

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH(Court- I)  
KOLKATA**

IA (IB) No. 360/KB/2022

in

CP (IB) No. 1685/KB/2019

*An application under sections 43, 45 and 66 of the Insolvency and Bankruptcy Code, 2016  
("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

*In the matter of:*

**Paragon Finance Limited**

*.... Financial Creditor*

*Versus*

**Mohan Motor Dealers Private Limited [CIN: U50203WB2006PTC109383]**

*.... Corporate Debtor*

*-And-*

*In the matter of:*

**Mr. Vaibhav Khandelwal**

Liquidator of M/s Mohan Motor Dealers Private Limited

*... Applicant*

*Versus*

1. Biharji Consultancy Private Limited;
2. Swaraj Vanijya Private Limited;
3. Trinity Vanijya Private Limited;
4. Mohan Motor Business Private Limited;
5. Govardhan Nirman Private Limited;
6. Sunrise Conclave Private Limited;
7. Mr. Pradip Kumar Bajaj;
8. Ms. Anju Bajaj;
9. Mr. Harshit Bajaj.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT NO. I)  
KOLKATA

I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019

Order pronounced on: 30.01.2024

**Coram:**

**Rohit Kapoor, Member (Judicial)**

**Balraj Joshi, Member (Technical)**

**Appearances (physically/ through Hybrid Mode):**

**For the Liquidator in I.A.(IBC) 360/2022:**

Mr. Rishav Banerjee, Adv.

Mr. Rajarshi Banerjee, Adv.

**For the Respondents No. 5 & 6:**

Mr. Sayantan Bose, Adv.

Ms. Urmila Chakraborty, Adv.

Ms. Ankita Choudhury, Adv.

**ORDER**

***Per Balraj Joshi, Member (Technical)***

1. This court convened *via* Hybrid mode.
2. This is an application filed by the liquidator of the Corporate Debtor under sections 43, 44 and 66 of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking the following reliefs against the suspended board of Directors and other Respondents herein:
  - (a) *To recover the assets fraudulently transferred to the Respondents and vest the same in the Corporate Debtor in accordance with Section 48 (1)(a) of the Code and initiate proceedings against the Respondents as per the Code.*
  - (b) *To pass necessary directions for recovery of the following amounts from the respondents, which have been fraudulently transferred:*

<b><i>SI.No.</i></b>	<b><i>Name</i></b>	<b><i>Amount</i></b>
<i>1.</i>	<i>Biharji Consultancy Pvt. Ltd.</i>	<i>Rs. 1,79,56,344/-</i>
<i>2.</i>	<i>Trinity Vanijya Pvt. Ltd.</i>	<i>Rs. 1,17,24,262/-</i>

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

3.	<i>Govardhan Nirman Pvt. Ltd.</i>	<i>Rs. 69,57,183/-</i>
4.	<i>Swaraj Vanijya Pvt, Ltd.</i>	<i>Rs. 1,29,34,271/-</i>
5.	<i>Sunrise Conclave Pvt. Ltd.</i>	<i>Rs. 3,35,42,107/-</i>
6.	<i>Harshit Bajaj</i>	<i>Rs. 10,00,000/-</i>
7.	<i>Pradhan Projects Pvt. Ltd.</i>	<i>Rs. 16,83,500/-</i>
	<b><i>Total</i></b>	<b><i>Rs. 8,57,97,667/-</i></b>

(c) *That this Hon'ble Tribunal may require the initiation of investigation and production of such documents by the erstwhile management of the Corporate Debtor and the Respondents to recover entire amount expeditiously from the Respondents so that stakeholder's interest can be protected.*

(d) *To give directions to such investigating officers or the Registrar of Companies or IBBI or such other offices/ regulators as the Tribunal may determine, to cause further investigation into the manner or running of the Corporate Debtor to detect any vulnerable, irregular or illegal transactions as may have taken place;*

(e) *To pass such other appropriate orders in terms of sections 43, 44, 45, 46, 47, 48, 49, 66 and other applicable provisions of the Code.*

(f) *Any other order that this Adjudicating Authority may deem fit in the facts and circumstances of this case.*

**3. Submissions in the Application filed by the Applicant are summarized hereinafter:**

3.1 The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) vide order passed by this Adjudicating Authority on 03.08.2021 in C.P. (IB) No. 1685/KB/2019 whereby Mr. Arun Kumar Khandelia was appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority, who was later on confirmed as the Resolution Professional (RP) by the Committee of Creditors (CoC) on 15.09.2021.

3.2 As IRP, the Applicant made public announcement regarding the initiation of CIRP and submission of claims on 05.08,2021 in two newspapers viz. Financial Express and

Aajkal. The IRP also intimated the suspended board of directors and other key managerial persons of the Corporate Debtor regarding the same and requested them to provide various documents and information. The IRP sent several reminders and requests to the suspended board of directors and other personnel on 04.04.2021, 03.08.2021, 04.08.2021, 06.08.2021, 10.08.2021, 14.08.2021 and 16.08.2021 but received no assistance or cooperation from them.

3.3 The Applicant again requested the suspended board of directors for the documents and information at the 1<sup>st</sup> Meeting of Committee of Creditors (CoC) held on 02.09.2021 but the respondents failed to provide the same. Thereafter, upon finding wrongful preparation and certification of financial statements for the Financial Years (F.Y.). 2018-2019 and 2019-2020, the IRP with the CoC's consent obtained at the 2<sup>nd</sup> CoC Meeting, filed a complaint on 01.10.2021 with the Registrar of Companies, West Bengal (RoC) as well as the disciplinary committee of the Institute of Chartered Accountant of India against the Respondent No. 7 and the statutory auditors who had signed the said financial statements.

3.4 In discharge of his statutory duty, the Applicant filed I.A. (IBC) 762/KB/2021 under section 19(2) and 19(3) of the Code. Vide order<sup>1</sup> dated 10.11.2021, this Adjudicating Authority directed the Corporate Debtor to furnish the requested documents within 48 hours. Pursuant to the said order, the Respondents No. 7 and 8 provided only a few documents and a copy of the tally data for the F.Y. 2018-19, 2019-20 and 2020-21.

3.5 Subsequently, the Adjudicating Authority, vide order dated .04.01.2022, allowed the Applicant to take steps in accordance with law, in case of future non-cooperation on part of the suspended management of the Corporate Debtor.

3.6 Due to the failure on part of the Corporate Debtor in providing the Applicant with the requested documents, the Applicant could not make a determination within the time stipulated under Regulation 35A of the CIRP Regulations. The Applicant was only able to form an opinion regarding the transactions entered into by the Corporate Debtor. On

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<sup>1</sup>Annexuer F to the Application

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

03.01.2022 at the 5<sup>th</sup> CoC Meeting<sup>2</sup>, after perusal of all financial statements, ledgers, books of accounts of the Corporate Debtor. Accordingly, M/s P S Roy & Associates, chartered accountants were appointed for conducting the forensic audit of the Corporate Debtor.

3.7 On the basis of such findings in the forensic audit report received on 11.03.2022, the Applicant has filed the present Application seeking the avoidance of preferential, undervalued and fraudulent transactions entered into by the Corporate Debtor with various parties under Sections 43, 45 and 66 respectively, of the Insolvency and Bankruptcy Code, 2016, ("Code") during the relevant period and for which the Respondent Nos. 1 to 9 are responsible and to seek contributions amounting to Rs.8,57,97,667/- from the respondents.

3.8 For the sake of convenience, the transactions mentioned in the application *i.e* the transactions entered into by the Corporate Debtor that purportedly fall under the category of preferential, undervalued and fraudulent transactions have been tabulated hereinunder:

<b>Table A</b>			
<b>Respon-dent</b>	<b>Date</b>	<b>Contention</b>	<b>Type of Transaction</b>
BiharijiConsultancyPvt. Ltd.	In F.Y. 2019-20	Transfer to assets <sup>3</sup> worth Rs. 1.44 Crore (approx.) lying at the Dhulagarh showroom of the Corporate Debtor consisting of furniture, fixtures, plant, machinery and equipment	Preferential and undervalued
Swaraj VanijyaPvt.	F.Y.	Transfer by the	Preferential

<sup>2</sup>Annexure I to the Application

<sup>3</sup> Copy of Tally Ledger annexed as Annexure "O"

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

Ltd.	2020-21	Corporate Debtor of the security deposit of Rs. 35,60,000/- which was lying with Bihariji Consultancy Pvt. Ltd.	and undervalued
Swaraj Vanijya Pvt. Ltd.	F.Y. 2020-21	Transfer by the Corporate Debtor of the security deposit of Rs.1,29,34,271/- which was lying with Trinity Vanijya Pvt. Ltd.	Preferential and undervalued
Trinity Vanijya Pvt. Ltd.	F.Y. 2019-20	Transfer of assets worth Rs. 1.17 Crore lying at Kona Workshop office	Preferential and undervalued
	F.Y. 2019-20	Term loan of Rs. 9,26,48,062/- from PNB Housing Finance Ltd. was obtained for a particular purpose was not utilized by the Corporate Debtor for the same.  Also, in the financial year 2019-20 balance of fixed asset was disclosed as Rs. 1,23,54,397/-.	Fraudulent
Govardhan Nirman Pvt. Ltd.	F.Y. 2020-	The loan advanced to Govardhan Nirman Pvt.	Preferential and

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

	21	Ltd. for an amount of Rs. 42,56,729/- which was assigned to Respondent No. 2.	undervalued
Harshit Bajaj	F.Y. 2020-21	The amount of Rs. 10,00,000/- received from Sunrise Conclave Pvt. Ltd. i.e. a related party was transferred to a different related party i.e. Mr. Harshit Bajaj	Preferential and undervalued
	F.Y. 2020-21	A deposit of Rs. 10,00,000/- with Hyundai had been adjusted with the reserves and surplus account of the Corporate Debtor.  The deposit of Rs. 3,54,917 with WBSEDCL had been written off.	Fraudulent
	July 2021	Cash in hand amounting to Rs. 16,83,500/- was deposited in the bank account of the Corporate Debtor and thereafter transferred to Pradhan Projects Pvt. Ltd, right before the	Fraudulent

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

		commencement of CIRP of the Corporate Debtor.	
	F.Y. 2020-21	<p>The following loans given to various related parties were adjusted/assigned to the directors and related parties of the Corporate Debtor:</p> <p>(a) Loan of Rs. 27,00,454/- given to Govardhan Nirman Pvt. Ltd., out of which the amount of Rs. 1,02,58,637/- was assigned to Pradip Kumar Bajaj;</p> <p>(b) Loan of Rs. 78,60,610/- given to Sunrise Conclave Pvt. Ltd. out of which the amount of Rs. 3,22,427/- was assigned to Harshit Bajaj;</p> <p>(c) Loan of Rs. 2,56,81,497/- given to Sunrise Conclave Pvt. Ltd. out of</p>	Fraudulent

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

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		which the amount of Rs. 2,56,81,497/- was assigned to Mohan Motors Business Pvt. Ltd.;	
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**4. Submissions of the Respondents No. 5 and 6 in the reply affidavit are summarized hereinafter:**

- 4.1 The applicant has failed to adhere to the timelines provided under Regulation 35A of the CIRP Regulations, 2016. As such, the purported application is ex-facie barred by the Laws of Limitation. Further, the loan transaction executed between the Corporate Debtor and the respondent No.5 was on 28 August, 2017 and the Corporate Debtor and the respondent No.6 was on 4th April, 2016 which are all beyond the lookback period. As such, the instant application is again barred by the Laws of Limitation.
- 4.2 The applicant failed to demonstrate that the transactions between the corporate debtor and the answering respondents were preferential during the review period. The answering respondents have argued that their transactions occurred in the ordinary course of business and need not be questioned.
- 4.3 Further, the answering respondents have been wrongly and illegally arrayed as party respondents in the purported application. Hence the instant application should be dismissed on the ground of misjoinder of parties.
- 4.4 The purported application is solely based on a misconceived Transaction Report with false allegations. The genesis of the transaction between the respondent Nos. 5 or 6 and the Corporate Debtor is missing in the purported application as well as in the purported transaction report. The transactions with the Corporate Debtor and the answering respondents are not in question. It is the subsequent adjustment and/or assignment with the other respondents which are under challenge in the present proceeding. For the same, the answering respondents need not have been made parties in the present proceeding. As such, it is clear that there is complete non-

application of mind by both the applicant and the transaction auditor which also indicates that no independent opinion has been formed by the applicant.

4.5 The assignment of the loan amount has been made through a tripartite agreement between the Corporate Debtor, the respondent No.2 and the respondent No.5. The respondent No.5 is the borrower company. The loan amount has been assigned by the Corporate Debtor to the respondent No.2 and, as such, the liability of the respondent No.5 company remains unaffected irrespective of such assignment. The respondent No.5 is not in any advantageous position because of such tripartite agreement as its liability to repay the debt remains. The transaction of assignment was mainly between the Corporate Debtor and the respondent No.2. The respondent No.5 has been kept in the loop as it is the borrower company. As such, no preference of any nature is being shown in this transaction to the answering respondent.

4.6 The respondent No.6, in the usual course of its business and in good faith has given an amount of Rs.10 lakh to the Corporate Debtor. What the Corporate Debtor does with the said amount received is of no concern to the respondent No.6 . Whatever the Corporate Debtor does with the said money that needs to be explained by the Corporate Debtor or its suspended board. The respondent No.6 has no role to play in this. As such, the respondent No.6 has been unnecessarily dragged into this litigation and has been made a party wrongfully.

5. **Submissions of the Applicant in the Rejoinder are summarized hereinafter:**

5.1 Any potential delay in filing of the instant application, as per Regulation 35A of the Insolvency and Bankruptcy Board of India (CIRP Regulations), is due to the non-cooperation from the suspended Board of Directors and/or management of the Corporate Debtor. The non-cooperation by the suspended Board was taken note of by the Adjudicating Authority, leading to directions for disclosure of records and information on multiple occasions. The non-cooperation by the suspended Board significantly impeded the RP's ability to form opinions and make determinations in accordance with Regulation 35A over an extended period.

- 5.2 Further, Regulation 35A's provisions and timelines are considered directory, not mandatory, as established by the Hon'ble National Company Law Appellate Tribunal.
- 5.3 The former Resolution Professional (RP) has independently explained in paragraphs 19, 23, 24, and 25 of the application how he formed an opinion and determination about various preferential, undervalued, and fraudulent transactions involving the Corporate Debtor, leading to the filing of the application.
- 5.4 A Respondent Nos. 5 and 6 are asserted to be proper and necessary parties in the application due to their involvement in purported loans and related transactions during the Financial Year 2020-2021.
- 5.5 A loan which was initially given to Respondent No. 5, a related party, was supposedly assigned to Respondent No. 2, another related party, during the mentioned financial year. In the same period, the Corporate Debtor received Rs. 10,00,000 from Respondent No. 6, which was then transferred to Respondent No. 9, another related party. Another loan of Rs. 2,56,81,497 given to Respondent No. 6 by the Corporate Debtor was also allegedly assigned to Respondent No. 4 during the Financial Year 2020-2021.
- 5.6 The interlinked transactions between the Corporate Debtor and its related parties during F.Y. 2020-2021 are characterized as mischievously woven, especially after the filing of the Company Petition under section 7 of the IBC in October 2019. The intention to defraud, deprive, or deny creditors of the Corporate Debtor is claimed to be evident from the constructed financial web during F.Y. 2020-2021 when the initiation of Corporate Insolvency Resolution Process (CIRP) was imminent.
- 5.7 The suspension of powers of the Board of Directors and management of the Corporate Debtor was also imminent during the financial web's construction in response to the pending admission of the Company Petition.
- 5.8 The Corporate Debtor itself disclosed Respondent Nos. 2, 5 and 6 as related parties in its financial statements for the fiscal year ending on 31.03.2018. As such, they are considered crucial elements in the constructed web of transactions aimed at disadvantaging creditors when the Corporate Debtor was inevitably heading into CIRP.

- 5.9 Respondent No. 5, despite relying on the alleged tripartite assignment agreement in its reply affidavit, has failed to disclose it, indicating potential suppression and revealing a nefarious plot involving related parties to harm the creditors of the Corporate Debtor.
- 5.10 Commencement of Corporate Insolvency Resolution Process (CIRP) implied a loss of influence for the suspended management and/or Board of Directors over the Corporate Debtor's operations, leading to an immediate advantage for Respondent No. 5 through the purported assignment of the loan to Respondent No. 2. This purported assignment provided Respondent No. 5 and/or Respondent No. 2 with a potential defense against legal actions for debt recovery or CIRP initiation by the erstwhile RP or present Liquidator.
- 5.11 It is asserted without prejudice that it is unclear from Respondent Nos. 5 and 6's affidavits whether any repayments were made to the Corporate Debtor and/or Respondent No. 2 regarding the loan at any relevant time, questioning the bona fide borrower status of Respondent No. 5. Respondent No. 6's denial in its affidavit glosses over the RP's averments regarding the loan assignment to Respondent No. 4 during Financial Year 2020-2021. An immediate advantage had accrued to Respondent No. 6 through the loan assignment to Respondent No. 4, providing a purported defense against legal actions. The overall narrative suggests a complex scheme involving alleged suppression, mischievous transactions, and purported defenses by related parties to manipulate the Corporate Debtor's financial position during the pending Company Petition and initiation of CIRP.
- 5.12 The purported assignments of loans occurred in Financial Year 2020-2021, disputing the claim that the transactions complained of are beyond the lookback period and barred by the Laws of Limitation.

6. **Analysis and Findings:**

- 6.1 Heard the Ld. Counsels on behalf of Liquidator *i.e* the erstwhile RP and the Ld. Counsel on behalf of the Respondents No. 5 & 6 and perused the records.
- 6.2 It is noted that the order for liquidation of the Corporate Debtor was passed on 14.09.2022 whereby **Mr. Vaibhav Khandelwal**[Reg. No. **IBBI/IPA-**

001/IPP02157/2020-2021/13348] was appointed as the liquidator of the Corporate Debtor. The cause title of the instant application was amended accordingly vide order dated 25.10.2022.

6.3 Before going into the merits of the instant case, we first adjudicate upon the maintainability of the instant application on the grounds of limitation. The Respondents No. 5 and 6 have contended that the instant application has been filed after the time period allowed under Regulation 35A has elapsed.

6.4 In this regard, we rely upon the decision of the Hon'ble NCLAT in the matter of ***Aditya Kumar Tibrewal RP vs. Om Prakash Pandey, Suspended Director and Ors.***<sup>4</sup>, wherein the Hon'ble Appellate Authority has held that:

*“ ....One of the objective of the Code is to maximise the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of Resolution Process, reach of the Court and shall cause great inconvenience and injustice to Corporate Debtor. Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations. There may be genuine and valid reasons for Resolution Professional not to file application for avoiding the transactions within time prescribed which are question relating to each case and has to be examined on case-to-case basis and if there are reasons due to which Resolution Professional could not file the Application within time the same has to be examined on merit.” [Para 11.viii]*

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<sup>4</sup> Company Appeal (AT) Insolvency No. 583 of 2021, decided 06.04.2022

6.5 It is evident from the records that the suspended board of directors failed to extend cooperation to the erstwhile RP and failed to provide the requested information and books of accounts of the Corporate Debtor in time. The delay in filing of the instant application can be attributed to the delay in gathering of the required information and documents. In light of the said facts and the aforementioned decision of the Hon'ble NCLAT, we are inclined to allow the instant application even though the samemay not strictly adhere to the timeline mentioned in Regulation 35A of CIRP Regulations, 2016.

6.6 Coming to the merits of the case, the Applicant has categorised the transactions mentioned in Table A given above as preferential, undervalued or fraudulent which have been dealt with separately as follows:

**Preferential Transactions**

6.7 In order to adjudicate upon the issue of the alleged Preferential Transactions, we need to refer to the decision of the Hon'ble Supreme Court in the matter of **Anuj Jain vs. Axis Bank Ltd. and Ors**<sup>5</sup>. The relevant paragraphs from the said judgment are reproduced hereinunder:

*“28.1. Looking to the legal fictions created by Section 43 and looking to the duties and responsibilities per Section 25, in our view, for the purpose of application of Section 43 of the Code in any insolvency resolution process, what a resolution professional is ordinarily required to do could be illustrated as follows:*

*1 .In the first place, the resolution professional shall have to take two major but distinct steps. One shall be of sifting through the entire cargo of transactions relating to the property or an interest thereof of the corporate debtor backwards from the date of commencement of insolvency and up to the preceding two years. The other distinct step shall be of identifying the persons involved in such transactions and of putting them in two categories; one being of the persons who fall*

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<sup>5</sup>MANU/SC/0228/2020

*within the definition of 'related party' in terms of Section 5(24) of the Code and another of the remaining persons.*

*2. In the next step, the resolution professional ought to identify as to in which of the said transactions of preceding two years, the beneficiary is a related party of the corporate debtor and in which the beneficiary is not a related party. It would lead to bifurcation of the identified transactions into two sub-sets: One concerning related party/parties and other concerning unrelated party/parties with each sub-set requiring different analysis. The sub-set concerning unrelated party/parties shall further be trimmed to include only the transactions of preceding one year from the date of commencement of insolvency.*

*3 .Having thus obtained two sub-sets of transactions to scan, the steps thereafter would be to examine every transaction in each of these sub-sets to find: (i) as to whether the transaction is of transfer of property or an interest thereof of the corporate debtor; and (ii) as to whether the beneficiary involved in the transaction stands in the capacity of creditor or surety or guarantor qua the corporate debtor. These steps shall lead to shortlisting of such transactions which carry the potential of being preferential.*

*4 .In the next step, the said shortlisted transactions would be scrutinised to find if the transfer in question is made for or on account of an antecedent financial debt or operational debt or other liability owed by the corporate debtor. The transactions which are so found would be answering to Clause (a) of Sub-section (2) of Section 43.*

*5. In yet further step, such of the scanned and scrutinised transactions that are found covered by Clause (a) of Sub-section (2) of Section 43 shall have to be examined on another touchstone as to*

*whether the transfer in question has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets per Section 53 of the Code. If answer to this question is in the affirmative, the transaction under examination shall be deemed to be of preference within a relevant time, provided it does not fall within the exclusion provided by Sub-section (3) of Section 43.*

*6. In the next and equally necessary step, the transaction which otherwise is to be of deemed preference, will have to pass through another filtration to find if it does not answer to either of the Clauses (a) and (b) of Sub-section (3) of Section 43.*

*7. After the resolution professional has carried out the aforesaid volumetric as also gravimetric analysis of the transactions on the defined coordinates, he shall be required to apply to the Adjudicating Authority for necessary order/s in relation to the transaction/s that had passed through all the positive tests of Sub-section (4) and Sub-section (2) as also negative test of Sub-section (3).*

*28.2. On a motion made by the resolution professional after and in terms of the exercise aforesaid, the Adjudicating Authority, in its turn, shall have to examine if the referred transaction answers to all the descriptions noted above and shall then decide as to what order is required to be passed, for avoidance of the impugned transaction or otherwise.”*

**6.8** In the case of Anuj Jain (Supra), the Supreme Court examined section 43 of the Code and provided significant insights. Addressing the issue of the Respondents' intention, the Supreme Court, following an analysis of section 43 of the Code, clarified that the intention of the parties holds no significance in determining whether a transaction is preferential. Further, in order to establish a clear categorization of a transaction as preferential, the Supreme Court outlined the following procedural steps.

- a. Determining “Relevant Time” concerning Section 43 :-  
Two years in case of related party and one year in case of unrelated parties (both to be calculated from insolvency commencement date) ;
- b. Determining whether there has been a transfer of property or transfer of an interest of the Corporate Debtor;
- c. Establishing the fact whether the beneficiary is a creditor or guarantor or surety in relation to the Corporate Debtor;
- d. Analysing whether the transaction is made on account of financial debt or an operational debt or any other liability; and
- e. Analysing whether the said transfer puts the transferee in a beneficial position than it would have been in the event of distribution of assets as per section 53 of the Code.

6.9 Coming to the first step mentioned in *Anuj Jain (supra)*, the Forensic Audit Report annexed on Page 210 to 230 of the application mentions the following respondents as related parties of the Corporate Debtor:

- i. Mr. Pradip Kumar Bajaj (R.7);
- ii. Mrs. Anju Bajaj (R.8);
- iii. Mr. Harshit Bajaj (R.9).

6.10 Further, the Applicant has also mentioned that Respondent No. 2 is a shareholder of the Corporate Debtor, having more than 10% of its shares according to the shareholding list dated 31.03.2019<sup>6</sup>. As such, Swaraj Vanijya Private Limited being Respondent No. 2, is also a related party of the Corporate Debtor.

6.11 Further, according to the the Transaction Audit Report, Respondents No. 1,3,4,5 and 6 have been mentioned to be companies over which the Corporate Debtor had “significant influence”. In this regard, it is pertinent to note that according to the public document i.e master data given in the official website of Ministry of Corporate Affairs, the directors of Respondent No. 4 and the directors of the

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<sup>6</sup>Annexure K

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

Corporate Debtor are same. Further, the directors of the other four companies being Respondents 1, 3, 5 and 6 are Gayatri Singh [DIN 08938077] and Rohit Kumar Singh [09521687]. In light of the aforesaid facts, Respondents No. 1,2,3,4,5 and 6 should also be categorised as related parties for the purpose of determination of “relevant time” under section 43 of the Code.

6.12 Keeping in mind the aforementioned facts and the law laid down in *Anuj Jain* (supra), the observations/ determination regarding the alleged preferential transactions are provided hereinafter:

<b>Contention</b>	<b>Type of Transaction</b>	<b>Observation/Determination</b>
In F.Y. 2019-20, transfer to R.1 of assets <sup>7</sup> worth Rs. 1.44 Crore (approx.) lying at the Dhulagarh showroom	Preferential	Transfer to related party creditor, within relevant time, of property of the CD, as a repayment of rent dues, thereby putting it in a beneficial position to other creditors
Transfer to R.2 of the security deposit of Rs. 35,60,000/- which was lying with R.1 in F.Y. 2020-21;	Preferential	Transfer to related party creditor, within relevant time, of interest of the CD, as a repayment of loan dues, thereby putting it in a beneficial position to other creditors
Transfer to R.2 of the security deposit of Rs. 1,29,34,271/- which was lying with R.3 in F.Y.	Preferential	Transfer to related party creditor, within relevant time, of interest of the CD, as a repayment of loan dues, thereby putting it in a beneficial position to other

<sup>7</sup> Copy of Tally Ledger annexed as Annexure “O”

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

2020-21;		creditors
Transfer of assets worth Rs. 1.17 Crore lying at Kona Workshop office to R.3 in F.Y. 2019-20	Preferential	Transfer to related party creditor, within relevant time, of property of the CD, as a repayment of rent dues, thereby putting it in a beneficial position to other creditors
The loan advanced to R.5 for an amount of Rs. 42,56,729/- which was then assigned to Respondent No. 2 F.Y. 2020-21.	Preferential	<p>According to the Reply- affidavit, the loan was advanced to R.5 in 2017 i.e beyond the “relevant time”. The Applicant has not disputed to the said date Also, R.5 cannot be held liable for the subsequent assignment of the said loan to R.2.</p> <p>However, the subsequent assignment, whereby the loan was admittedly assigned to R.2, a related party within the “relevant period” as a repayment of a loan, falls within the category of preferential transaction therefore needs to be reversed. As such, the liability of R.5 will lie to the Corporate Debtor and not the assignee being R.2.</p>
The amount of Rs. 10,00,000/- received from R.6 was transferred to a different related party i.e Mr. Harshit Bajaj (R.9) in F.Y. 2020-21.	Preferential	According to the Reply- affidavit, the amount was received from R.6 in 2017 i.e beyond the “relevant time”. The Applicant has not disputed to the said date. Also, R.6 cannot be held liable for the subsequent assignment of the said amount to R.9.

		However, the subsequent assignment, whereby the loan was admittedly assigned to R.9, a related party within the “relevant period” as a repayment of a loan, falls within the category of preferential transaction and is therefore reversed.
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6.13 It is clear in light of the decision in Anuj Jain (supra) that while determining if a transaction falls within the category of preferential transaction or not, the intention of the parties becomes irrelevant. Even though the Respondent No. 7 i.e the suspended director of the Corporate Debtor has attempted to provide an explanation regarding the said transactions on pages 236- 242 of the application, the Adjudicating Authority needs to decide upon the same in light of the law down before it. Upon going through each of the transactions given in the instant application, we find that the transactions fulfill the parameters set by the Hon’ble Supreme Court in Anuj Jain (Supra). As such the reliefs sought by the Applicant can be allowed.

Undervalued Transactions under section 45:

6.14 In order to adjudicate upon the issue of the alleged undervalued Transactions, we first refer to the provision of section 45 which is reproduced hereunder:

*45. Avoidance of undervalued transactions. –*

*(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions*

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

---

*as void and reverse the effect of such transaction in accordance with this Chapter.*

*(2) A transaction shall be considered undervalued where the corporate debtor—*

- a. makes a gift to a person; or*
- b. enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,*

*and such transaction has not taken place in the ordinary course of business of the corporate debtor.*

6.15 According to the aforementioned provision, any transaction entered into during the “relevant period” by the Corporate Debtor, wherein, transfer of one or more assets by the corporate debtor takes place for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor or the written down value (WDV) in the instant case shall be deemed an undervalued transaction. Further, the transaction should not have taken place in the ordinary course of business of the Corporate Debtor.

6.16 Regarding the alleged transactions, while the Applicant has claimed the following transactions as undervalued, the same has not been backed by any evidence. Mere ledgers and vouchers provide no proof towards establishing the claims of the Applicant. As such, the same cannot be taken into consideration. In light of the same, our observations about the alleged transactions are as follows:

<b>Contention</b>	<b>Type of Transaction</b>	<b>Explanation</b>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT NO. I)  
KOLKATA**

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

In F.Y. 2019-20, transfer to R.1 of assets <sup>8</sup> worth Rs. 1.44 Crore (approx.) lying at the Dhulagarh showroom	Not Undervalued	Since R.1 is a non-related party, the transaction falls outside the “relevant period”
Transfer to R.2 of the security deposit of Rs. 35,60,000/- which was lying with R.1 in F.Y. 2020-21;	Not undervalued	There is nothing on record to indicate that the said transaction was for a consideration which is significantly less than the value of the consideration provided by the corporate debtor or the written down value (WDV)
Transfer to R.2 of the security deposit of Rs. 1,29,34,271/- which was lying with R.3 in F.Y. 2020-21;	Not undervalued	There is nothing on record to indicate that the said transaction was for a consideration which is significantly less than the value of the consideration provided by the corporate debtor or the written down value (WDV)
Transfer of assets worth Rs. 1.17 Crore lying at Kona Workshop office to R.3 in F.Y. 2019-20	Not undervalued	Since R.3 is a non-related party, the transaction falls outside the “relevant period”
The loan advanced to R.5 for an amount of Rs. 42,56,729/- which was then assigned to Respondent No. 2 F.Y. 2020-21.	Not undervalued	There is nothing on record to indicate that the said transaction was for a consideration which is significantly less than the value of the consideration provided by the corporate debtor or the written down value (WDV)
The amount of Rs.	Not	There is nothing on record to indicate

<sup>8</sup> Copy of Tally Ledger annexed as Annexure “O”

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

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10,00,000/- received from R.6 was transferred to a different related party i.e Mr. Harshit Bajaj (R.9) in F.Y. 2020-21.	undervalued	that the said transaction was for a consideration which is significantly less than the value of the consideration provided by the corporate debtor or the written down value (WDV)
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*fraudulent Transactions under section 66:*

6.17 At this juncture, it relevant for us to refer to the provisions of section 66 of the Code. The said sections are reproduced hereinunder:

*66. Fraudulent trading or wrongful trading. –*

*(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.*

*(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-*

*(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and*

*(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.*

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

*Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.*

6.18 From section 66(1), it becomes clear that the intent of the directors to defraud the creditors is an essential ingredient when it comes to establishing that a transaction is covered under the category of fraudulent transaction under section 66 of the Code.

6.19 In the instant case, there are five transactions categorized as fraudulent transactions by the Applicant. In respect of the same, the suspended director has given explanations which are annexed to the application on pages 236 to 242. Our determination in respect of the alleged transactions, In light of such explanations and other documents on record, are provided hereinafter, in a tabular form:

Transaction	Explanation Given	Observation/ Determination
A deposit of Rs. 10,00,000/- with Hyundai had been adjusted with the reserves and surplus account of the Corporate Debtor	The marketing agency with Hyundai India Ltd. was terminated and hence the deposit given to them amounting to Rs. 10,00,000/- had been written off.	<b><u>Not Fraudulent</u></b> We are satisfied with the explanation given by the suspended director in this regard and it appears that the said transaction was made in usual course of business and not <u>with the intent to defraud creditors of the corporate debtor or for a fraudulent purpose.</u>

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

<p>The deposit of Rs. 3,54,917/- with WBSEDCL had been written off</p>	<p>The deposit to WBSEDCL has been written off because the possession of the showroom space and workshop space has been taken over by the landlord. Hence, carrying the same in the books of accounts was not logical.</p>	<p><b><u>Not Fraudulent</u></b> We are satisfied with the explanation given by the suspended director in this regard and it appears that the said transaction was made in usual course of business and not <i>with the intent to defraud creditors of the corporate debtor or for a fraudulent purpose.</i></p>
<p>Cash in hand amounting to Rs. 16,83,500/- was deposited in the bank account of the Corporate Debtor and thereafter transferred to Pradhan Projects Pvt. Ltd. Right before the commencement of CIRP of the Corporate Debtor</p>	<p>The said amount was partly paid to Pradhan Projects Pvt. Ltd. in respect of consultancy services provided by them and partly towards a One- Time Settlement (OTS) with Axis Bank Ltd. of Rs. 1.50 Crores. The The operator has made a typographical error and has erroneously mentioned “the amount paid for share purchase”</p>	<p><b><u>Fraudulent</u></b> The ledger account<sup>9</sup> mentions that the amount was paid to Pradhan Projects Pvt. Ltd. for purchase of shares. It is highly unlikely that the operator would make the same typographical error multiple times in the same document.  Further, no proof had been produced by the Respondents in support of their explanation and as such, we are of the considered opinion that the said transaction was made with an <i>intent to defraud</i></p>

<sup>9</sup>Annexure U

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

		<u>creditors of the corporate debtor or for a fraudulent purpose.</u>
<p>The following loans given to various related parties were adjusted/assigned to the directors and related parties of the Corporate Debtor:</p> <p>(a) Loan of Rs. 27,00,454/- given to Govardhan Nirman Pvt. Ltd., out of which the amount of Rs. 1,02,58,637/- was assigned to Pradip Kumar Bajaj;</p> <p>(b) Loan of Rs. 78,60,610/- given to Sunrise Conclave Pvt. Ltd. out of which the amount of Rs. 3,22,427/- was assigned to Harshit Bajaj;</p> <p>(c) Loan of Rs. 2,56,81,497/- given to Sunrise Conclave Pvt. Ltd. out of which the amount of Rs. 2,56,81,497/- was assigned to Mohan Motors Business Pvt.</p>	<p>Sunrise Conclave Pvt Ltd had purchased a property against which MMDPL has entered into an agreement with PNB Housing Finance Ltd, as guarantor, for two separate loans amounting to Rs. 2,90,50,000/- and Rs. 1,30,00,000/-. MMDPL has also assured Sunrise Conclave Pvt Ltd of paying a 5 monthly EMI of Rs 2,89,483/- and Rs 1,37,718/- to PNB Housing Finance Ltd. The payment of monthly EMI to PNB Housing Finance Ltd was made by MMDPL by taking financial assistance from Mr. Pradip Kr. Bajaj, suspended director of MMDPL, Mr. Harshit Bajaj and Mohan Motor Business Pvt Ltd. When the business of MMDPL came to a halt and the company came under severe financial stress, MMDPL approached Sunrise</p>	<p><b>Fraudulent</b> (as well as preferential):</p> <p>Upon perusal of records as well as the explanation given in this regard, it is clear that after the business of the Corporate Debtor came to a halt, a preference was given towards the repayment of dues of the directors over other creditors of the Corporate Debtor, thereby placing them in a beneficial position and prejudicing the interests of other creditors. The same can only be done with an intent to defraud the creditors of the corporate debtor.</p> <p>As such, the instant transaction falls within the category of fraudulent transaction under section 66 as well as a preferential transaction under section 43.</p>

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

Ltd.;	Conclave Pvt Ltd to directly repay the amount payable by MMDPL to Mr. Pradip Kr. Bajaj, Mr. Harshit Bajaj and Mohan Motor Business Pvt Ltd.	
Term loan of Rs. 9,26,48,062/- from PNB Housing Finance Ltd. was obtained by the Corporate Debtor for a particular purpose but was not utilized for the same. Also, in the financial year 2019-20 balance of fixed asset was disclosed as Rs. 1,23,54,397/-	The Suspended director was unable to locate the house agreement copy and assured the Applicant to provide the same once located.	<p><b>Fraudulent</b></p> <p>The suspended director has failed to produce any document in support of his explanation and without the same his contention doesn't stand.</p> <p>From the records, it appears that the loan amount was not used for the designated purpose and misappropriated, while the liability to repay remained with the Corporate Debtor. It is thus clear that the same was done for a fraudulent purpose ultimately prejudicing other creditors because of a purported fraud.</p>

6.20 From the aforesaid facts and findings, it becomes clear that the following transactions need to be reversed and accordingly, the amount payable by the Respondents to the Applicant are given hereinafter:

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

Respondent	Transactions	Amount Payable
Respondent No. 1 (Bihariji Consultancy Pvt. Ltd)	Transfer to assets <sup>10</sup> worth Rs. 1.44 Crore (approx.) lying at the Dhulagarh showroom	Rs. 1,44,00,000/-
Respondent No. 2 (Swaraj Vanijya Pvt. Ltd.)	a. Transfer by the Corporate Debtor of the security deposit of Rs. 35,60,000/- which was lying with Bihariji Consultancy Pvt. Ltd. b. Transfer by the Corporate Debtor of the security deposit of Rs.1,29,34,271/- which was lying with Trinity Vanijya Pvt.Ltd.	Rs. 1,64,94,271/- (Rs. 35,60,000/- + Rs. 1,29,34,271/- )
Respondent No. 3 (Trinity Vanijya Pvt.Ltd.)	Transfer of assets worth Rs. 1.17 Crore approx. lying at Kona Workshop office	Rs. 1,17,24,262/-
Respondent No. 4 (Mohan Motors Business Pvt. Ltd.)	Loan of Rs. 2,56,81,497/- given to Sunrise Conclave Pvt. Ltd. out of which the amount of Rs. 2,56,81,497/- was assigned to Mohan Motors Business Pvt. Ltd.;	Rs. 2,56,81,497/-
Respondent No. 5 (Govardhan Nirman Pvt. Ltd.)	The loan advanced to Govardhan Nirman Pvt. Ltd. for an amount of Rs. 42,56,729/- which was assigned to Respondent No. 2.	Rs. 42,56,729/-
Respondent No. 7 (Pradip Kumar Bajaj)	Loan of Rs. 27,00,454/- given to Govardhan Nirman Pvt. Ltd., out of which the amount of Rs. 1,02,58,637/- was assigned to Pradip Kumar Bajaj	Rs. 1,02,58,637/-
Respondent No. 9 (Harshit Bajaj)	a. Loan of Rs. 78,60,610/- given to Sunrise Conclave Pvt. Ltd. out of which the amount of Rs. 3,22,427/- was assigned to Harshit Bajaj; b. The amount of Rs. 10,00,000/- received from Sunrise Conclave Pvt. Ltd. i.e a related party was transferred to a Harshit Bajaj	Rs. 13,22,427/- (Rs. 3,22,427/- + Rs. 10,00,000/-)

<sup>10</sup> Copy of Tally Ledger annexed as Annexure "O"

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

**I.A. (IBC) 360/KB/2022 in  
C.P. NO. 1685/KB/2019**

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6.21 In light of the aforementioned facts, findings and the case law cited above, we hereby allow the application and direct that:

- i. Respondent No. 1 will pay Rs. 1,44,00,000 /- to the liquidation estate;
- ii. Respondent No. 2 will pay Rs. 1,64,94,271/- to the liquidation estate;
- iii. Respondent No. 3 will pay Rs. 1,17,24,262/- to the liquidation estate;
- iv. Respondent No. 4 will pay Rs. 2,56,81,497/- to the liquidation estate;
- v. Respondent No. 5 will pay Rs. 42,56,729/- to the liquidation estate;
- vi. Respondent No. 7 will pay Rs. 1,02,58,637/- to the liquidation estate;
- vii. Respondent No. 9 will pay Rs. 1322427/- to the liquidation estate;
- viii. The aforementioned payments shall be completed within 15 days of the instant order.

6.22 The amount shall be deposited in the liquidation estate of the Corporate Debtor.

6.23 With the above directions, , I.A.360/KB/2022 is hereby *disposed of*.

6.24 List CP No. 1685/KB/2019 on **02.02.2024**.

6.25 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

6.26 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on the 30<sup>th</sup> day of January 2024

SM[LRA]