

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2273 of 2024

**[Arising out of the Order dated 01.10.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Ahmedabad Bench in IA No. 556(AHM) 2021 in CP (IB) No.
601 of 2019]**

IN THE MATTER OF:

1. **Atul Babulal Prajapati**
(Member of Suspended Director and
Promoter of WSH PVT. Ltd.)
101, Panshil Enclave, Nr. Parimal Underbridge
Karnavati pagarkha Bazar, Ahmedabad-380007 **...Appellant No.1**
2. **Pinal Prajapati Promoter**
101, Panshil Enclave, Nr. Parimal Underbridge
Karnavati pagarkha Bazar, Ahmedabad-380007 **...Appellant No.2**

Versus

1. **Suhas Dinkar Bhattbhatt**
RP/Liquidator of WSH Private Ltd
Registration No.:
IBBI/IPA-002/IP-N00571/2017-2018/11738
Having Residence At: 520, K 10 Grand,
Opp. Honest Restaurant, Near Genda Circle,
Vadodara- 390007 **...Respondent No.1**
2. **Bismillahkhan Ayubkhan Pathan**
Suspended Director
18, New Faishal Nagar, Nr. Shahealam Masjid,
Bombe Hotel, Ahmedabad- 380028 **...Respondent No.2**
3. **ZEN Agrifoods LLP**
Business Acquirer of Corporate Debtor
8th Floor, The Chambers, Opp. Gurudwara,
S.G. Highway, Thaltej, Ahmedabad- 38005 **...Respondent No.3**
4. **ZEN Fincorp Private Ltd**
Associate Company of Acquirer of
CD FF-1, F.P.- 404,
Shakti, Opp. Patel Farm, Thaltej Cross Roads,
Ahmedabad- 380054 **...Respondent No.4**

Present:

For Appellant : Ms. Honey Satpal, Mr. Mayur Jugtawat, Mr. Nipun Singhvi and Mr. Aman, Advocates

For Respondent : Mr. Mandeep Singh Saluja, Advocate for R-1

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an Appeal filed by Shri Stul Babulal Prajapati, who is member of suspended director and promoter of WSH Pvt. Ltd. and Shri Pinal Prajapati, promoter of WSH Pvt. Ltd. The Appellants assail the impugned order dated 01.10.2024 in which the Adjudicating Authority has directed the Appellants alongwith Respondent No. 3 i.e. Zen Agrifoods LLP to pay a sum of Rs.2,00,50,000/- while declaring the transaction as preferential transaction.

Introduction:

2. The Appellants claims that Respondent No. 1/RP/Liquidator of WSH Pvt. Ltd. approached the NCLT for offsetting of an amount of Rs. 2,00,50,000/- which was a receivable to the account of Corporate Debtor i.e. WSH Pvt. Ltd. from an entity, namely, WSH Hub LLP, as it is a preferential transaction. The Appellants contends that Respondent No. 1 has produced a sheet but not a ledger or book entry showing the adjustment of the money in the application filed before the NCLT. It also contends that Respondent No. 1 has not made any pleadings that the transaction is preferential under Section 43 of the Code. The Appellants further contends that there is no case of the RP that there was transfer of property of the Corporate Debtor to the benefit of the Appellant. Offsetting of the receivables from the third party with the payables to the Appellants without routing of any money to the Appellant does

not make it a beneficiary. Since there was no transfer of property, Section 43 does not apply. Respondent No. 1 / RP has a right to recover the money from the third party for the receivables, if any, survives. The Adjudicating Authority could not have passed the order under Section 44 of the Code without concluding that the Appellant is a beneficiary and the Appellant received the money on transfer of property.

3. Furthermore, the Appellants contends that WSH Hub LLP was not made a party to the proceedings. There is no pleadings on Section 43 and thus the order could not be placed beret of any pleadings. Furthermore, there is no evidence placed on record of transfer of property. It also claims that offsetting, otherwise, reduces the loss of the Corporate Debtor and does not place the Appellant in the beneficial position.

4. It is to be noted that CIRP against the Corporate Debtor M/s WSH Pvt. Ltd. was initiated on 01.02.2021 under the provisions of the Code. The Appellant claims that it had informed the RP-R1 regarding a fraud played upon the Appellant No. 1 by Respondent No. 3 i.e. Zen Agrifoods LLP and this matter was placed before the CoC in its first meeting. Respondent No. 1 – RP appointed a forensic auditor on 17.04.2021. Basis the forensic report, RP filed an application i.e. I.A No. 556 of 2021 before the Adjudicating Authority under Section 43, 45 and 66 of the Code. Further another I.A No. 626 of 2021 was filed by the Respondent No. 1 / RP under Section 33 of the Code for liquidation of the Corporate Debtor. The Corporate Debtor was ordered to be liquidated vide order dated 14.12.2021 of the Adjudicating Authority.

5. On 12.08.2024 the Appellants filed an application being I.A No. 770 of 2024 for seeking a direction of the Adjudicating Authority to place on record the relevant facts and documents and the details of pending criminal proceedings qua the fraud played/committed by Respondent No. 3 and 4 upon the Appellants i.e. Zen Agrifoods LLP and Zen Fincorp Pvt. Ltd. This I.A was dismissed by the Adjudicating Authority vide order dated 06.09.2024.

6. In I.A No. 556 of 2021 the Applicant i.e. Respondent No. 1 / RP of WSH Pvt. Ltd. had sought the following relief: -

A. Order and direct the Respondents No. 1 to 3 to pay Rs. 2,24,50,141/- (Rupees Two Crores Twenty-Four Lakhs Fifty Thousand One Hundred Forty-One only) being the preferential amount given to the related party during the period of two years preceding the insolvency commencement date in accordance with Section 43 read with Section 44 of the Code; and/or

B. Order and direct the Respondents No. 5 to pay Rs.95,86,302/- (Rupees Ninety-Five Lakhs Eighty-Six Thousand Three Hundred Two only) being the preferential amount given to accordance with Section 43 read with Section 44 of the Code; and/or

C. Order and direct the Respondent No. 1 to 3 to pay Rs.1,09,99,150/- (Rupees One Crore Nine Lakhs Ninety-Nine Thousand One Hundred Fifty only) being the undervalued amount of Fixed Assets sold by the suspended management to Respondent No. 4 during the period of two years preceding the insolvency commencement date in accordance with Section 45 read with Section 46 of the Code; and/or

D. Order and direct the Respondent No. 1 to pay an amount of Rs.48,85,000/- (Rupees Forty-Eight Lakhs Eighty-Five Thousand only) being

amount of rebate charged by related party during the period of preceding two years in accordance with Section 45 and 46 of the code; and/or

E. Order and direct the Respondent No. 4 to contribute Rs.1,14,40,150/- (Rupees One Crore Fourteen Lakhs Forty Thousand One Hundred Fifty only) to the assets of the Corporate Debtor, being the amount gained 1.85- by carrying on business with an intent to defraud creditors in Rent accordance with Section 66 of the Code; and/or

F. Order and direct the Respondent No. 1 to contribute Rs.1,32,34,770/- (Rupees One Crore Thirty Two Lakhs Thirty Four Thousand Seven Hundred Seventy only) to the assets of the Corporate Debtor, being the amount received in cash on behalf of corporate debtor, adjustment of loans & Advances, non-transfer of fixed assets and withdrawals made from corporate debtor's bank account and thus gained by carrying on business with an intent to defraud creditors in accordance with Section 66 of the Code; and/or

G. Any such order and or other further relief as the Hon'ble Tribunal deems fit and proper in the interest of justice.

7. The aforesaid application i.e. I.A No. 556 of 2021 was partially allowed on 01.10.2024. The Adjudicating Authority had passed the following order in I.A No. 556 of 2021: -

“13. In light of the above, in our considered view the amounts seeking under prayer (B), (C), (D), (E), and (F) stands rejected and the amount mentioned in the Relief (A) which is Rs.2,24,50,141/- further bifurcated in two parts i) Rs. 2,00,50,141/- and ii) Rs. 24,00,000/-, only part (i) amounting to Rs. 2,00,50,141 is allowed and we order that a sum of Rs.2,00,50,000/-to be paid by R-1 to R-3 within a period of 15 days from the date of this order.”

Submissions on behalf of the Appellant – Atul Babulal Prajapati

8. The Appellant, Mr. Atul Babulal Prajapati, suspended director is engaged in the wholesale business of vegetable and fruits for a long time and had a good reputation in the vegetable market at Ahmedabad. The Appellant No. 1 in his individual capacity, is license holder of 'the Agricultural Produce Market Committee-Ahmedabad'. The benefit of holding the license is to get the vegetables on credit and on discounted rates. For advancement of the business, the Appellants promoted the Corporate Debtor and opened up 11 retail outlets known as 'Whole- Sale Hub". For the purpose of expansion, the Corporate Debtor had taken loan from Financial Institutions and Private Parties. Respondent No. 3 to 4 offered partnership and later offered to purchase the Corporate Debtor along with its liabilities. As per the terms of the acquisition, the Appellant was to purchase the vegetables and sell it to Respondent No. 3. From April 2019 to July 2020, the Appellant purchased for approximately 12 crores and supplied to Respondent No. 3. Respondent 3 defaulted for 1.67 crores also, it remained in full control of the banking operations.

9. The Respondent No. 3 withdrew Rs. 1.20 Crores using withdrawal slips giving an impression that the R-4 paid to Appellant and Appellant withdrew it, whereas the same amount of money was deposited back to the account of Respondent No.3. The Appellant lodged criminal complaint with crime branch against R3 and R4. Police issued arrest warrants against all three accused. The proceedings are pending. CIRP commenced against the Corporate Debtor- WSH Pvt. Ltd. on 01.02.2021.

10. Second meeting of CoC held on 22.03.2021 appointed the 'Forensic Auditor' for the period of two years i.e. 2018-2019 & 2019-2020. The Forensic Auditor submitted its transaction audit report dated 09.06.2021. Few relevant extracts from the Transaction Audit Report for the present Appeal are as follows:

“a. Page 287: In accordance with the aforesaid resolution process, Resolution Professional Mr. Suhas Bhatt appointed M/s J. Singh and Associates, Chartered Accountant, Ahmedabad to conduct forensic audit of the Company for the period from 01 April 2018 to 31.03.2020.

b. Page 295 (5.1.1): Preferential transactions under Section 43 of IBC, 2016: The Auditor's finding is that the CD was offsetting receivables/payables balances of one party against other party without transactions through the Company Bank Account. Total amount of Rs. 205.62 Lakhs.

c. Page 295 (5.1.2): The Corporate Debtor purchased vegetables from Mr. Atul Babulal Prajapat (Proprietary Firm) i.e. from related party and the amount outstanding was set off against the balance of Wholesale Hub Enterprise LLP for Rs. 200.66 Lakhs. This is preferential payment to the creditors.

d. Page 301: CD made all purchases from Appellant No. 1 thus the Appellant stood as creditor. The amount standing to the credit of the account was set off against the balance of Wholesale HUB Enterprises LLP for Rs. 200.66 Lakhs.

e. Page 333: The only supporting document-a ledger prepared by the Transaction/Forensic Auditor showing offsetting entry for the period 2018-2019.”

11. The Resolution Professional filed an I.A. No. 556/2021 seeking avoidance of various transactions. Appellants bring to our notice the transaction pleaded to be preferential and states that as per claim of RP, the accounts of the Corporate Debtor show offsetting of receivable balances of one party against payable balances of other party without routing through the Corporate Debtor Bank Account. The identified amount is Rs. 2,00,50,141.-. However, on the very next explanation at Page 238, the Resolution Professional states to have not been able to identify the amount of offsetting. There's no other pleading on the preferential transaction.

12. The Appellant had claimed in its reply before Adjudicating Authority, that inter alia (i) the Appellant sold the vegetables to the Corporate Debtor at concessional rate for being a license holder (ii) that helped the Corporate Debtor to earn profit (iii) there was huge payables to the Appellant by Corporate Debtor (iv) the offsetting with receivable from Whole Sale Hub LLP, which is also controlled by Appellant-was to avoid any banking entry (v) the entry was an adjustment entry to avoid banking transaction, did not incur any loss to Corporate Debtor (vi) it is not the case of the Resolution Professional/transaction auditor that the transactions were not at arm length basis.

13. Appellant contends that the Adjudicating Authority dismissed all the reported transactions except one i.e. preferential transactions. The Adjudicating Authority in the impugned order observes that from the contents of application and its Annexures it is seen that the basis of formation of the opinion by the application for the alleged transactions is very heavily on the

Forensic Audit Report. The applicant has not attached the copies of the books of accounts of the Corporate Debtor, abstract of the Bank Accounts were attached, no agreements were attached with the application. Very minimal evidence is attached with the application, it is also noticed that there are disputes between the Respondents in the present matter and for which criminal action is pending at various forums. The operative para for the transaction under challenge is: *"The Applicant has not attached the ledger account of the said related party along with any of its pleadings. The Respondent has merely stated in the reply that "to avoid banking transactions". The above methodology of account transfer was resorted to by the parties. In our view, this is clear violation, more particularly when entered between the related parties. Accordingly, we order that a sum of Rs. 2,00,50,000/- to be paid by R-1 to R-3 within a period of 15 days from the date of this Order"*.

14. Appellant contends that the finding of the Ld. AA does not hold that by the alleged transactions there has been violation of Section 43 of the Code; it simply states that in their opinion the methodology of account transfer with the related party is a clear violation.

15. Further the Appellant claims that the Impugned Order has not examined the transaction on the ingredients of Section 43 of the Code. It claims that for alleging the transactions under Section 43 of the Code following ingredients are to be met:

- a. There is transfer of property or an interest thereof of the CD
- b. for the benefit of a creditor on account of antecedent debt

- c. the transfer puts such creditor in a beneficial position in event of liquidation
- d. transfer is not made in ordinary course of business
- e. the preference is within as defined in 43 (4)

16. Appellant contends that this Appellate Tribunal in its judgement dated 06.03.2024 in the matter of **Md. Sadique Islam & Ors Vs. Niraj Kumar Agarwal & Ors.** held that there has to be application of mind to the ingredients of each transaction to come to conclusion that ingredients are satisfied and the transaction falls in the said category adverted to the given pleadings in the Application. [**2024 SCC OnLine NCLAT 331**].

17. Appellant also brings to our notice that the **Hon'ble Supreme Court** in the matter of **Anuj Jain Vs. Axis Bank Ltd & Ors 2020 SCC OnLine SC 237** have listed down all the ingredients required to be examined for holding a transaction as preferential and has also explained the Resolution Professional's duties.

18. Appellant also contends that the appointment of Transaction Auditor is for beyond Relevant Period. It claims that the Relevant Period is defined under Section 43 (4). The Transaction Auditor has been appointed for FY 2018-2019 to FY 2019-2020. The appointment of Transaction Auditor is bad in law as it surpassed the look back period. The CIRP commenced as on 01.02.2021 therefore the look back period could not have been extended beyond 01.02.2019.

19. Appellant brings to our notice that this Appellate Authority in a very recent judgement dated 25.07.2025 in **Greenfield Overseas Vs. Anil Goel, Company Appeal (AT) (Ins) No. 1088/2024 & Ors.** had framed inter alia the below question:

- a) What is the lookback period with reference to under value transaction under Section 45 of the Code.
- b) Whether Look Back period is to be counted with respect to CIRP date of period is to be treated as full financial year preceding the CIRP date.

20. Appellant claims that this Appellate Tribunal held that the Look back period in Section 43, 45 and 50 have been categorised into two categories i.e. transaction with related parties and transactions with unrelated parties and look back period has been defined as two year preceding the CIRP date for related parties. It was held that Look Back period is to be counted from insolvency commencement date and the Resolution Professional has to act within the prescribed time limit and cannot go further back.

21. Furthermore, this Appellate Tribunal in the order dated 14.10.2024 passed in the matter of **Company Appeal (AT) (Ins) No. 242 of 2024 Siddharth Bharatbhushan Jain & Ors Vs. SBI & Ors.** held that the look back period cannot be extended beyond two years.

22. Appellant contends that the transaction is beyond Relevant Period. The Respondent has placed on record a ledger entry of offsetting prepared by the Transaction Auditor placed at Page 308 and 333 of the Appeal and the date mentioned is 2018-2019. Having relied over the judgments of Hon'ble Supreme Court in **Anuj Jain, Greenfield and Siddharth Bharatbhushan**

Jain (supra) it is claimed that the transaction as alleged is beyond the look back period.

23. Appellant further claims that there is no beneficiary since there is no actual transfer of the property/interest of the Corporate Debtor. The Appellants were creditors of the Corporate Debtor for having sold the vegetables to it. A huge amount was payable to the Appellants by the Corporate Debtor which stood offset with the receivables from the related party. As the Appellant received no money from the Corporate Debtor-there has been no transfer of money. An entry made to clear the books and liabilities of the Corporate Debtor has in fact benefited the Corporate Debtor as the related party i.e. WSH Ent LLP did not file its claim with the Corporate Debtor. In the matter of **Ashish Niranjana Nanvati Vs. Reliance Tech Services Limited & Anr**, (Para 4.5 to 4.8) while relying on the judgement of Anuj Jain by SC, the AA held that squaring off the balances between the group entities is in ordinary course. If no amount has been paid in cash, there has been no loss to the Corporate Debtor.

24. Appellant also contends that there has been non-joinder of parties. If the Respondent had alleged the money receivable from the related party was squared off against the liability of the Corporate Debtor towards the Appellant, the Respondent failed to mention of any action taken to recover the money from the related party. Whereas, the Resolution Professional has failed to even identify the amount recoverable from WSH Ent. LLP. Without prejudice, if at all the offsetting of the balances has benefited the WSH Ent. LLP and the Appellants. Thus, the Application suffers from non-joinder of parties.

25. Appellant contends that there is no evidence except the entry prepared by the Transaction Auditor. The Adjudicating Authority has held that the Resolution Professional has failed to provide any evidences whatsoever in support of his contentions.

26. Appellant also claims that the transaction falls into ordinary course of business. Every related party transaction is not a preferential transaction. The transactions entered in ordinary course of business is excluded from the purview of Section 43. The **Hon'ble Supreme Court in Anuj Jain (supra)** at Para No. 28 and **Greefield (supra)** in Para 51 has explained the meaning of Ordinary Course of Business. The Corporate Debtor is trader in the vegetables and the WSH LLP focused on the business of transportation of vegetables and fruits. The transactions between the parties are carried out in ordinary course of business.

Submissions on behalf of the Respondent No. 1

27. It is an undisputed and admitted position that Appellant No. 1, Mr Atul Babulal Prajapati, was at the relevant time:

- Director and Key Managerial Personnel of the Corporate Debtor, WSH Private Limited;
- exercising complete control over Wholesale Hub LLP; and
- the sole proprietor of M/s Atul Babulal Prajapati.

28. It is further undisputed that Wholesale Hub LLP was indebted to the Corporate Debtor, and amounts were due and payable by Wholesale Hub LLP to WSH Private Limited. It is also undisputed that instead of such amounts

being credited into the bank account of the Corporate Debtor, the same were diverted and adjusted through accounting entries and paid directly to the Appellant's proprietorship concern, as borne out from the forensic audit. The Appellants themselves admitted in an affidavit filed before the Learned Adjudicating Authority that such diversion was done merely to "avoid unnecessary/multiple banking transactions". This admission itself proves that the diversion was deliberate and without corporate authority.

29. There was no board resolution, no agreement, no MOU authorising the diversion of Corporate Debtor's receivables to the Appellant's personal proprietorship concern. It is pertinent to note that the appellant had merely mentioned regarding the attachment of a signed agreement; however, did not place the agreement in the records either before the Learned Adjudicating Authority nor before the Hon'ble Appellate Tribunal.

30. Respondent No.1 – RP brings to our notice that the Corporate Insolvency Resolution Process of the Corporate Debtor commenced on 01.02.2021. Clarifying the exact date of the impugned square-off transaction, Appellant brings to our notice that the ledger entries are maintained by the Appellant as well as by Wholesale Hub Enterprise LLP, clearly recording that the said amount through alleged entries was settled on 30.06.2019. The Corporate Debtor had correspondingly removed the said entries from its balance sheet for the financial year 2019–2020, which entries were reflected in the balance sheet for the preceding Financial Year 2018–2019. It is submitted that the said facts had not been disputed by the Appellant. Upon verification of the ledger accounts, books of records of the Corporate Debtor,

and reconfirmation by the Forensic Auditor, the square-off/ offsetting transaction of Rs. 2,00,50,141/- was effected on 30.06.2019. The impugned transaction, being well within two years prior to the insolvency commencement date, squarely falls within the statutory look-back period applicable to related party transactions. The Appellants' plea of limitation is therefore factually incorrect and misconceived. The transaction made by the Appellant falls under the definition of related party as provided under Section 5(24) of the Code. The transaction falls squarely within the ambit of "related party" under Section 5(24) IBC under multiple clauses of Section 5(24):

- s. 5(24)(a) & (b): being a Director/ Key Managerial Personnel of the Corporate Debtor;
- s. 5(24)(c): Whole Hub LLP being an LLP controlled by him;
- s. 5(24)(m)(iii): interchange of managerial personnel and overlapping control;
- s. 5(24)(h): Corporate Debtor accustomed to act on his directions.

Thus, Wholesale Hub LLP and the Appellant's proprietorship are related parties of the Corporate Debtor, and any transaction in their favour is subject to stricter scrutiny.

31. Furthermore, Section 43(2) IBC defines a preferential transaction as which reads are below:

"(2) A corporate debtor shall be deemed to have given a preference if:

(a) there is a transfer of property or interest thereof for the benefit of a creditor, surety or guarantor, on account of an antecedent financial or operational debt no liability; and (b) the

transfer has the effect of putting such creditor, surety or guarantor in a position more beneficial than it would have been in the event of distribution of assets under Section 53."

The facts of the present case satisfy both limbs:

- Section 43(2)(a): The diversion of receivables from Whole sale Hub LLP, a related party debtor of the Corporate Debtor, to the Appellant's proprietorship concern was in respect of an antecedent liability of Whole sale Hub LLP.
- Section 43(2)(b): Such diversion extinguished Whole sale Hub LLP's liability to the Corporate Debtor and simultaneously benefited the Appellant personally, thereby placing the Appellant/related party in a position more beneficial than other creditors of the corporate debtor.

32. Furthermore, in the present case, the receivable of the Corporate Debtor from Wholesale Hub LLP constituted a valuable property interest. By squaring off the said receivable through accounting entries, the Corporate Debtor's right to recover money stood extinguished.

33. Furthermore, a transfer under Section 43 is not confined to the physical movement of funds. The extinguishment, relinquishment, or reduction of an enforceable receivable through accounting entries itself amounts to a transfer of property or an interest therein within the meaning of Section 43(2)(a). Such transfer was clearly in respect of an antecedent liability owed to the Appellant and/or his controlled entities. Further, the said transfer had the effect of:

- satisfying the Appellant's dues;
- reducing the asset pool of the Corporate Debtor; and

- placing the Appellant in a more beneficial position than other creditors.

The transaction therefore squarely satisfies both limbs of Section 43(2)(a) and (b).

34. Importantly, this wrongful diversion reduced the assets available for distribution under Section 53 IBC, thereby prejudicing the interests of all other creditors and hence, the Learned Adjudicating Authority, therefore, rightly held the transaction to be a preferential transaction under Section 43 IBC.

35. The transaction in question was not made in the ordinary course of business as:

- it involved related parties under common control;
- it bypassed the Corporate Debtor's banking channels;
- it lacked any corporate authorisation; and
- it resulted in the extinguishment of recoverable receivables.

36. The impugned transaction does not qualify as one undertaken in the ordinary course of business. The records of the Corporate Debtor reflect that, at the relevant time, there were around 14 outstanding creditors. As said, around 6 have filed their claims, aggregating to an amount exceeding approx. Rs. 1.5 Crores. The said claims remained outstanding when the impugned set-off adjustment was effected. Despite the existence of multiple unpaid creditors, the receivable of the Corporate Debtor was adjusted through accounting entries in favour of the Appellant alone. The effect of such

adjustment was that the Appellant's dues stood settled, while the claims of other creditors continued to remain unpaid. Such selective adjustment, undertaken in the backdrop of outstanding creditor claims, does not reflect a routine or ordinary business transaction and had the effect of placing the Appellant in a more beneficial position in comparison to other creditors, thereby attracting the provisions of Section 43 of the Code. Furthermore, the diversion was carried out without authority, purely for the Appellant's benefit and to the detriment of the creditors and stakeholders of the Corporate Debtor. Such conduct also attracts Sections 66(1) and 66(2) of the Code. The forensic audit conclusively establishes that the Appellant orchestrated and benefited from the diversion.

37. Under Insolvency Jurisprudence, the liability arises not merely from direct receipt of funds but also from control and beneficial interest over the recipient entity. A person cannot escape liability simply by using an entity under his control as a conduit to divert the funds. It has been clarified by the judgments of the Hon'ble Apex Court and Appellate Tribunal that when transactions benefit a related party entity, and the person exercising control over such an entity had facilitated the transactions, liability under Sections 43 and 66 of the Code squarely arises. Accordingly, in the present case, where the funds were routed directly to the appellant's own proprietorship firm, the appellant's liability is beyond any doubt.

38. Where a related party entity receives a benefit in a transaction orchestrated by an individual in control of both the transferor and transferee, the benefit flowing to the related party is deemed to accrue to the controlling

individual as well. Indirect benefit through a related party suffices to attract the provisions of sections 43 and 66 of the Code. Accordingly, the liability fastened upon the appellants by the Learned adjudicating authority is fully justified in law and fact.

39. The diversion was carried out without any corporate authorisation, purely for the Appellant's benefit, detrimental to the interest of the creditor and stakeholder of the corporate debtor, and hence, such acts amount to fraudulent trading under Section 66(1) and wrongful trading under Section 66(2) of the Code.

40. The forensic audit conclusively establishes that the Appellant orchestrated and benefited from the diversion, making him personally liable.

41. The ground of the Appellant is that the order is based only on ledgers, but the order is based on forensic audit, banking transactions, and the Appellant's own admissions.

42. The another ground of the appellant is that the Wholesale Hub LLP was not made a party. Such a ground is totally misconceived, as appellant No. 1 was the controlling mind of Whole Sale Hub LLP, sufficiently representing its interest. Non-joinder does not defeat adjudication.

43. Another ground of the appellant is that no benefit accrued to the Appellant personally. However, the payments were diverted directly to his proprietorship. Even otherwise, indirect benefit through a related party is

recognised under the code. Therefore, the contention made by the appellant that they are not benefited is totally misconceived and baseless.

44. The Appellant raises another argument, that the transaction reduced the losses of the Corporate Debtor. Such a ground is baseless as the transaction is made to a related party; in other words, it can be said that the appellant had routed the transaction to benefit himself only, therefore, the diversion extinguished recoverable receivables and prejudiced other creditors. Thus, the transaction falls under Section 43(2)(b).

45. The ground of the appellant is that the proof beyond a reasonable doubt is required. IBC proceedings are civil in nature. The correct standard is preponderance of probabilities. Hon'ble Supreme Court in the case of **Anuj Jain v/s Axi Bank Ltd (supra)** was pleased to observe that Section 43 operates as a legal fiction, requiring that the transactions meeting the stipulated conditions be treated as preferential, irrespective of whether they were intended or anticipated to be so.

46. The impugned transaction was undertaken within the statutory look-back period, involved related parties under common control, resulted in transfer of property and extinguishment of valuable receivables of the Corporate Debtor, and conferred a preferential and unjust benefit upon the Appellant to the detriment of the general body of creditors. Adjudicating Authority has correctly appreciated the facts and law, and no perversity, illegality, or jurisdictional error is made out, warranting interference by this

Appellate Tribunal. The Appeal is therefore devoid of merit and deserves to be dismissed.

47. The Respondent herein prays to rely upon the following judgments:

- a) **Anuj Jain, IRP for Jaypee Infratech Limited v.s Axis Bank Limited & Ors** reported in (2020) 8 Supreme Court Case 401.
- b) **GVR Consulting Services Pvt Ltd & Ors v/s Pooka Bahry & Ors Company appeal (AT) (Insolvency) No. 405 of 2022** with Company appeal (AT) 369 of 2022 with Company appeal (AT) 412 of 2022 dated 24.04.2023 by Hon'ble NCLAT, New Delhi.
- c) **Jagish Kumar Praulkar v/s Vinod Agarwal & Ors Company appeal (AT) 483 of 2022** order dated 16.02.2023 by Hon'ble NCLAT, New Delhi.
- d) Kushal Traders proprietorship represented by its proprietor, represented by its proprietor Mr. Sunil Trilokchand Jain v/s T.V Balasubramanian, RP of Corporate debtor Sholingur Textiles Limited, reported in **2021 SCC Online NCLAT 4039**.

Appraisal

48. We have heard both sides and also perused the material placed on record.

["Related party" under Section 5\(24\) of the Code](#)

49. Briefly speaking, this is an appeal wherein Shri Stul Babulal Prajapati, who is member of suspended director and promoter of WSH Pvt. Ltd. and Shri Pinal Prajapati, promoter of WSH Pvt. Ltd and the Appellants assail the impugned order dated 01.10.2024 in which the Adjudicating Authority has directed the Appellants along with Respondent No. 3 i.e. Zen Agrifoods LLP to

pay a sum of Rs. 2,00,50,000/- while declaring the transaction as preferential transaction.

50. We find that the Appellant No. 1, Mr Atul Babulal Prajapati, was the Director and KMP of the Corporate Debtor-WSH Private Limited and was exercising complete control over Wholesale Hub LLP; and was also the sole proprietor of M/s Atul Babulal Prajapati. The respondent brings to our notice that the appellant is the key person in three different entities and he is all in all and he is definitely covered under the definition of related parties. Further he also gets benefited by such book entries. Thus, we find that Wholesale Hub LLP and the Appellant's proprietorship are related parties of the Corporate Debtor, and any transaction in their favour is subject to stricter scrutiny. Thus, the transaction made by the Appellant falls under the definition of related party as provided under Section 5(24) of the Code. The transaction falls squarely within the ambit of "related party" under Section 5(24) IBC under multiple clauses of Section 5(24):

- s. 5(24)(a) & (b): being a Director/ Key Managerial Personnel of the Corporate Debtor;
- s. 5(24)(c): Whole Hub LLP being an LLP controlled by him;
- s. 5(24)(m)(iii): interchange of managerial personnel and overlapping control;
- s. 5(24)(h): Corporate Debtor accustomed to act on his directions.

Transaction within look-back period per section 43¹ of the Code

51. It is also undisputed that Wholesale Hub LLP was indebted to the Corporate Debtor, and amounts were due and payable by Wholesale Hub LLP to WSH Private Limited. Instead of such amounts being credited into the bank account of the Corporate Debtor, the same were diverted and adjusted through accounting entries and paid directly to the Appellant's proprietorship

¹ **Section 43. Preferential transactions and relevant time.**

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

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

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers—

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if—

(a) it is given to a **related party** (other than by reason only of being an employee), during the period of **two years** preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

concern, as borne out from the forensic audit. The Appellants admit that such diversion was done merely to "avoid unnecessary/multiple banking transactions".

52. It is claimed by the appellant that the transaction auditor under Section 43 (4) was appointed for financial year 2018 – 2019 to 2019 – 2020, and that this appointment is bad in law as it surpassed the look-back period. The CIRP commenced on 01.02.2021; therefore, the look-back period cannot be extended beyond 01.02.2019. Thus, the transaction is beyond the relevant period. On the other hand, the respondent has brought to our notice that the transaction was found to be within the look-back period and is based on the Forensic Audit Report, which is placed on the record. The Forensic Audit Report is placed at page No. 282 of the appeal paper book, and the Forensic Auditor has clearly brought out in para 5.1.1 that:

“5.1.1 Offsetting of payable and receivable balances without assignment agreement: During our review period, we have observed that the corporate debtors was setting of receivable/payable balances of one party against payable/receivable balances of other party without routing transactions through the Company bank accounts. The aforementioned setoffs circumvent the banking covenant of routing transactions through designated bank account of the financial creditor. The offsetting of such transactions have been made with the related parties. The total amount of transactions done by the Corporate Debtor in the above manner amounted to 205.62 Lakhs...”

53. Furthermore, para 6.13 at page No. 301 also has to be noted in this context:

“...6.1.3 Purchase of Vegetables and Fruits from M/s Atul Babulal Prajapati (Proprietary Firm): All purchase of vegetables and fruits etc. were purchased from related party i.e. proprietary firm of one of the directors Mr. Atul Prajapati without any agreement and without any resolution passed leading to related party transaction whether at arm's length price or not. On verification of books of accounts, we have noted that total purchase made from M/s Atul Babulal Prajapati was for Rs. 1823.96 Lakh and fund paid for Rs. 1661.22 lakh. The amount standing to the credit of the account was off-set against the balance of Wholesale HUB Enterprise LLP for Rs. 200.66 lakh. Thus, it clearly shows the preferential payment to creditors related to the company whether at arm's length price or not is one of the questions due to non-availability of the clear-cut agreement with the supplier....”

54. We note that the insolvency commenced on 01.02.2021 in this case. The transactions that have been offset out at page No. 308 at Annexure – B are as follows:

*“Annexure – B
Offsetting transactions.*

Period	Party Name	Debit	Party Name	Credit	Observation
2018-19	Wholesale Hub Ent LLP	2,00,50141.00	M/s Atul Babulal Prajapati	2,00,50141.00	Off-Setting Entry
	<i>Total</i>	2,00,50141.00	<i>Total</i>	2,00,50141.00	

55. This transaction relates to 30.06.2019 and very much within the relevant time period i.e. during the period two years preceding the insolvency commencement date if it is given to a related party. This has been confirmed by respondent in its additional affidavit dated 9th February 2026 in which it brings to our notice that this is noted in the books of accounts of WSH Private Limited CD on 30th June 2019. The additional affidavit clearly demonstrates

from the ledger accounts that a) there is a debit entry of Rs. 2,00,50,141/- in the account of WSH Pvt. Ltd. to Atul Babulal Prajapati; and b) a corresponding credit entry of Rs. 2,00,50,141/- in the account of WSH Pvt. Ltd. to Wholesale Hub Enterprise LLP. Further, the Corporate Debtor had correspondingly removed the said entries from its balance sheet for the financial year 2019–2020, which entries were reflected in the balance sheet for the preceding Financial Year 2018–2019.

56. We thus find that since the impugned square-off transaction was executed on 30th June, 2019, the same clearly falls within two years prior to 01.02.2021, and is therefore fully covered by the statutory framework governing avoidance of preferential transactions.

57. Appellant has placed its reliance on **Anuj Jain, Greenfield and Siddharth Bharatbhushan Jain (supra)** and is claimed that the transaction as alleged is beyond the look back period. But as per the facts and circumstances as noted above, we do not find that the transaction is beyond the look back as provided under Section 43 and these judgments are of no assistance to the appellant.

58. We further observe that such accounting adjustments without routing funds through the Corporate Debtor's bank account, confers undue benefit upon related parties and correspondingly diminishing the asset pool of the Corporate Debtor, to the prejudice of its creditors. We note that if Rs 2,00,50,141 is restored to the account of the CD, the same will directly augment the pool of the CD and the creditors of the CD shall proportionately

benefit in accordance with the distribution mechanism prescribed under the Code.

59. The records also show that at the relevant time, there were 14 outstanding creditors, and around six had filed their claims, which amounted to approximately 1.5 Crores. The said claims remained outstanding when the impugned set of adjustment was affected. Such a transaction has put the appellant in a more beneficial position in comparison to other creditors, thereby attracting the provisions of Section 43 of the Code. We find that such diversion was carried out without authority, purely for the appellant's benefit and to the detriment of the creditors and stakeholders of the CD. For these reasons, such conduct also attracts Section 66(1) and Section 66(2) of the Code.

Satisfaction of section 43(2) for preferential transactions

60. We find that the facts of the present case satisfy both limbs of Section 43(2) for preferential transactions i.e.:

- Section 43(2)(a): The diversion of receivables from Whole sale Hub LLP, a related party debtor of the Corporate Debtor, to the Appellant's proprietorship concern was in respect of an antecedent liability of Whole sale Hub LLP.

Section 43(2)(b): Such diversion extinguished Whole sale Hub LLP's liability to the Corporate Debtor and simultaneously benefited the Appellant personally, thereby placing the Appellant/related party in a position more beneficial than other creditors of the corporate debtor.

61. We note that a transfer under Section 43 is not confined to the physical movement of funds. The extinguishment, relinquishment, or reduction of an enforceable receivable through accounting entries itself amounts to a transfer of property or an interest therein within the meaning of Section 43(2)(a). Such transfer was clearly in respect of an antecedent liability owed to the Appellant and/or his controlled entities. Further, the said transfer had the effect of:

- satisfying the Appellant's dues;
- reducing the asset pool of the Corporate Debtor; and
- placing the Appellant in a more beneficial position than other creditors.

The transaction therefore squarely satisfies both limbs of Section 43(2)(a) and (b).

No actual transfer of the property or interest of the Corporate Debtor

62. It is also argued by the appellant that there is no actual transfer of the property or interest of the Corporate Debtor (CD). We note that the transfer under section 43 is not confined to the physical movement of the funds. Extinguishment, relinquishment, or reduction of an enforceable receivable through accounting entries also amounts to a property or an interest therein within the meaning of section 43(2)(a). In this case, there is a clear antecedent liability of the appellant and he was controlling the entities. Further, the said transfer had the effect of satisfying the appellant's dues and on the other hand, reducing the asset pool of the CD. This had put the appellant in a more beneficial position than other creditors. This wrongful diversion reduced the

assets available for distribution under Section 53 of the IBC. Therefore, such an argument of the appellant is not sustainable.

Transaction in the ordinary course of business

63. The appellant also claims that the transaction was made in the ordinary course of business and, for that reason, it should not be included under Section 43. It further claims that every related party transaction is not a preferential transaction. For this purpose, it relies on the judgment of the Hon'ble Supreme Court in the matter of **Anuj Jain and Greenfield**, which explains the concept of the ordinary course of business. This argument has been strongly rebutted by the respondent. It has brought to our notice that this transaction involved related parties under common control. Further, this transaction bypassed the CD's banking channels and this transaction also lacked any corporate authorization. It also resulted in the extinguishment of the recoverable receivables of the CD. For these reasons, the impugned transaction does not qualify as one undertaken in the ordinary course of business. Further the judgment of the Hon'ble Supreme Court in the matter of **Anuj Jain and Greenfield**, do not assist the Appellant in any way and rather explains the concept of the ordinary course of business.

64. We also note that the transaction in question was not made in the ordinary course of business as:

- it involved related parties under common control;
- it bypassed the Corporate Debtor's banking channels;
- it lacked any corporate authorisation; and
- it resulted in the extinguishment of recoverable receivables.

Thus the impugned transaction does not qualify as one undertaken in the ordinary course of business.

65. Furthermore, the records of the Corporate Debtor reflect that, at the relevant time, there were around 14 outstanding creditors. Around 6 have filed their claims, aggregating to an amount exceeding approx.. Rs. 1.5 Crores. The said claims remained outstanding when the impugned set-off adjustment was affected. Despite the existence of multiple unpaid creditors, the receivable of the Corporate Debtor was adjusted through accounting entries in favour of the Appellant alone. The effect of such adjustment was that the Appellant's dues stood settled, while the claims of other creditors continued to remain unpaid. Such selective adjustment, undertaken in the backdrop of outstanding creditor claims, does not reflect a routine or ordinary business transaction and had the effect of placing the Appellant in a more beneficial position in comparison to other creditors, thereby attracting the provisions of Section 43 of the Code. Furthermore, the diversion was carried out without authority, purely for the Appellant's benefit and to the detriment of the creditors and stakeholders of the Corporate Debtor. Such conduct also attracts Sections 66(1) and 66(2) of the Code. The forensic audit conclusively establishes that the Appellant orchestrated and benefited from the diversion.

Conclusions

66. We thus can conclude that basis verification of the ledger accounts, books of records of the Corporate Debtor, and reconfirmation by the Forensic Auditor, the square-off/ offsetting transaction of Rs. 2,00,50,141/- was affected on 30.06.2019. Wholesale Hub LLP and the Appellant's

proprietorship are related parties of the Corporate Debtor. The impugned transaction, being well within two years prior to the insolvency commencement date, squarely falls within the statutory look-back period applicable to related party transactions. Thus, we find that the Appellants' plea of limitation is therefore factually incorrect. We also conclude that the receivable of the Corporate Debtor from Wholesale Hub LLP constituted a valuable property interest. By squaring off the said receivable through accounting entries, the Corporate Debtor's right to recover money stood extinguished. Furthermore, this wrongful diversion reduced the assets available for distribution under Section 53 IBC, thereby prejudicing the interests of all other creditors and hence, the transaction is a preferential transaction under Section 43 IBC. We therefore do not find any infirmity in the order of the adjudicating authority.

Order

67. Bases above analysis, the appeal is dismissed. All IAs are disposed of.

No orders as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

Indevar Pandey
Member (Technical)

New Delhi.
March 25, 2026.

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