IB) No. 14 of 2018 stands **partly allowed** and disposed of in the aforesaid terms.
36. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Jeel/LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)