



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
16.04.2026 AT 10:30 A.M.**

**IA (IBC)/1247/2024 in  
Company Petition IB/98/10/HDB/2023  
U/s 10 of IBC**

**IN THE MATTER OF:**

Mithra Yarns Pvt Ltd

**...Petitioner**

**C O R A M:-**

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)  
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA (IBC)/1247/2024**

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH, COURT-II**

**I.A (IBC) No. 1247 of 2024**

**IN**

**C.P. (IB) No. 98/10/HDB/2023**

**[Under Section 43 of Insolvency and Bankruptcy Code, 2016]**

**IN THE MATTER OF M/S. MITHRA YARNS PRIVATE LIMITED**

**Between:**

**Mr. Murali Mohan Chevuturi,**

Liquidator, Mithra Yarns Private Limited,  
FF 26, Raghava Ratna Towers, Chirag Ali Lane  
Abids, Hyderabad-500001, Telangana

.... Applicant/Resolution Professional

**Versus**

1. **Mr. Sandeep Kumar Karampuri,**

H. No. 19-8, P. No. 41A, Chandulal Bowli,  
Sikh Village,  
Secunderabad-500009.

.....Respondent No. 1 /R1

2. **Mr. Manideep Karampuri,**

H. No. 19-8, P. No. 41A, Chandulal Bowli,  
Sikh Village,  
Secunderabad-500009.

.....Respondent No. 2/R2

3. **M/s. Mithra Yarns Private Limited,**

H. No. 19-8, P. No. 41A, Chandulal Bowli,  
Sikh Village,  
Secunderabad-500009.

.....Respondent No. 3/R3



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**Coram:**

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

**Counsels Present**

For Applicant : Mr. Murali Mohan Chevuturi, Liquidator

For Respondent No. 1 & 2 : Mr. Shaik Gouse, Advocate

1. The present Application is filed by the Mr. Murali Mohan Chevuturi (Replaced the original Applicant/Resolution Professional), Liquidator of M/s. Mithra Yarns Private Limited (**Corporate Debtor/CD**) seeking a direction to the person benefitted under these transactions to refund the money/funds received under preferential transactions.

2. **Application**

2.1 It is submitted that M/s. Mithra Yarns Private Limited (Corporate Debtor/CD) was admitted into the Corporate Insolvency Resolution Process (**CIRP**) vide order dated 12.01.2024 in C.P. (IB) No. 98/10/HDB/2023. An Interim Resolution Professional (**IRP**) was appointed and thereafter, the Committee of Creditors (**CoC**), in its 1st meeting, appointed Ms. Azra Banu as the Resolution Professional (**RP**).

2.2 It is further submitted that in the 2nd CoC meeting, M/s. MMRS & Co., Chartered Accountants, were appointed as Transaction Auditors to examine the transactions of the Corporate Debtor from the date of first disbursement of the term loan till 11.01.2024. It is



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stated that the Transaction Auditor submitted its Transaction Audit Report on 20.05.2024.

2.3 It is averred that there was a necessity to examine transactions beyond the two-year period for the following reasons:

- During the FY 2022-23 and 2023-24, the payments were all in cash.
- The refund of GST amounting to Rs. 70 lakhs was used to pay the unsecured loans and to one or two parties immediately on receipt of the same.
- The provisional financials (revised) as on 12.01.2024 show a cash balance of Rs. 3,00,300/- and bank balance of Rs. 3,500/-.

2.4 It is contended that CD made a related party payment of Rs. 70,00,000/- to Mr. Manideep (**Respondent No. 2/R2**), who is the brother of Mr. Sandeep (**Respondent No. 1/R1**), the erstwhile director of the CD. It is further averred that the Corporate Debtor claimed that Respondent No. 2 had discharged an outstanding liability of Rs. 47,59,259/- owed to M/s. Sri Rohit Cottons, a vendor of the Corporate Debtor. It is alleged that the said adjustment was recorded merely through a journal entry, and there existed no direct corelationship between M/s. Rohit Cotton and Respondent No. 2:

<i>1-Apr-22 to 28-Feb-24</i>					
17-12-2022	To	Skanda, K. Manideep A/c	journal	1441	47,59,259

2.5 It is further averred that an amount of Rs. 33,37,276/- was paid to Respondent No. 2 on the premise that certain receivables of the

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Corporate Debtor were collected by Respondent No. 2 from various parties:

Sl. No	Name of the Customer	Name	Amount
1.	Adepu Ravinder JV	29.05.2022	4,43,999
2.	Butla Raghupathi JV	10.07.2022	8,62,850
3.	D.Mondayya JV	20.06.2022	3,49,650
4.	G.Prabhakar JV	31.05.2022	4,58,640
5.	Mangalarapu Prabhakar JV	10.06.2022	4,08,240
6.	Rapelli Laxminarayana JV	15.07.2022	4,05,972
7.	Rapelli Narahari JV	30.06.2022	4,07,925
	TOTAL	-	33,37,276

2.6 It is contended that the above transactions amount to a diversion of funds, as the Corporate Debtor has not produced any documentary evidence supporting the alleged liability towards Respondent No. 2. It is further contended that the Corporate Debtor had opened a separate bank account with Mercantile Co-operative Urban Bank (A/c No. 00114038002792) for the purpose of receiving the GST refund of Rs. 70,42,972/-, which was thereafter utilized to make payments to Respondent No. 2.

3. **Counter by Respondent No. 1 (Erstwhile Director) & Respondent No. 2**

3.1 The Respondents have submitted that the present Application is not maintainable, as it is not in compliance with Section 43 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35A of the CIRP Regulations, 2016.



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- 3.2 It is contended that under Section 43 of the Code read with Regulation 35A, the Resolution Professional is required to form an opinion on or before the 75th day of the insolvency commencement date, thereafter make a determination on or before the 115th day, and file an application before the Adjudicating Authority on or before the 130th day. It is therefore contended that the present Application has been filed beyond the prescribed timelines, is barred by limitation, and is liable to be dismissed.
- 3.3 The Respondents has relied upon the decision of the Hon'ble High Court of Delhi in ***Venus Recruiters (P.) Ltd. v. Union of India*** to support the contention regarding adherence to the statutory timelines. It is further averred that the appointment of the Transaction Auditor was not in compliance with Regulation 30B of the CIRP Regulations, 2016.
- 3.4 It is further submitted that M/s. MMRS & Co., Chartered Accountants, and its partner CA Mohan Rao M, are not qualified Insolvency Professionals, and therefore not competent to conduct such an audit. It is also contended that the prayers in the Application are vague and not specific, as the Applicant has failed to clearly identify the persons who allegedly benefitted from the impugned transactions.
- 3.5 The Respondents have further submitted that the ledger account of M/s. Rohit Cotton reflects genuine purchase transactions undertaken by the Corporate Debtor supported by GST invoices, and therefore no fictitious liability has been created.
- 3.6 It is further contended that during FY 2022-23, due to financial constraints, the Corporate Debtor was unable to discharge the



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outstanding liability of Rs. 47,59,259/- towards M/s. Rohit Cotton. Consequently, Respondent No. 1 sought financial assistance from Respondent No. 2, who allegedly discharged the said liability directly to the vendor.

3.7 It is also submitted that during the period July 2021 to September 2021, Respondent No. 1 received payments aggregating to Rs. 18,02,000/- from Respondent No. 2, which were utilized to discharge operational liabilities of the Corporate Debtor. It is further submitted that Respondent No. 1 received payment of Rs. 1,95,000/- from Respondent No. 2 (Sri Skanda Homes) during June 2022 to October 2022. The said amount was also used to discharge the operational debt of the CD.

3.8 It is further submitted that an amount of Rs. 32,54,999/-, received during the period January 2020 to October 2022, was also utilized to discharge liabilities of the Corporate Debtor.

3.9 It is therefore contended that the payment of Rs. 70,00,000/- along with assignment of receivables amounting to Rs. 33,37,276/-, aggregating to Rs. 1,03,37,276/-, was made to Respondent No. 2 towards reimbursement of the amounts allegedly advanced by Respondent No. 2 during the ordinary course of business. It is also contended that the GST refund received in the separate bank account was utilized to discharge the liabilities of the Corporate Debtor towards its creditors.

**4. Rejoinder**

4.1 The Applicant/Resolution Professional briefly reiterated the contentions and averments made in the Application.



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- 4.2 It is submitted that the present Application has been filed on the 144th day of the Corporate Insolvency Resolution Process. Accordingly, the Applicant has sought condonation of a delay of 14 days in filing the present Application. It is further submitted that the Applicant/Resolution Professional has duly complied with Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 while appointing a Chartered Accountant as the Transaction Auditor for the purpose of examining the transactions of the Corporate Debtor.
- 4.3 It is submitted that the Tally accounts for the Financial Year 2021–22 reflect that the Corporate Debtor had made four purchases from M/s. Rohit Cotton aggregating to Rs. 8,10,092/-, for which no payments were made by the Corporate Debtor. Further, the Tally accounts for the Financial Year 2022–23 reflect an opening balance of Rs. 8,83,910/- as on 01.04.2022, as against Rs. 8,10,092/- in the previous year. During the said financial year, purchases amounting to Rs. 44,74,349/- were recorded, against which the Corporate Debtor paid only Rs. 5,99,000/-, and the remaining amount of Rs. 47,59,259/- was shown as having been paid by Respondent No. 2 through a non-cash transaction. It is further submitted that most of the sundry creditors were shown as settled through the Sandeep (Respondent No. 1) Loan Account or through cash entries.
- 4.4 It is submitted that, as on the Insolvency Commencement Date and as reflected in the audited financial statements of the Corporate Debtor for the Financial Years 2021–22 and 2022–23, the total amount invested by the family members is reflected in the books of accounts of the Corporate Debtor.is as follows:



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Loan from related parties in the financials	
2019-20	Rs. 258.17 lakh
2020-21	Rs. 176.71 lakh
2021-22	Rs.121.9118 lakh
2022.23	Rs. 81.1045 lakh
(after payment of Rs.70.00 lakh to R - 2)	
12/01/2024	Rs. 81.1045 lakh

4.5 It is averred that the loans shown as lent to the Corporate Debtor exceed the original sanctioned cash credit limit of Rs. 100.00 lakhs, which was subsequently reduced to Rs. 81.10 lakhs by adjusting the amount received from the GST refund. It is further contended that the total outstanding amount of Rs. 8,37,51,111/- was shown as adjusted by recording cash payments during the period April to July 2023, after the filing of an Application under Section 10 of the Insolvency and Bankruptcy Code by the suspended management. It is further contended that dues amounting to Rs. 93.00 lakhs from a single debtor were left without any serious follow-up by the suspended management.

4.6 It is submitted that, based on the above records, the Applicant/Resolution Professional has formed the opinion that the



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transactions recorded with M/s. Rohit Cotton are fictitious in nature. It is further submitted that M/s. Rohit Cotton supplied material only until FY 2022-23 and no supplies were made thereafter. The liabilities relating to Rohit Cotton were crystallized during FY 2022-23, which indicates that no business operations were carried out during FY 2023-24.

- 4.7 It is submitted that the Respondents' contention that Respondent No. 2 paid Rs. 47,59,259/- to M/s. Rohit Cotton on 01.12.2022 is not reflected in the bank statements of Respondent No. 2 filed along with the Counter. It is further submitted that the said payment is alleged to have been made on 01.12.2022, and in the same month, upon receipt of GST refund of Rs. 70.43 lakhs, an amount of Rs. 70 lakhs was transferred to Respondent No. 2 within a period of 15 to 20 days, indicating the intention of the suspended management to make a preferential payment.
- 4.8 It is contended that no proof of payment by Respondent No. 2 to M/s. Rohit Cotton has been furnished. Further, no arrangement, authorization, or agreement existed between the Corporate Debtor and Respondent No. 2 permitting Respondent No. 2 to make such payment on behalf of the Corporate Debtor. Therefore, the said transaction cannot be considered an authorized transaction and, even if assumed to exist, cannot be regarded as a transaction carried out in the ordinary course of business.
- 4.9 It is submitted that the operations of the Corporate Debtor had ceased much prior to the payment made to Respondent No. 2. As per the information obtained from the GST Department, the last return filed by the Corporate Debtor was for the month of October 2022. It is further submitted that when no business operations were



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being carried out, the GST refund ought to have been utilized for reducing the outstanding liability with Union Bank of India, thereby enabling the NPA account of the said bank to be standard account. Thus, the transfer of the GST refund to Respondent No. 2 cannot be considered as a transaction undertaken in the ordinary course of business. It is further submitted that most creditors were shown as settled in cash in the books of accounts of the Corporate Debtor during April to July 2023, which further indicates that the payment made to Respondent No. 2 was not in the ordinary course of business.

4.10 It is submitted that, as per the books of accounts, Respondent No. 2 transferred funds to the ICICI Bank account of Respondent No. 1 and not to the bank account of the Corporate Debtor. It is submitted that an amount of Rs. 52.52 lakhs was transferred by Respondent No. 2 to Respondent No. 1 between July 2021 and October 2022, and the Respondents further claim that Rs. 47.59 lakhs was paid to M/s. Rohit Cotton, aggregating to Rs. 100.11 lakhs, purportedly to support Respondent No. 1.

4.11 It is further submitted that Respondent No. 2 collected Rs. 33,37,276/- from the debtors of the Corporate Debtor without any authorization from the Board of Directors or No Objection Certificate from the first charge holder, Union Bank of India, and further received Rs. 70 lakhs directly from the Corporate Debtor, aggregating to Rs. 1,03,37,276/-, allegedly in consideration for payments claimed to have been made to M/s. Rohit Cotton and Respondent No. 1.

4.12 It is contended that no evidence has been produced to establish that the Corporate Debtor received any amount from Respondent No. 2



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aggregating to Rs. 100.11 lakhs. On the contrary, the records indicate that Respondent No. 2 received Rs. 1,03,37,276/- from the assets of the Corporate Debtor, comprising Rs. 33.37 lakhs by way of collection of receivables and Rs. 70 lakhs by way of transfer from the Corporate Debtor's account maintained with Mercantile Co-operative Bank. It is therefore contended that the Corporate Debtor made a preferential payment to Respondent No. 2, who was in fact a creditor of Respondent No. 1, in preference to the secured Financial Creditor.

4.13 It is submitted that the Reserve Bank of India, vide Circular DOR No. BP.BC/7/21.04.048/2020-21 dated 06.05.2020, has clarified that a borrower cannot open a current account with another bank even with the No Objection Certificate of the lending bank. However, in the present case, the Corporate Debtor opened a current account with Mercantile Co-operative Bank, primarily to ensure that the GST refund received by the Corporate Debtor was not adjusted towards the dues of the Financial Creditor.

4.14 In view of the above facts and circumstances, it is respectfully prayed that this Hon'ble Authority may be pleased to direct Respondent No. 2 to refund an amount of Rs. 1,03,37,276/- to the CD/RP.

5. We have heard the counsels of all the parties and perused the entire record.

6. **Findings**

6.1 At the outset, this Authority deems it appropriate to address the preliminary objection raised by the Respondents regarding the maintainability of the present Application on the ground of non-



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compliance with the timelines prescribed under Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 6.2 Regulation 35A prescribes timelines for the Resolution Professional to form an opinion, make a determination, and file an application before the Adjudicating Authority with respect to avoidance transactions. However, the **Hon'ble National Company Law Appellate Tribunal in *Prasant Chandra Rath & Ors. v. Surya Kanta Satapathy (RP) & Ors. (2022) ibclaw.in 789 NCLAT*** has categorically held that the timelines prescribed under Regulation 35A are directory and not mandatory, and that non-compliance with the said timelines would not render an avoidance application non-maintainable. In view of the aforesaid settled position of law, the objection raised by the Respondents on the ground of limitation or delay in filing the present Application is rejected.
- 6.3 The principal issue that arises for consideration in the present case is whether the impugned transactions undertaken by the Corporate Debtor in favour of Respondent No. 2 constitute preferential transactions within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016.
- 6.4 Section 43 of the Code provides that a transaction shall be treated as preferential where the Corporate Debtor has transferred its property or an interest therein for the benefit of a creditor, surety or guarantor, in respect of an antecedent debt or liability, within the prescribed look-back period, and such transfer has the effect of placing such creditor, surety or guarantor in a more beneficial position than it would have been in the event of distribution of



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assets under Section 53 of the Code, provided that the transaction is not one made in the ordinary course of business.

6.5 The Hon'ble Supreme Court in **Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020) 8 SCC 401** has authoritatively held that the aforesaid conditions must be cumulatively satisfied, and the Adjudicating Authority is required to examine the substance of the transaction, rather than its form, to determine whether it falls within the mischief of Section 43.

6.6 In the present case, the record reveals that Respondent No. 1, who was the Director of the Corporate Debtor at the relevant time, had obtained financial assistance from Respondent No. 2. The amounts were transferred by Respondent No. 2 to Respondent No. 1 in several tranches and were stated to have been utilized by Respondent No. 1 for discharging certain operational liabilities of the Corporate Debtor.

6.7 The material available on record, however, shows that the alleged financial assistance provided by Respondent No. 2 was not routed through the bank accounts of the Corporate Debtor. The Respondent No. 1 & 2 themselves have stated that the funds were transferred to and handled through the personal account of Respondent No. 1. Consequently, the alleged financial assistance did not flow through the financial records of the Corporate Debtor in a transparent manner and was not properly reflected through contemporaneous documentation in the books of the Corporate Debtor.

6.8 The record further reflects that the Corporate Debtor received a GST refund amounting to Rs. 70,42,972/-, which was credited into



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separate bank account maintained with Mercantile Co-operative Urban Bank. From the said amount, a sum of Rs. 70,00,000/- was transferred to Respondent No. 2. In addition, receivables belonging to the Corporate Debtor amounting to Rs. 33,37,276/- were assigned to Respondent No. 2 and were collected from the debtors of the Corporate Debtor.

6.9 The assignment of receivables in favour of Respondent No. 2 assumes significance in the present case. The record does not disclose the existence of any agreement, arrangement, assignment deed or other contemporaneous document authorising such transfer of receivables in favour of Respondent No. 2. Furthermore, there existed no prior relationship between the Corporate Debtor and Respondent No. 2 which would justify the assignment of the Corporate Debtor's receivables to Respondent No. 2.

6.10 It is also relevant to note that Respondent No. 2 is the brother of Respondent No. 1, who was the Director of the Corporate Debtor. Respondent No. 2 therefore falls within the ambit of a related party within the meaning of the Insolvency and Bankruptcy Code.

6.11 The Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 12.01.2024, whereas the impugned transactions involving transfer of GST refund and assignment of receivables occurred on 17.12.2022, which clearly falls within the two-year look-back period prescribed under Section 43 of the Code for transactions involving related parties.

6.12 The explanation placed on record states that the payments made to Respondent No. 2 represented reimbursement of amounts allegedly advanced towards liabilities of the Corporate Debtor. However, the



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material placed on record does not establish the existence of any legally enforceable liability of the Corporate Debtor towards Respondent No. 2. As per the journal entry reflected at page 19 of the Counter filed by Respondent No. 1, the liability of the Corporate Debtor towards Respondent No. 2 is shown as Rs. 47,59,259/-. Apart from this journal entry, no agreements, invoices, confirmations or contemporaneous documentary evidence have been produced to substantiate the nature and existence of such liability.

6.13 The circumstances surrounding the transfer of the GST refund also require consideration. The Corporate Debtor received a GST refund of Rs. 70,42,972/-, which was credited into a separate bank account maintained with Mercantile Co-operative Urban Bank. From this amount, Rs. 70,00,000/- was transferred to Respondent No. 2 shortly after receipt of the refund. In addition, receivables belonging to the Corporate Debtor amounting to Rs. 33,37,276/- were assigned to Respondent No. 2 and collected from the debtors of the Corporate Debtor.

6.14 The transfer of Rs. 70,00,000/- and the assignment of receivables amounting to Rs. 33,37,276/- have been admitted on record by both Respondents. However, the record does not disclose the existence of any agreement, arrangement, assignment deed, authorization, or other contemporaneous document enabling Respondent No. 2 to receive such payments or collect the receivables of the Corporate Debtor.

6.15 The Respondents have further stated that Respondent No. 2 had directly paid Rs. 47,59,259/- to M/s. Rohit Cotton on behalf of the Corporate Debtor. However, upon perusal of the bank statements



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produced by the Respondents themselves, no such transaction evidencing payment of Rs. 47,59,259/- to M/s. Rohit Cotton by Respondent No. 2 is reflected therein.

6.16 The absence of documentary evidence establishing the alleged liability of the Corporate Debtor towards Respondent No. 2, coupled with the absence of proof of payment to M/s. Rohit Cotton directly by Respondent No. 2, clearly establishes that there existed no valid justification for the transfer of funds and assignment of receivables in favour of Respondent No. 2.

6.17 In the absence of any substantiated liability or legally enforceable arrangement, the transfer of Rs. 70,00,000/- and the assignment of receivables amounting to Rs. 33,37,276/- effectively enabled Respondent No. 2 to recover amounts from the assets of the Corporate Debtor ahead of other creditors and cannot be considered as transactions undertaken in the ordinary course of business.

6.18 Further, the admitted transfer of Rs. 70,00,000/- from the GST refund through a separate bank account and the assignment of receivables of Rs. 33,37,276/- had the effect of diverting the assets of the Corporate Debtor and keeping such funds beyond the reach of the Financial Creditor.

6.19 In ***Regen Powertech Pvt. Ltd. v. Wind Construction Pvt. Ltd. (2022) ibclaw.in 793 NCLAT***, the Hon'ble NCLAT held that fraudulent trading requires clear material evidence demonstrating that transactions were carried out with intent to defraud creditors. The Hon'ble Supreme Court in ***Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020) ibclaw.in 06 SC***, has clarified that the enquiry under Section 66 is distinct from preferential and



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undervalued transactions and must be supported by specific material facts.

6.20 In the present case, the admitted transfer of Rs. 70,00,000/- and assignment of receivables of Rs. 33,37,276/-, in the absence of any substantiated liability or supporting documentation and without proof of payment allegedly made on behalf of the Corporate Debtor, clearly establishes that the assets of the Corporate Debtor were deliberately diverted in favour of Respondent No. 2 and kept beyond the reach of the Financial Creditor. The said transactions therefore squarely fall within the ambit of preferential transactions under Section 43 of the Code and constitute fraudulent transactions within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016.

In view of the above observations, we hereby direct Respondent No. 2 to refund and restore a sum of Rs. 1,03,37,276/- [Rs. 70,00,000/- (GST Refund) + Rs. 33,37,276/-(receivables of CD)]to the Corporate Debtor within a period of thirty (30) days from the date of receipt of this order.

Accordingly, this I.A (IBC) No. 1247 of 2024 in C.P (IB) No. 98/10/HDB/2023 is **allowed**.

**Sd/-**

**SANJAY PURI  
MEMBER (TECHNICAL)**

**Sd/-**

**RAJEEV BHA RDWAJ  
MEMBER (JUDICIAL)**