



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

IA (I.B.C.) No. 22/MB/2025 in CP (IB) No.1046/MB/2023

[Under Section 43 of the Insolvency and Bankruptcy Code read with Rule 11 of the National Company Law Tribunal Rules, 2016]

MR. RAMPRASAD VISHVANATH GUPTA

Building No. 58, Flat No. 1305
Saikripa CHS Ltd., Nehru Nagar
Kurla (East), Mumbai – 400024.

...Applicant

V/s

- 1. MR. DINESH KUMAR DEORA**
RESOLUTION PROFESSIONAL OF
M/S SNEHANJALI AND S.B. DEVELOPERS PRIVATE LIMITED
205, 2nd Floor, Nadiawala Market
Near S.M. Lal Poddar Road
Malad (East), Mumbai – 400097.
- 2. KOTAK MAHINDRA INVESTMENTS LTD.**
27 BKC, C-27, G-BLOCK
Bandra Kurla Complex
Bandra (East), Mumbai – 400051.
- 3. MR. MANISH LALJI DAWDA**
AUTHORIZED REPRESENTATIVE OF HOMEBUYERS
205 A, 2nd Floor, Hiren Light Industrial Estate
Behind Johson & Johnson, Moghul Land
Bhagoji Kheer Marg, Mahim (West), Mumbai – 400016.
- 4. MR. JIA ZHUOWEN WEI**
198, Ground Floor
Rajpipla, Opp. Standard Chartered Bank
Linking Road, Santacruz (West), Mumbai – 400054.
- 5. MR. SHEKHAR VISHWANATHAN**
198, Ground Floor
Rajpipla, Opp. Standard Chartered Bank
Linking Road, Santacruz (West), Mumbai – 400054.
- 6. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA**
7th Floor, Mayur Bhawan, Shankar Market
Connaught Circus, New Delhi – 110001.

...Respondents

IN THE MATTER OF:

MR. SANTOSH ANANDA SHETTY AND ORS.

...Financial Creditor



V/s

M/S SNEHANJALI AND S.B. DEVELOPERS

PRIVATE LIMITED

...Corporate Debtor

Pronounced: 24.01.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant : Adv. Maulik Chokshi i/b Adv. Amar Khanna

For Respondents: Adv. Niyati Merchant i/b MDP Legal

Adv. Ishwar Nankani i/b Nankani & Associates

(Respondent No. 2)

Adv. Sanaya Patel & Adv. Richa Phulwani i/b Indus Law

(Respondent No. 5)

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This Interlocutory Application bearing I.A. (I.B.C.) No.22/MB/2025 has been filed in CP (IB) No.1046/MB/2023 (Main Application) on 23.12.2024 by Mr. Ramprasad Vishwanath Gupta, the Applicant under Section 43 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules) seeking declaration of certain transactions undertaken by M/s Snehanjali and S.B. Developers Private Limited, the Corporate Debtor in favour of Kotak Mahindra



Investments Ltd. (Respondent No. 2), as preferential transactions under Section 43 of the Code as they took place within the look-back period specified therein.

- 1.2 The Corporate Debtor was admitted to Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") in C.P. (IB) No.1046/MB/2023 under Section 7 of the IBC *vide* order of this Adjudicating Authority dated 07.03.2024. Mr. Dinesh Kumar Deora, Respondent No.1 was appointed as the IRP and later his appointment as RP was confirmed for conducting CIRP.
- 1.3 The Applicant in the present IA seeks relief by way of (a) a declaration that the impugned transactions fall within the ambit of Section 43 of the Code; (b) a direction to Respondent No.2 to refund the amounts received to the Corporate Debtor's CIRP account; (c) replacement of Respondent No.1 as the Resolution Professional with another suitable person; (d) imposition of costs on Respondent No.1 and (e) reference of misconduct of Respondent No.1 to the IBBI.
- 1.4 This Bench *vide* order dated 03.01.2025 removed Respondent No.3 i.e., the Authorised Representative (AR) of homebuyers and Respondent No. 6 i.e., IBBI from the party array as they were not deemed necessary parties for adjudicating the present IA.
- 1.5 Respondent No.2 is Kotak Mahindra Investments Limited, an NBFC engaged in financing sector with whom the Corporate Debtor through its Authorised Representative (Respondent No.4) had settled the loan by making an upfront payment of approximately Rs.50 Crore from the account of the Corporate Debtor. Respondent Nos.4 and 5 are Directors of the Suspended Board of Directors of the Corporate Debtor.



2. AVERMENTS OF APPLICANT

- 2.1 During the year 2023, the construction on the project site was completely stopped by the Corporate Debtor. The Corporate Debtor had availed a loan from Respondent No.2 and from the hearsay, the Applicant came to know that Respondent No.2 had initiated recovery proceedings against the Corporate Debtor. Instead of applying the proceeds received from the homebuyers to complete the project, the Corporate Debtor had started clearing the loan of Respondent No.2. Thus, the Corporate Debtor, while facing financial difficulties, engaged in preferential treatment by prioritising repayment of a loan amounting to Rs.90,00,00,000/- to Respondent No.2, a secured financial creditor. This was allegedly done at the expense of other stakeholders, including the homebuyers, who represent a substantial portion of the financial creditors in the ongoing CIRP of the Corporate Debtor. Such a payment violates the principles of equity and neutrality embedded in the insolvency framework.
- 2.2 The aforesaid payment was made during the “look-back period” as defined under Section 43(4) of the Code. During this period, any transaction favouring a specific creditor to the detriment of other creditors is presumed to be preferential unless proven otherwise. Respondent No.2 was thus placed in a more advantageous position than it would have been under the equitable distribution mechanism of the CIRP.
- 2.3 The repayment to Respondent No.2 not only violates Section 43 but also undermines the statutory waterfall mechanism prescribed under Section 53 of the Code. This provision mandates that payments be made in a specified order of priority, ensuring equitable treatment of creditors. By diverting substantial funds to Respondent No.2, the Corporate Debtor allegedly disrupted this statutory



framework, resulting in unfair treatment of homebuyers and other financial creditors.

- 2.4 The repayment was funded by diverting amounts collected from homebuyers, which were intended for the completion of the stalled real estate project. The misuse of such funds has caused significant financial loss and emotional distress to hundreds of homebuyers who have invested their life savings in the project. This diversion of funds has delayed the completion of the project, compounding the hardship faced by the homebuyers.
- 2.5 The RP/Respondent No.1 failed to exercise due diligence and fulfil the statutory duties mandated under Sections 18 and 25 of the Code. It was the responsibility of the RP to review all financial transactions conducted by the Corporate Debtor during the look-back period and identify any preferential, undervalued, or fraudulent transactions. By failing to take proactive measures, including filing an application under Section 43 to avoid the transactions, the RP/Respondent No.1 allegedly acted negligently.
- 2.6 The RP/Respondent No.1 acted in collusion with Respondent No.2 to safeguard its interests while disregarding the rights of other creditors, particularly the homebuyers. Such collusion not only breaches the fiduciary duties of the RP/Respondent No.1 but also undermines the credibility of the CIRP. This constitutes a serious lapse, warranting immediate removal of the RP/Respondent No.1 from his position.
- 2.7 As a financial creditor representing the homebuyers' class, the Applicant has the *locus standi* to approach this Tribunal under Section 43 of the Code. In the absence of proactive measures by the RP/Respondent No.1, it is imperative for an affected creditor to intervene and seek redressal from the Tribunal. The Applicant



emphasises that the objective of this Application is to protect the collective interests of all stakeholders, including homebuyers, who have suffered due to the alleged misconduct of the Respondents.

- 2.8 Respondent No.1, in his capacity as the Resolution Professional (RP), failed to fulfil his statutory obligations under the Code. It was the duty of the RP/Respondent No.1 to scrutinise the financial transactions of the Corporate Debtor from the last two years preceding the initiation of CIRP to identify and address any irregularities, including preferential or undervalued transactions.

3. CONTENTIONS OF RESPONDENTS

Respondent No. 1 (Resolution Professional)

- 3.1 The RP/Respondent No.1 denies that the transactions in question qualify as preferential under Section 43 of the Code. It is submitted that the payments made to Respondent No.2, a secured financial creditor, were executed in the ordinary course of business and do not confer any undue advantage. The RP/Respondent No.1 emphasises that preferential transactions under Section 43 require two conditions to be satisfied: first, the transfer must be for the benefit of a creditor for an antecedent financial or operational debt; and second, such transfer must place the creditor in a beneficial position in comparison to the statutory waterfall mechanism under Section 53. The RP/Respondent No.1 argues that neither condition is met in this case.
- 3.2 The repayment of the loan to Respondent No.2 was funded by M/s Hive Carbon-Zero Developers Pvt. Ltd., an external entity associated with the Corporate Debtor. It is categorically stated that no funds collected from homebuyers were utilised for this repayment. The RP/Respondent No.1 presents evidence to show that the



repayment was made through an infusion of funds from the holding company of the Corporate Debtor, specifically to clear secured obligations.

- 3.3 The payments made to Respondent No.2 are consistent with the waterfall mechanism under Section 53 of the Code, which prioritises payments to secured creditors. As a secured creditor, Respondent No.2 holds a superior claim over unsecured creditors and homebuyers. The repayment of loan has ultimately benefitted the Corporate Debtor by releasing the mortgage on its assets, thereby increasing the value available for resolution.
- 3.4 The RP/Respondent No.1 challenges the maintainability of the present Application, arguing that under Section 43(1) of the Code, only the RP or the Liquidator has the statutory authority to file an application seeking avoidance of preferential transactions. The Applicant, as an individual financial creditor, lacks the *locus standi* to independently approach the Tribunal on this issue.
- 3.5 The RP highlights that multiple applications, including IA Nos. 4129 and 4841 of 2024, have already been filed under Sections 43 and 66 of the Code to address undervalued and fraudulent transactions. It is argued that these applications comprehensively address all concerns related to financial transactions conducted during the look-back period and no further action is warranted.
- 3.6 The RP/Respondent No.1 categorically denies all allegations of collusion or misconduct. All actions taken during the CIRP were in strict compliance with the provisions of the Code and were aimed at maximising the value of the Corporate Debtor's assets. The Applicant's allegations are thus speculative, baseless and lack evidentiary support.



Respondent No. 2 (Kotak Mahindra Investments Ltd.)

- 3.7 Respondent No.2 has relied on the contents of the Affidavit in Reply dated 14.01.2025 filed by the RP/Respondent No.1 to the present Application.
- 3.8 The repayment of loan was a legitimate financial transaction executed prior to the initiation of the CIRP. The repayment was made in accordance with contractual obligations and benefitted the Corporate Debtor by releasing the mortgage on its assets. This, in turn, enhanced the overall value of the Corporate Debtor's estate, ultimately serving the interests of all stakeholders, including the homebuyers.
- 3.9 The transaction involving Respondent No.2 is covered under the statutory exceptions in Section 43(3)(a) of the Code, which exempts transactions made in the ordinary course of business from being declared preferential. It is argued that the repayment of a secured debt constitutes a routine business activity and cannot be classified as a preferential transaction.
- 3.10 The Applicant has failed to provide any credible evidence to substantiate the claim that funds collected from the homebuyers were utilised for the repayment. It is emphasised that the repayment was made using funds infused by Hive Carbon-Zero Developers Pvt. Ltd., and no amounts from the Corporate Debtor's operational cash flow or homebuyers' contributions were involved.
- 3.11 The decisions of the Committee of Creditors (CoC), which includes homebuyers as a class, are binding on all individual members of the CoC. The Applicant, as an individual homebuyer, lacks the authority to challenge transactions approved by the CoC or independently seek relief from the Tribunal.
- 3.12 The Applicant is engaging in forum shopping by filing repetitive complaints with different authorities, including the Economic Offences Wing (EOW). It is argued



that the present Application is another attempt by the Applicant to delay the resolution process and disrupt the CIRP.

3.13 Finally, Respondent No.2 submits that the Applicant's claims are rooted in hearsay, speculation and conjectures with no substantive basis in fact or law. It is thus submitted that the Application is frivolous and devoid of merit, warranting its dismissal with costs.

4. ANALYSIS AND FINDINGS

4.1 We have perused the pleadings and the documents available on record and heard both the Ld. Counsel for the Applicant and the Respondents.

4.2 It is noticed from the record that both Respondent No.1 and Respondent No.2 have challenged the maintainability of the present Application on the ground that under Section 43(1) of the Code, only the RP or the Liquidator has the statutory authority to file an Application before the Adjudicating Authority for avoidance of preferential transactions and as such, the Applicant has no *locus standi* to file the present Application.

4.3 In this connection, it is observed that Section 43 of the Code explicitly empowers only the RP or the Liquidator to file applications for the avoidance of preferential transactions, as rightly contended by Respondent Nos. 1 and 2. Therefore, the Applicant, in his individual capacity as a homebuyer, lacks the requisite legal standing to initiate these proceedings and hence, the present Application is liable to be dismissed.

4.4 We are of the considered view that the Applicant has filed the present Application in a frivolous manner without having any legal authority or any independent or plausible cause of action to do so under Section 43 of the Code. A plain reading of Section 43 of the Code makes it amply clear that an application under that Section



can only be filed by an Insolvency Professional while acting as a Resolution Professional or Liquidator and none else. The Applicant seems to be an educated person who argued his case in person on the first date of hearing. There is absolutely no confusion in the language employed by the legislature in Section 43. Further, he has approached this tribunal based on hearsay information and without personal verification of the allegations he levelled against the professionals appointed by the Bench and also against third parties. In view of the above, we are of the considered of the considered opinion that the Tribunal has a duty to protect and preserve judicial sanctity and any attempt of vexatious litigation needs to be discouraged. This Application is filed by the Applicant only for the purpose of causing hindrance to the due process of law under the Code and the Regulations, having fully known the consequences of his actions. The Applicant is fully aware that the Resolution Plan is under consideration of this Tribunal for adjudication. The instant Application has been filed at this very crucial juncture of CIRP by the Applicant for ulterior motives. The Applicant by filing this application has not only wasted precious time of this Tribunal but also tried to delay and derail the smooth conduct of CIRP including approval of Resolution Plan. Therefore, we deem it appropriate to impose costs of Rs.50,000/- (Fifty Thousand Rupees only) on the Applicant to be paid to the Prime Minister's National Relief Fund within 10 days from the date of this Order.

ORDER

In view of the foregoing discussions, we find that the present Application filed under Section 43 of the Code by Mr. Ramprasad Vishvanath Gupta fails and the prayers are **rejected**. However, I.A. (I.B.C.) No.22/MB/2025 shall be disposed of on the Applicant providing evidence as to payment of costs as ordered.



List on **28.01.2025** for **further consideration**.

The designated Registrar is directed to forward electronic version of this Order to the Insolvency and Bankruptcy Board of India (IBBI) for information and record.

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

//Alka Siwach//

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT VI

Item No. 1.

IA(I.B.C)/ 22(MB)2025 IA(I.B.C)/ 192(MB)2025 IA(I.B.C)/ 269(MB)2025
IN C.P. (IB)/1046(MB)2023

CORAM:

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **24.01.2025**

NAME OF THE PARTIES: **Mr. Santosh Shetty**

Vs

Snehanjali And S.B. Developers Private
limited.

For Petitioner In IA 192/ 2025 : Adv. Sanaya Patel & Richa Phulwani
i/b Induslaw

For HDFC Bank Ltd (Respondent No. 2) In IA 22/ 2025 : Adv. Ishwar
Nankani a/w Karan Parmar i/b Nankani & Associates

For RP In IA 22/ 2025, IA 192/ 2025 & IA 269 / 2025 : Adv. Niyati
Merchant i/b MDP Legal

Section 7 of IBC

ORDER

IA 22/ 2025

Order pronounced in the open Court *vide* separate order. In the result, prayers in this IA are rejected with costs. However, this IA shall be disposed of on the Applicant providing evidence as to payment of costs. Detailed order will be uploaded on the website today. **List on 28.01.2025.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
//RA//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)