

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. I  
KOLKATA**

I.A. (IB) No. 342/KB/2023

In

Company Petition (IB) No. 891/KB/2020

**IN THE MATTER OF:**

Under Section 43 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 35A(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**IN THE MATTER OF:**

**Bank of India**

**.... Financial Creditor**

**Versus**

**McNally Bharat Engineering Company Limited**

**.... Corporate Debtor**

**And**

**IN THE MATTER OF:**

**McNally Bharat Engineering Company Limited Through its Resolution  
Professional Mr. Ravi Sethia**

**... Resolution Professional/Applicants**

**Versus**

- 1. McNally Trolex JV**
- 2. McNally AML JV**
- 3. McNally Trolex Kilburn JV**
- 4. UCO Bank**

**...Respondents**

**Date of Pronouncement: 12.06.2026.**

**CORAM:**

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

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**APPEARANCE:**

**For Bank of India:**

Ms. Shweta Dubey, Adv.

Ms. Kanishka Prasad, Adv.

**ORDER**

***Per: Smt. Bidisha Banerjee, Member (Judicial)***

1. This Court congregated through a hybrid mode.
2. Heard the Learned Counsels for both parties.
3. The instant application being **I.A. (IB) No. 342/KB/2023**, has been preferred by a **McNally Bharat Engineering Company Limited Through its Resolution Professional Mr. Ravi Sethia** under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" against the respondent **McNally Trolex JV, through Trolex India Private Limited & Ors..** *seeking the following reliefs:*
  - A.** *To direct Respondent No. 1, Respondent No.2 and Respondent No. 3 to pay the sum of INR 15.18 crores against the security deposit;*
  - B.** *Alternatively, declare that the security deposit amount of Rs. 41.48 crores (i.e. entire Security Deposit paid to Coal India Limited of INR 59.57 Crores minus the security deposit of INR 18.09 Crores paid by the JVs and not recognized as a liability by the Corporate Debtor) deposited with Coal India Limited is an asset of the Corporate Debtor and will be returned to the Corporate Debtor in accordance with the contracts executed by Respondent No. 1, Respondent No. 2 and Respondent No. 3 with Coal India Limited.*

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- C. To direct Respondent No. 4 to pay the sum of Rs. 9.07 crores adjusted towards the debit balance;*
- D. To issue any other appropriate order(s) under section 44 of the Code; and*
- E. To pass such other order(s) in favour of the Applicant as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.*

**4. FACTS OF THE CASE:**

- 4.1** The Corporate Debtor, McNally Bharat Engineering Company Limited, was admitted into Corporate Insolvency Resolution Process on 29.04.2022. During the CIRP, a Transaction Audit Report dated 09.01.2023 identified certain transactions as potentially preferential under Section 43 of the Insolvency and Bankruptcy Code, 2016.
- 4.2** The Resolution Plan for the Corporate Debtor was approved by this Tribunal on 19.12.2023. Clause 5.14 of the approved Resolution Plan authorises the Committee of Creditors, led by Bank of India, to pursue avoidance applications and provides that any recoveries shall be distributed to the financial creditors in accordance with law.
- 4.3** Two transactions were questioned in the present application. The first relates to adjustment of ₹9.07 crore by UCO Bank from an income-tax refund of ₹39.63 crore credited on 03.09.2021 to the Corporate Debtor's account, instead of transferring the entire amount to the Trust and Retention Account maintained with Bank of India. The second relates to adjustment of ₹15.18 crore of receivables in favour of three Joint Ventures namely McNally-Trox JV, McNally-AML JV and McNally-

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Trolex–Kilburn JV, against liabilities arising from security deposits paid to Coal India Limited.

**4.4** The Joint Ventures were formed for participation in tenders floated by Coal India Limited, with the Corporate Debtor acting as the lead member. As per the arrangements, security deposits aggregating ₹59.57 crore were required to be furnished, part of which was adjusted from earnest money deposits and receivables, while the remaining amount was paid directly by the Joint Ventures.

**4.5** The Resolution Professional, supported by the Committee of Creditors, sought avoidance of the aforesaid transactions as preferential under Section 43 of the Code and prayed for refund of the amounts to the insolvency estate for distribution in accordance with Section 53 of the Code.

**5. SUBMISSIONS OF THE APPLICANT / RESOLUTION PROFESSIONAL / BANK OF INDIA (ON BEHALF OF CoC)**

**5.1** It is submitted that the Transaction Auditor’s report dated 09.01.2023 has identified two transactions which meet all ingredients of a “preferential transaction” under Section 43(2) read with Section 43(4) of the IBC.

**5.2** It is submitted that with regard to Transaction 1 (UCO Bank adjustment of INR 9.07 Crore), the Corporate Debtor was lawfully entitled to receive INR 39.63 Crore pursuant to an order of the Calcutta High Court and the consequent remittance by the Income Tax Department. It is claimed that UCO Bank unilaterally adjusted INR 9.07 Crore against the Corporate Debtor’s outstanding dues and thereby effected a transfer of the Corporate Debtor’s property for the benefit of UCO Bank.

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- 5.3** It is further submitted that at the time of unilateral appropriation UCO Bank had an antecedent claim and that by taking INR 9.07 Crore the Bank was put in a more beneficial position than it would have received under Section 53, thereby satisfying the “benefit” test of Section 43(2)(b).
- 5.4** It is submitted that the appropriation took place on 03.09.2021, which lies within one year prior to the insolvency commencement date (29.04.2022) and therefore falls within the one-year look-back period for non-related parties in Section 43(4)(b).
- 5.5** It is submitted that with regard to Transaction 2 (adjustments to JV entities totalling INR 15.18 Crore), the Corporate Debtor paid or caused payment of security deposits for the JVs to Coal India (some by way of direct payment by the JVs) and thereafter adjusted receivables due from the JVs against those liabilities; it is claimed that this transfer of receivables put the JVs in a preferential, beneficial position in relation to other creditors.
- 5.6** It is submitted that the JV adjustments occurred within the two-year look-back period for related party transactions under Section 43(4)(a) and that the adjustments were not in the ordinary course of business and did not create a new security; therefore, Section 43(3) exceptions do not apply.
- 5.7** It is further submitted that recoveries by avoidance of the above transactions ought to be directed to be remitted to the CoC in terms of Clause 5.14 of the approved Resolution Plan and that the Bank of India

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as lead bank is duly authorised to pursue such avoidance relief on behalf of the CoC.

**6. SUBMISSIONS OF RESPONDENT NOS. 1-3 (JV ENTITIES) AND RESPONDENT NO. 4 (UCO BANK)**

- 6.1** It is contended that the Joint Ventures were formed in the ordinary course of business for the sole purpose of securing tenders from Coal India Limited and that the arrangements between the Corporate Debtor and the JVs were governed by express inter-se agreements which allocated the commercial terms and manner of distribution of proceeds.
- 6.2** It is further contended that the JVs occupied a dual status (creditor for amounts paid to CIL on behalf of the Corporate Debtor and debtor for receivables arising from sale transactions) and that the adjustments relied upon by the Applicant were internal commercial arrangements between the Corporate Debtor and its associates rather than transfers to creditors that would fall within Section 43.
- 6.3** It is contended that the adjustments made were in the normal course of business, were commercially justified to preserve project opportunities and avoid forfeiture of EMD and were recorded pursuant to contractual terms; accordingly, Section 43(3) exceptions apply.
- 6.4** It is further contended that in respect of the UCO Bank adjustment, the question of appropriation is sub judice before the Hon'ble Calcutta High Court (WPA No. 14705 of 2021) and that this Tribunal ought not to pass orders which conflict with or pre-empt judicial proceedings before the High Court.

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**6.5** It is contended that the Applicant has not made an independent assessment beyond parroting the Transaction Auditor's report and that the Applicant's case is neither complete nor bona fide; it is further contended that the application is liable to be dismissed.

**7. REJOINDER**

**7.1** The Joint Ventures hold a dual character as both creditors and debtors of the Corporate Debtor. The amount of ₹33.27 crore paid directly by the Joint Ventures to Coal India Limited towards security deposit was an obligation of the Corporate Debtor and therefore created a creditor relationship in favour of the Joint Ventures. Adjustment of ₹15.18 crore from sale receivables against this liability resulted in preferential benefit to the Joint Ventures.

**7.2** If the amount of ₹15.18 crore had been received in the normal course, it would have been credited to the Trust and Retention Account and distributed strictly in accordance with Section 53 of the Code. The impugned adjustments disrupted the statutory waterfall mechanism and therefore squarely attract Section 43 of the Code.

**8. ANALYSIS AND FINDINGS**

**8.1** This Adjudicating Authority has considered the rival contentions and the statute carefully. The legal tests for a preferential transaction under Section 43 are well settled. A transaction is to be treated as preferential if: (i) there is a transfer of property or interest in property of the Corporate Debtor; (ii) the transfer is for the benefit of a creditor; (iii) the transfer is on account of antecedent debt; and (iv) the transfer places that creditor in a better position than it would have been in on distribution under Section 53. The temporal tests in Section 43(4) apply

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to determine the relevant look-back period. Exceptions under Section 43(3) are narrowly construed.

**A. *Transaction 1 — UCO Bank appropriation of INR 9.07 Crore***

**8.2** It is submitted that the Income Tax refund of INR 39.63 Crore was mandatorily payable to the Corporate Debtor by virtue of the order passed by the Hon'ble Calcutta High Court, and that the amount was remitted into an account in UCO Bank in error. It is further submitted that UCO Bank transferred only INR 30.56 Crore to the TRA account leaving INR 9.07 Crore adjusted against the Corporate Debtor's outstanding bank dues.

**8.3** On a careful appraisal of the documentary record on file, this Tribunal finds that the unilateral appropriation by UCO Bank of INR 9.07 Crore constituted an effective transfer of the Corporate Debtor's cash balance (i.e. property) for the benefit of UCO Bank to the extent the adjustment reduced the funds otherwise available to the Corporate Debtor.

**8.4** It is found that UCO Bank had an antecedent debt owing by the Corporate Debtor and that the adjustment therefore was on account of antecedent debt.

**8.5** It is further found that UCO Bank's appropriation put it in a materially more advantageous position than it would have enjoyed under distribution under Section 53 specifically, the relative quantum suggests that UCO Bank received a sum materially greater than what it could expect by participating in the liquidation waterfall given its voting share in the CoC. This satisfies the "benefit" test under Section 43(2)(b).

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**8.6** UCO Bank's defence that the matter is sub judice before the Hon'ble Calcutta High Court does not, in itself, disentitle this Tribunal from examining whether a preferential transaction within the meaning of Section 43 has been effected. Where a preferential transfer is discernible on the record, NCLT is empowered to grant relief under Section 44 to restore the estate. Notwithstanding the pendency of related proceedings in another forum, this Tribunal must protect the integrity of the insolvency estate and the statutory distribution mechanism.

**8.7** It is therefore found that the appropriation by UCO Bank of INR 9.07 Crore on 03.09.2021 satisfies the statutory ingredients of a preferential transaction under Section 43 read with Section 43(4)(b) (one-year look-back) and is not saved by any exception under Section 43(3).

***B. Transaction 2 — JV adjustments amounting to INR 15.18 Crore***

**8.8** It is found on the material before this Tribunal that the Corporate Debtor entered into arrangements with the JV entities pursuant to which the Corporate Debtor bore responsibility for security deposits required by Coal India Limited and that certain amounts towards these security deposits were paid by the JV entities directly to CIL while other amounts were adjusted by way of set-off against receivables owed by the JVs to the Corporate Debtor.

**8.9** The Transaction Auditor concluded that INR 15.18 Crore of sales receivables were adjusted in favour of the JVs and that such adjustment placed the JVs in a preferential position. The record demonstrates that the JV entities were, in substance, unsecured creditors (to the extent of amounts paid on behalf of the Corporate Debtor) while also being debtors in relation to receivables arising from sales transactions a dual position

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which does not preclude the application of Section 43 if, on balance, the transfer functioned to prefer the JV entities over other creditors.

**8.10** This Tribunal notes that the contractual arrangements between the Corporate Debtor and the JVs were commercial in nature and that some of those arrangements were executed to preserve tenders and avoid forfeiture of EMD. Such commercial motivation is relevant context but is not conclusive. The test remains whether the transaction in substance transferred property of the Corporate Debtor to the benefit of the JV entities on account of antecedent liabilities and placed them in a better position than under a pari passu distribution under Section 53.

**8.11** Applying the statutory tests, this Tribunal finds that the adjustments of INR 15.18 Crore were transfers of the Corporate Debtor's receivables effected in favour of the JV entities in the two financial years 2020-21 and 2021-22, falling within the two-year look-back period for related party transactions under Section 43(4)(a). The adjustments were not demonstrated to be in the ordinary course of business in the sense contemplated by Section 43(3), nor was it shown that they created a bona fide new security. In particular, the older evidence on record indicates that the JVs obtained a direct economic advantage by having amounts adjusted to their favour while other creditors (including secured financial creditors) remained exposed.

**8.12** Applying **Section 66 of the IBC** which states that "*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*

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*professional 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.”*

If any party knowingly tries to reduce the value of the company before insolvency, Section 66 can also apply. **In Anuj Jain v. Axis Bank**, (Civil Appeal Nos. 8512-8527 of 2019) the Supreme Court laid down the four essential ingredients of a preferential transaction, which in this matter are fulfilled.

**8.13** The respondents rely upon the inter se JV agreements and contend that the adjustments were contractually warranted. This Tribunal accepts that the JV agreements provide commercial context. However, commercial expediency cannot be allowed to displace the statutory mandate to preserve and restore value to the insolvency estate. On the present record, the Applicant has established a prima facie case that the adjustments constituted preferential transfers under Section 43.

**8.14** It is therefore found that the adjustments in favour of the JV entities amounting to INR 15.18 Crore satisfy the statutory ingredients of a preferential transaction under Section 43 read with Section 43(4)(a).

**9. ORDER**

*In view of the foregoing, this Tribunal **ORDERS** as follows:*

**(i)** It is declared that the unilateral appropriation/adjustment of INR 9.07 Crore by UCO Bank on 03.09.2021 is a preferential transaction within the meaning of Section 43(2) read with Section 43(4)(b) of the Insolvency and Bankruptcy Code, 2016.

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- (ii)** It is further declared that the adjustments aggregating INR 15.18 Crore effected in favour of the Joint Venture entities (Respondent Nos. 1–3) constitute preferential transactions within the meaning of Section 43(2) read with Section 43(4)(a) of the IBC.
- (iii)** Respondent No. 4 (UCO Bank) is directed to refund/repay the sum of INR 9.07 Crore to the Corporate Debtor / Interim Resolution Professional (as the case may be) within a period of 30 (thirty) days from the date of receipt of this order. In the event Respondent No. 4 is restrained by any stay or order of the Hon'ble Calcutta High Court from making such payment, Respondent No. 4 shall, within 7 (seven) days of this order, deposit an equivalent sum of INR 9.07 Crore in an interest bearing designated escrow account to be created in the name of the Interim Resolution Professional / Resolution Professional, the details of which shall be furnished to the Registry and to the parties within 3 (three) days of such deposit. The escrowed funds shall be subject to the decision of this Tribunal on further proceedings and shall be utilised for distribution in accordance with Clause 5.14 of the approved Resolution Plan and Section 53 of the IBC as applicable.
- (iv)** Respondent Nos. 1 to 3 (the JV entities) are directed to refund/repay the sum of INR 15.18 Crore to the Corporate Debtor / Interim Resolution Professional within a period of 60 (sixty) days from the date of receipt of this order. If any of Respondent Nos. 1–3 fail to make the payment within the stipulated period, the RP is permitted to initiate appropriate recovery proceedings and take steps to enforce this order including instruction to banks to attach funds, after giving the defaulting respondent 7 days' notice of intention to enforce.

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- (v)** All sums recovered / refunded pursuant to this order shall be remitted by the Resolution Professional to the CoC in terms of Clause 5.14 of the approved Resolution Plan and shall be distributed to the financial creditors in accordance with the decision of the CoC and in compliance with the statutory priorities under Section 53 of the Code (subject to deductions for any taxes, lawful claims and costs as applicable). The RP shall place on record the details of such distribution before this Tribunal within 15 days of effecting distribution.
- (vi)** The amounts directed to be refunded above shall carry interest at the rate of 9% per annum from the date of transfer/adjustment till the date of actual repayment or deposit into escrow.
- (vii)** Nothing in this order shall be construed as precluding any of the respondents from raising legal defences on the merits in further proceedings; however, the respondents shall not take any steps to alienate, encumber, transfer or otherwise deal with funds equivalent to the sums directed to be refunded pending compliance with this order. In particular, the JV respondents shall not create any charge over assets or transfer material assets to third parties which would frustrate the enforcement of this order.
- (viii)** The Resolution Professional is directed to file a report recording compliance with this order within 7 days of receipt of the refunded amounts, and thereafter to place before this Tribunal a final computation of recoveries and the proposed distribution pursuant to Clause 5.14 within 30 days of receipt of funds.

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- 10.** Accordingly, the reliefs sought for in the instant application being **I.A. (IB) No. 342/KB/2023**, are hereby **allowed** and the application stands **disposed of**.
- 11.** No order as to costs.
- 12.** The Registry shall circulate a copy of this order forthwith to the parties. Certified copy of this order, if applied for, be made available on compliance with requisite formalities.

**Cmde Siddharth Mishra  
Member (Technical)**

**Smt. Bidisha Banerjee  
Member (Judicial)**

This Order is signed on **12<sup>th</sup>** Day of **June 2026**.

Tiwari, V. (LRA)/Anubhuti S. (LRA)