

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
14-05-2026 AT 12:30 PM**

**Company Petition IB/229/2021
AND
IA (IBC) 1168/2022 & IA(IBC) 858/2024 in Company Petition IB/229/2021
u/s. 9 of IBC, 2016**

IN THE MATTER OF:

M/s. Sunland Alloys

...Operational Creditor

AND

M/s. Castall Technologies Pvt Ltd

...Corporate Debtor

C O R A M:-

SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 1168/2022

Present: Mr. Teja, Ld. Proxy Counsel for the Applicant.

Ms. D. Kiranmaye, Ld. Proxy Counsel for R1, R4, R8-R11

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

IA(IBC) 858/2024

Present: Mr. Madasa Kumar, Liquidator.

Orders pronounced, recorded vide separate sheets.

In the result, this application is allowed and disposed of.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – I

IA (IBC) No. 1168 of 2022

In CP(IB) No.229/9/HDB/2021

IN THE MATTER OF:

M/s. Castall Technologies Private Limited,

Between:

M/s. Castall Technologies Private Limited,

CIN No. U27107TG1999PTC031968

Plot No. A-55, IDA Kukatpally Gandhi Nagar,
Hyderabad, Telangana-500037.

Represented by its Resolution Professional

Mr. Haridasu Sambasiva Rao

Reg. No.: IBBI/IPA-002/IP-N00603/2018-2019/11858

Flat No. 107, Prajapathi Elite 3,

Mayuri Nagar, Miyapur,

Hyderabad – 500049.

... Applicant

VERSUS

1. **Mr. N. Madhu Venkateswar**

Flat No. 402, Block No. P, Rainbow Vistas,
Green Hills Road, Musapet, Kukatpally,
Hyderabad – 500018.

2. **Ch. Laxmibai**

H. No. 3-1-225, Somasundaram Street,
Secunderabad – 500003, Telangana.

3. **K. Aashika**

5-9-22/38/2, Adarsh Nagar,
Hyderabad – 500063.

4. **Kavita Nagpal**

2-4-119 to 128/1, Besides KFC Lane,
Ramgopalpet, Secunderabad – 500003.

5. **K. Rama Devi**

5-9-22/38/2, Adarsh Nagar,
Hyderabad – 500063.

6. **K.V. Sai Ranjan**

5-9-22/38/2, Adarsh Nagar,
Hyderabad – 500063.

7. **K. Yamini**
5-9-22/38/2, Adarsh Nagar,
Hyderabad – 500063.
8. **Priya H. Sadhvani**
Flat No. 502, Krishe Gardens,
Next to Passport Office, Begumpet,
Secunderabad – 500003, Telangana.
9. **Raj Kumar Parsram**
Flat No. 202, TanMan Apartments,
D.V. Colony, Minister Road,
Secunderabad – 500003.
10. **Ravula Bhuvana Sai**
C/o Flat No. 402, Block No. P, Rainbow Vistas,
Green Hills Road, Musapet, Kukatpally,
Hyderabad – 500018.
11. **Rekha A. Nagpal**
2-4-119 to 128/1, Besides KFC Lane,
Ramgopalpet, Secunderabad – 500003.

... **Respondents**

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel:

For the Applicant : Ms. K V S Madhumita (Advocate)
For Respondent No's: 1, 4, 8, 9, 10, 11: Mr. P Ramesh Babu (Advocate)

Date Of Order: 14.05.2026

Applicant's Case:

1. The Applicant, being the Resolution Professional of M/s Castell Technologies Private Limited¹, has filed the present application under Section 43 of the Insolvency and Bankruptcy Code, 2016², seeking directions against the Respondents, jointly and severally, for repayment of Rs. 57,33,485/- on account of preferential transactions effected from the Corporate Debtor's account.

¹ Hereinafter referred to as the Corporate Debtor/CD.

² Referred to as the IBC

2. The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process by this Tribunal in CP (IB) No. 229/9/HDB/2021, vide its orders dated 19.04.2022.
3. Pursuant to the said order, the Applicant was appointed as the Interim Resolution Professional³ and was subsequently confirmed as the Resolution Professional⁴.
4. The Applicant submits that, during the course of CIRP, a review of the financial books and accounts of the Corporate Debtor was undertaken. Based on the aforesaid review, the Applicant deemed it necessary to appoint a Transaction Auditor. Accordingly, upon obtaining the approval of the Committee of Creditors, a Transaction Auditor was duly appointed.
5. Subsequently, the transaction auditor has submitted its report on 05.09.2022, wherein it is stated that a sum of Rs. 57,33,485/- was paid to the Respondents during the financial years 2020–21 and 2021–22.
6. The details of the payments, as recorded, are set out below:

| S. No. | Name | FY 2020–21 (Rs.) | FY 2021–22 (Rs.) |
|---------------|----------------------|-----------------------------|-----------------------------|
| 1. | N. Madhu Venkateswar | 36,44,461 | 7,02,213 |
| 2. | K. Aashika | 35,640 | 1,24,740 |
| 3. | Kavita Nagpal | 45,000 | — |
| 4. | K. Rama Devi | 14,400 | 82,800 |
| 5. | K.V. Sai Ranjan | 36,000 | 1,44,000 |
| 6. | K. Yamini | 21,600 | 43,200 |
| 7. | Ch. Laxmibai | 22,500 | — |
| 8. | Priya H. Sadhvani | 22,500 | — |
| 9. | Raj Kumar Parsram | 45,000 | — |

³ Referred to as IRP

⁴ Referred to as RP

| | | | |
|-----|--------------------|--------|----------|
| 10. | Ravula Bhuvana Sai | — | 7,04,431 |
| 11. | Rekha A. Nagpal | 45,000 | — |

6. The Applicant submits that the aforesaid payments were made during the period falling within the two years preceding the Insolvency Commencement Date i.e., 19.04.2022, as referred to under Section 43 of the IBC.
7. It is further submitted that, the Applicant submits that no contracts or supporting documents were produced to justify the payments between the Respondents and the CD. Additionally, the explanation of short-term loans for proposed machinery remains unsubstantiated by the Suspended Director's, clearly indicating that the payments were made to the Respondents in preference to other creditors.

Counter Filed by Respondent No. 1:

8. It is the case of the Respondent No.1/R.1 that, the RP has alleged that payments aggregating to Rs. 43,46,674/-⁵ made by the CD to Respondent No.1 to be preferential in nature. In response, Respondent No.1 submits that no supporting documentation has been furnished by the suspended directors of the CD, and that the ledger copies relied upon, duly rearranged and read in conjunction with R.1's Savings Bank account extract and summary sheet, clearly set out the nature and particulars of the said transactions.
9. It is further submitted that, on 29.04.2020, the Respondent No.1 withdrew an amount of Rs.10,00,000/-, from the account of the CD and subsequently transferred the said amount to R.1's SB account, as only one cheque leaf was remaining available with the CD for its operational use.

⁵ The breakup is Rs.36,44,461/- during FY 2020-21 and Rs.7,02,213/- during FY 2021-22.

10. Further, on the same day an amount of Rs.10,75,000/- was disbursed from the savings bank account of Respondent No.1, to various contractors through multiple cheques of the Respondent No.1's SB Account.
11. Subsequently, an amount of Rs.17,09,250/- was paid by the Respondent No.1 towards repayment of a loan availed by CD from LIC. The said loan amount aggregating to Rs.30,73,776/-, was credited from the account of CD into Respondent No.1 personal SB account on 07.03.2020, and Rs.30,75,000/- was infused into the account of the CD shortly thereafter to meet urgent working capital requirements of the CD. The EMIs paid from the CD were not personal gains but were of the nature of repayment of funds infused for the benefit of the CD . Such transactions are averred to be common in promoter-driven MSMEs, and contended not to constitute preferential transactions.
12. Additionally, R.1 in his capacity as the Managing Director of the CD has withdrawn Rs.12,00,000/- on 18.03.2021 as remuneration payable to him aggregating to Rs.1,00,000/- per month, in accordance with the internal approvals of the CD. However, it is also submitted that the same amount was redeposited into the CD's account on 24.03.2021.
13. Thereafter, R.1 contends that, an amount of Rs.1,30,000/- was paid as TDS on directors' salaries in the subsequent year, as earlier salary withdrawals had been redeposited into the CD account to meet urgent financial obligations.
14. It is further contended that payments of Rs. 33,247/- towards employee insurance policy, Rs. 29,177/- towards sundry creditors, and Rs. 75,000/- towards legal expenses were made in the ordinary course of business. Additionally, a sum of Rs. 1,70,000/- was paid to two individuals who had extended hand loans to the CD, which amounts were subsequently repaid on 22.10.2020 and 29.12.2020, respectively.

15. The above transactions are averred to be considered keeping in view the nature of promoter-driven MSMEs, where financial intermingling between the promoter and the company is often necessary for survival, especially in the absence of external funding.
16. Further, the RP has merely relied upon the Transaction Auditor's report without proper verification of facts. The Application refers to unrelated transactions from FY 2018–2020 and has no bearing on the present allegations. All transactions were contended to be undertaken in the ordinary course of business and in line with generally accepted commercial practices for MSMEs. These transactions were aimed at sustaining the operations of the CD as a going concern and safeguarding enterprise value. There was no intent to defraud or prejudice creditors.
17. On the contrary, the Respondent No.1 infused more funds into the CD, than the amount that were withdrawn. As per the ledger the net infusion during FY 2020–21 was approximately Rs. 8.57 lakhs and the salary for FY 2021–22 was reduced to Rs. 6 lakhs and was not drawn. These transactions were transparent and subject to bank audit during FY 2020–21, with no objections raised.

Counter Filed by The Respondent No. 2:

18. Respondent No.2 submits that, it is an unsecured financial creditor, having extended a loan of Rs. 5,00,000/- with interest to the CD on 02.05.2018, at the request of the promoter to meet its day-to-day expenses, and is a member of the CoC holding 0.13% voting rights.
19. Further it stated that, it has been advised by the promoter that the secured financial creditor (erstwhile Andhra Bank and now Union Bank of India) was aware of and permitted withdrawals upon impounding

12% of all collections into the bank accounts to meet the CD's other obligations.

20. It is also contended, that the remittances were made with the knowledge and consent of the Bank and, therefore, cannot be construed as preferential transactions under Section 43 of the IBC, as the payments were effected in terms of the arrangement agreed upon with the Bank.
21. It is submitted that, the R.2 is not a related party. And the CD was admitted into the CIRP on 19.04.2022, while the transactions refer to remittances made to the R.2 prior to 19.04.2021, i.e., beyond the look-back period of one year. Therefore, it is averred that the transaction cannot be categorized as a preferential transaction under Section 43 of the IBC, even otherwise.
22. It is submitted that the transaction is neither preferential nor within the relevant period, in view of the foregoing.

Counter Filed by The Respondent No. 4:

23. The amount averred to be preferential against the Respondent No.4/R.4 is Rs. 45,000/- during FY 2020–21. In response R.4 has averred that, it is an unsecured financial creditor who extended a loan of Rs. 5,00,000/- with interest to the CD, on 02.05.2018, at the request of the promoter of the CD, to meet the day-to-day expenses of the CD.
24. The R.4 being a member of the CoC with 0.13% voting rights was informed by the promoter of the CD that, the secured financial creditor⁶, was aware of and permitted withdrawals of the said amount, subject to impounding 12% of all collections into the bank accounts to meet the CD's other obligations.

⁶ Union Bank of India

25. Additionally, it is submitted that the remittances made to the CD were within the knowledge of the Bank, and thus, the transaction between the R.4 and CD cannot be categorized as preferential under Section 43 of the IBC, as the payments were made as per the agreed arrangement with the Bank.
26. It is the case of R.4, that it is not a related party to the CD and the company was admitted into CIRP on 19.04.2022, while the transactions averred to be preferential were in regard to the remittances made to the Respondent No.4, being prior to 19.04.2021, i.e., beyond the look-back period of one year. It is submitted that the transaction is neither preferential nor within the relevant period.

Counter Filed by The Respondent No. 8:

27. The RP alleges that payments of Rs. 22,500/- made to Respondent No.8/R.8 during FY 2020–21 is preferential. However, in response, it is submitted that R.8 is an unsecured financial creditor who had extended a loan of Rs. 5,00,000/- to the CD for its day-to-day operations and is a CoC member with 0.13% voting rights. Further, the RP has also asserted that no supporting documentation was provided by the suspended directors in relation to the said transactions.
28. It is also submitted that, Respondent No.8 was advised by the promoter that the secured financial creditor (erstwhile Andhra Bank, now Union Bank of India) was aware of and had permitted withdrawals upon impounding 12% of all collections into the bank accounts for meeting the company's other obligations. The remittances were made within the knowledge of the bank. Therefore, it is averred that the transaction cannot be categorised as preferential under Section 43 of the IBC, as the payments were made pursuant to the agreed arrangement with the Bank.
29. It is submitted that the R.8 was an unrelated party, and the transactions referred to are pertaining to remittances made to the

Respondent No.8 prior to 19.04.2021, i.e., beyond the look-back period of one year. Accordingly, the transaction cannot be categorised as a preferential transaction under Section 43 of the IBC.

30. It is submitted that the transaction is neither preferential in nature nor does it fall within the relevant look-back period.

Counter Filed by the Respondent No. 9:

31. The present IA has been filed by the RP alleging that a sum of Rs. 45,000/- paid to Respondent No. 9 during FY 2020–21 constitutes a preferential transaction under Section 43 of the IBC. It is further alleged that Respondent No. 9 was given preference over other creditors and that supporting documents pertaining to the transactions were not provided by the suspended directors.

32. It is submitted that Respondent No. 9 is an unsecured financial creditor who had advanced a loan of Rs. 5,00,000/- to the CD on 02.05.2018 for meeting the day-to-day operational requirements of the CD. The Respondent is also a member of the CoC with 0.13% voting rights.

33. It is further submitted that the remittances were made with the knowledge and permission of the secured financial creditor, namely Andhra Bank (now Union Bank of India), under the existing banking arrangement permitting withdrawals towards the CD's obligations. Accordingly, the transactions are submitted to not fall within the ambit of preferential transactions under Section 43 of the IBC.

34. Respondent No. 9 is alleged to be an un-related party of the CD, and the remittances referred to in the IA were made prior to 19.04.2021, beyond the statutory look-back period prescribed under Section 43 of the IBC.

35. In view of the above, the transactions in question neither fall within the relevant period nor qualify as preferential transactions under the IBC, 2016.

Counter Filed by The Respondent No. 10:

36. This IA has been filed by the RP claiming that certain payments have been made by the CD to the Respondents during the look-back period, as specified, which are alleged to be preferential in nature.

37. It is submitted by the Respondent No.10 that, the amount considered to be preferential against Respondent No.10/R.10, is Rs. 7,04,431/- during FY 2021–22. The RP in this regard has claimed that, the Respondent was given preference over other creditors, and that the funds transferred to the R.10, have benefited the suspended director, and further alleges that no supporting documentation was provided for the transactions.

38. It is further submitted by R.10, that it is not a related party to the CD and is only an unsecured creditor who extended a hand loan amounting to Rs. 7,04,431/- on 25.02.2022. Further, the said amount was contended to be paid by Respondent No.10 to TS TRANSCO on behalf of the CD Company.

39. The promoter of the CD Company had approached the Respondent No.10, with a request to clear the CD's pending power bills immediately, as the disconnection date (24.02.2022) had already passed and the power utility could disconnect supply at any time. The promoter of the CD also assured that, the amount would be remitted to the Respondent No.10's account upon collection of the pending receivables by the CD Company and subject to the Bank permitting the transaction.

40. Thereafter, a remittance was received by the R.10, on 07.03.2022 from the Bank account of the CD maintained with its secured financial

creditor, with due knowledge of the Bank. Thus, the remittance made to the Respondent No.10, does not fall within the category of preferential transactions.

Counter Filed by the Respondent No. 11:

41. The present IA has been filed by the RP alleging that a sum of Rs. 45,000/- paid to Respondent No. 11 during FY 2020–21 constitutes a preferential transaction under Section 43 of the IBC. It is further alleged that Respondent No. 11 was preferred over other creditors and that supporting documents relating to the transactions were not provided by the suspended directors.
42. It is submitted that Respondent No. 11 is an unsecured financial creditor who had advanced a loan of Rs. 5,00,000/- to the CD on 02.05.2018 for meeting the day-to-day operational requirements of the CD. The Respondent is also a member of the CoC with 0.13% voting rights.
43. It is further submitted that the remittances were made with the knowledge and permission of the secured financial creditor, namely Andhra Bank (now Union Bank of India), under the existing banking arrangement permitting withdrawals towards the company's obligations. Accordingly, the transactions do not fall within the ambit of preferential transactions under Section 43 of the IBC, 2016.
44. It is further submitted that Respondent No. 11 is not a related party of the CD. The CD was admitted into CIRP on 19.04.2022, whereas the remittances referred to in the IA were made prior to 19.04.2021, beyond the statutory look-back period prescribed under Section 43 of the Code. In view of the above, the transactions in question neither fall within the relevant period nor qualify as preferential transactions under the Insolvency and Bankruptcy Code, 2016.

Convenience Note by R.1:

45. It is further submitted that during FY 2021–22, the remuneration of the Respondent was reduced to Rs. 6,00,000/- and the same was not even drawn from the CD, clearly demonstrating the bona fides of the Respondent and the absence of any intention to derive personal benefit at the cost of the CD or its creditors.
46. It is further clarified that certain amounts reflected in the ledger pertain to ordinary business and statutory expenses, including Rs. 33,247/- towards Employee Insurance Policy payments and Rs. 29,177/- towards payments made to Sundry Creditors, which have erroneously been portrayed as preferential transactions.

Convenience Note by R.4,8,9,10,11:

47. The convenience note is a reiteration of the counter.
48. Respondent Nos.3,5,6,7 were set **ex-parte** vide this Tribunal's order dated 22.06.2023.
49. We have heard the learned Counsel for both the parties and perused the documents on record.

Findings and Decision:

50. The present Application is founded upon the Transaction Audit Report, wherein payments aggregating to Rs.57,33,485/- made to the Respondents during FY 2020–2021 and FY 2021–2022 have been characterized as preferential transactions.

51. At this stage, the following issues arise for consideration before us:

- (i) Whether the impugned transactions fall within the scope of Section 43 of the Insolvency and Bankruptcy Code, 2016;
- (ii) Whether the Applicant has established the ingredients of a preferential transaction under Section 43(2) of the Code;
- (iii) Whether the impugned transactions fall within the relevant look-back period prescribed under Section 43(4) of the Code; and
- (iv) Whether the transactions are liable to be avoided.

52. Before examining the issues framed above, we find it necessary to refer to the statutory framework governing preferential transactions under Section 43 of the Insolvency and Bankruptcy Code, 2016. For a transaction to be avoided as preferential, the Resolution Professional is required to establish:

- a) that there was a transfer of the property or an interest thereof of the Corporate Debtor for the benefit of a creditor, surety or guarantor, on account of an antecedent financial debt, operational debt or other liability owed by the Corporate Debtor;
- b) that such transfer had the effect of putting such creditor, surety or guarantor in a beneficial position than it would have occupied in the event of distribution of assets under Section 53 of the Code;
- c) that the transaction falls within the relevant look-back period prescribed under Section 43(4) of the Code; and
- d) that the transaction is not excluded by virtue of the ordinary course of business exception contemplated under Section 43(3) of the Code.

53. Further, Section 43(4)(a) prescribes a look-back period of two years preceding the insolvency commencement date in the case of related parties, whereas Section 43(4)(b) prescribes a period of one year in respect of persons other than related parties.

54. Additionally, the burden of establishing the statutory ingredients under Section 43 rests squarely upon the Applicant, as affirmed by the

Hon'ble Supreme Court in **Anuj Jain v. Axis Bank**⁷, which mandates a structured inquiry into the twin conditions under Section 43(2), the relevant period under Section 43(4), and the exclusions under Section 43(3). It is further observed that, in light of the deeming fiction embedded therein, the Applicant must demonstrate, on the basis of material on record, that the impugned transactions satisfy the requirements of antecedent debt, preferential effect, and occurrence within the relevant time.

Transactions Of Respondent No. 1

55. Respondent No. 1, being the Managing Director of the Corporate Debtor, is a 'related party' within the meaning of Section 5(24A) of the IBC. Accordingly, the two-year look-back period under Section 43(4)(a) applies to transactions involving Respondent No. 1, covering the period from 19.04.2020 to 19.04.2022. Transactions falling within this period are prima facie subject to the presumption under Section 43(3). The question is whether Respondent No. 1 has successfully rebutted that presumption.

(a) Transfer of Rs.10,00,000/- on 29.04.2020:

56. We are of the considered view that, the documents furnished by Respondent No.1 are substantially corroborated by contemporaneous banking records. The said transfer of Rs.10,00,000/- on 29.04.2020 from the account of the CD to the personal account of Respondent No.1 stands immediately followed by outward remittances aggregating to Rs.10,75,000/- made on the very same day to various contractors including Subhan, Jahangeer, Afzal Engineering and New Engineering.

57. Moreover, the bank statements therefore corroborate the explanation that the amount was routed through the account of Respondent No.1 for payment of contractor wages during the COVID lockdown period.

⁷ (2020) 8 SCC 401

The material on record does not disclose retention of the amount by Respondent No.1 or diversion of the said funds for personal gain. The transaction appears to be operational in nature to sustain the activities of the CD.

(b) LIC Loan Repayments aggregating to Rs.17,09,250/-:

58. The entries relating to LIC loan repayments aggregating to Rs.17,09,250/-, stood explained through supporting bank statements. The record placed before us, discloses that Respondent No.1 had availed a LIC loan in his personal capacity and substantial amounts were thereafter infused into the account of the CD towards working capital requirements. The subsequent repayments reflected in the ledger correspond to servicing of the said funding arrangement.

59. In this regard, we find that, the Applicant has not placed any material to disprove the infusion of funds into the CD or to establish that the repayments were intended to confer any undue advantage upon Respondent No.1. On the contrary, the material indicates that the transactions were intrinsically connected with keeping the CD operational during financial distress.

(c) Payment of Rs.12,00,000/- towards remuneration on 18.03.2021:

60. Further, the transaction concerning payment of Rs.12,00,000/- towards remuneration to Respondent No.1 also does not persuade this Tribunal to hold the same as preferential. The bank statement reflects that the said amount, credited on 18.03.2021, was transferred back to the account of the CD on 24.03.2021. Thus, in absence of any material indicating wrongful gain or siphoning of funds, the said transaction cannot be brought within the ambit of Section 43.

(d) TDS of Rs.1,30,000/- towards directors' salaries and Other operational amounts:

61. The amounts reflected in the ledger towards employee insurance policy (Rs.33,247/-), advocate fees (Rs.75,000/-), TDS deductions, sundry creditors (Rs.29,177/-) and repayment of temporary hand loans (Rs.1,70,000/-) are comparatively small operational and statutory payments. The explanations furnished in relation thereto have not been effectively controverted by the Applicant. Such payments appear to have been incurred in the ordinary course of business and no material has been placed to indicate that the same were intended to prefer any particular creditor.
62. Though transactions involving related parties falling within the relevant period may invite closer scrutiny under Section 43 of the IBC, the Applicant is nevertheless required to establish the essential ingredients contemplated under Section 43(2), particularly the preferential treatment as contemplated under Section 43(2)(b). In the present case, the material on record does not demonstrate siphoning of funds, wrongful extraction of value, or any depletion of the estate of the CD for the personal enrichment of Respondent No.1.

Transactions of Respondents Nos. 2, 4, 8, 9, And 11:

63. Respondents Nos. 2, 4, 8, 9, and 11 have consistently asserted that they are not related parties to the CD and that the transactions relied upon by the Applicant pertain to remittances made prior to 19.04.2021. The Applicant has not disputed the dates of the impugned remittances or the status of these Respondents as unrelated parties.
64. The CD was admitted into CIRP on 19.04.2022. Since the said Respondents are unrelated parties, the relevant look-back period under Section 43(4)(b) extends to only one year preceding the Insolvency

Commencement Date, i.e., transactions on or after 19.04.2021 are alone susceptible to examination. The transactions relied upon by the Applicant against Respondents Nos. 2, 4, 8, 9, and 11 pertain to FY 2020–21 and were made prior to 19.04.2021. They therefore fall entirely outside the statutory look-back period prescribed under Section 43 of the IBC.

65. Transactions falling outside the look-back period cannot be subjected to avoidance proceedings under Section 43 regardless of their character. The claims against Respondents Nos. 2, 4, 8, 9, and 11 are accordingly not maintainable on this ground alone.

Transactions of Respondent Nos.3, 5, 6 and 7:

66. Insofar as Respondent Nos.3, 5, 6 and 7 are concerned, the transaction audit report merely reflects payments aggregating to Rs.35,640/- and Rs.1,24,740/- in respect of Respondent No.3, Rs.14,400/- and Rs.82,800/- in respect of Respondent No.5, Rs.36,000/- and Rs.1,44,000/- in respect of Respondent No.6, and Rs.21,600/- and Rs.43,200/- in respect of Respondent No.7 during FY 2020–2021 and FY 2021–2022 respectively.

67. We observed that, the Applicant has not placed any material on record to establish the presence of the alleged antecedent liability, the circumstances in which the payments were made, or the manner in which such transactions had the effect of placing the said Respondents in a more beneficial position vis-à-vis other creditors in the distribution waterfall contemplated under Section 53 of the IBC.

68. Additionally, even in relation to the amounts reflected during FY 2021–2022, which fall within the one-year look-back period applicable to unrelated parties, there is no material produced by the Applicant to establish that the transactions were intended to prefer the said Respondents or that the CD suffered any corresponding depletion of

assets for their personal benefit. Mere existence of accounting entries, in the absence of supporting evidence establishing the ingredients of Section 43(2), cannot by itself sustain an avoidance application.

Transactions of Respondent No. 10:

69. Insofar as Respondent No.10/R.10 is concerned, the amount of Rs.7,04,431/- reflected during FY 2021–2022 has been explained as reimbursement towards payment of electricity dues payable to TS TRANSCO on behalf of the CD. We observed that, the material on record indicates that the said payment was made by R.10 in order to prevent disconnection of electricity supply to the CD, and the subsequent remittance received from the CD was in the nature of reimbursement of the said expenditure.
70. The explanation furnished by R.10 has not been rebutted by the Applicant through any contrary material. The transaction appears to have been undertaken for preserving the operations of the CD as a going concern and not for conferring any unlawful preference. Additionally, the said transaction does not reflect discharge of an antecedent debt owed to R.10 in a manner that would place R.10 in a more beneficial position vis-a-vis other creditors in a Section 53 distribution. The essential ingredient under Section 43(2)(b) has not been established. Accordingly, the claim against R.10 is not maintainable.
71. In light of the findings recorded above, the CP(IB)No.229/9/HDB/2021, stands dismissed in its entirety. No order as to costs.

Sd/-

SANJAY PURI

MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ

MEMBER (JUDICIAL)