

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1088 of 2024 & I.A. No. 3927, 3928 of 2024**

**(Arising out of the Order dated 30.04.2024 passed by the National Company Law Tribunal, Mumbai Bench in MA 1265 of 2018 in C. P. (IB) No. 724/MB/2017)**

**IN THE MATTER OF:**

**M/s Greenfield Overseas**

(proprietor - Pradeep Joshi)

B-10, kripa, willows CHS dadlani Road opposite

Ashok nagar, Balkum Thane-400608

**...Appellant**

**Versus**

**Anil Goel (Liquidator of Loha Ispaat).**

E-10/A, Kailash Colony New Delhi - 110048

**...Respondent**

**Present**

**For Appellants:** Mr. Shivam Kukreja, Advocate.

**For Respondents:** Ms. Shalya Agarwal & Mr. Sandeep Vij, Advocate.

**With**

**Comp. App. (AT) (Ins) No. 1089 of 2024 & I.A. No. 3929, 3930 of 2024**

**(Arising out of the Order dated 30.04.2024 passed by the National Company Law Tribunal, Mumbai Bench in MA 1265 of 2018 in C. P. (B) NO. 724/MB/2017)**

**IN THE MATTER OF:**

**M/s Arihant International**

(proprietor - Shripal Jain)

Satvant villa room.1

1<sup>st</sup> floor, Aarey Road, Near Railway Sub-way

Motilal Nagar, Mumbai-400104

**...Appellant**

**Versus**

**Anil Goel (Liquidator of Loha Ispaat)**

E-10/A, Kailash Colony New Delhi - 110048

**...Respondent**

**Present**

**For Respondents:** Mr. Shivam Kukreja, Advocate.

**For Respondents:** Ms. Shalya Agarwal & Mr. Sandeep Vij, Advocate.

**With**

**Comp. App. (AT) (Ins) No. 1090 of 2024 & I.A. No. 3931, 3932 of 2024**

**(Arising out of the Order dated 30.04.2024 passed by the National Company Law Tribunal, Mumbai Bench in MA 1265 of 2018 in C. P. (IB) NO. 724/MB/2017)**

**IN THE MATTER OF:**

**M/s Marque Global**

(proprietor – Rahul Singh)

Sai Pooja CHS, Plot No.33,

Room No.76, near Rajendra Ashram,

Sector-4, Navi Mumbai, Ghansoli

Thane, Maharashtra-400701

**...Appellant**

**Versus**

**Anil Goel (Liquidator of Loha Ispaat)**

E-10/A, Kailash Colony New Delhi - 110048

**...Respondent**

**Present**

**For Appellants:** Mr. Shivam Kukreja, Advocate.

**For Respondents:** Ms. Shalya Agarwal & Mr. Sandeep Vij, Advocate.

**J U D G E M E N T**

**(25.07.2025)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. There are three appeals before us arising out of the Impugned Order dated 30.04.2024 under section 61 of the Insolvency & Bankruptcy Code, 2016 (in short 'Code') passed by National Company Law Tribunal, Mumbai Bench, (in short 'Adjudicating Authority') in MA 1265 of 2018 in C.P.(IB) No. 724/MB/2017.

**Company Appeal (AT) (Ins.) No.1088 of 2024**

2. This appeal has been filed by the Appellant i.e. M/s Greenfield Overseas which is a proprietorship firm, by, Pradeep Joshi (proprietor of Greenfield) against Impugned Order dated 30.04.2024 passed by Adjudicating Authority in MA 1265 of 2018 in C.P.(IB) No. 724/MB/2017.

3. Mr. Anil Goel who is the liquidator of Loha Ispat, the Corporate Debtor is the Respondent herein.

4. The Appellant submitted that the Impugned Order directed the Appellant to pay an amount of Rs. 5,49,23,112/-, despite the alleged transaction being genuine and conducted in the ordinary course of business. During the financial year 2016-2017, the Appellant legitimately purchased scrap trimming by-products from the Corporate Debtor, arising as scrap during the manufacturing of steel, at a gross value of Rs. 29,15,78,735/-.

5. The Appellant submitted that the Corporate Insolvency Resolution Process (CIRP) was initiated on 28.04.2017 against the Corporate Debtor. Consequently, the look-back period applicable to transactions with unrelated parties spans from 28.04.2016 to 27.04.2017. The impugned transactions, which occurred between 01.04.2016 and 27.04.2017, fall outside the ambit of this look-back period. As evidenced by the calculations provided in Exhibit - F, the appellant is entitled to the benefit of transactions valued at Rs. 2,91,64,518/- conducted during the period from 01.04.2016 to 27.04.2017.

**Company Appeal (AT) (Ins.) No.1089 of 2024**

6. This appeal has been filed by the Appellant i.e. M/s Arihant International which is a proprietorship firm, by, Shripal Jain (proprietor of Arihant International) against Impugned Order dated 30.04.2024 passed by Adjudicating Authority') in MA 1265 of 2018 in C.P.(IB) No. 724/MB/2017.

7. Mr. Anil Goel who is the liquidator of Loha Ispat is the Respondent herein.

8. The Appellant submitted that the Impugned Order directed him to pay an amount of Rs. 2,37,81,057/-, despite the fact that the alleged transaction was genuine and conducted in the ordinary course of business. During the financial year 2016-2017, the Appellant legitimately purchased scrap trimming by-products from the Corporate Debtor, generated as scrap during the manufacturing of steel, at a gross value of Rs. 10,30,99,223/-. The Appellant stated that the Respondent, with mala fide intent, has wrongly classified this transaction as a purchase return.

9. The Appellant submitted that the CIRP commenced on 28.04.2017 and consequently, the look-back period for transactions involving unrelated parties extends from 28.04.2016 to 27.04.2017. The impugned transactions, occurring between 01.04.2016 and 27.04.2017, fall outside the scope of this look-back period. As detailed in the calculations provided in Exhibit - F, the appellant is entitled to the benefit of transactions valued at Rs. 2,05,55,152/- conducted during the period from 01.04.2016 to 27.04.2017. Consequently, these transactions are not subject to scrutiny or avoidance under Section 43 of the Code.

**Company Appeal (AT) (Ins.) No.1090 of 2024**

10. This appeal has been filed by the Appellant i.e. M/s Marque Global which is a proprietorship firm, by, Rahul Singh (proprietor of Marque Global) against Impugned Order dated 30.04.2024 under section 61 of the Insolvency & Bankruptcy Code, 2016 (in short 'Code') passed by Adjudicating Authority in MA 1265 of 2018 in C.P.(IB) No. 724/MB/2017.

11. Mr. Anil Goel who is the liquidator of Loha Ispat is the Respondent herein.

12. The Appellant submitted that the impugned order, directing the payment of Rs. 26,76,91,364/-, is fundamentally flawed as it erroneously characterizes the transactions in question as non-genuine, despite these being legitimate transactions conducted in the ordinary course of business. The Appellant contended that during the financial year 2016-17, it purchased scraps of mild steel and trimming by-products from the Corporate Debtor, generated as scrap during the steel manufacturing process, at a gross value of Rs. 15,92,34,161/-.

13. The Appellant submitted that the CIRP commenced on 28.04.2017 and consequently, the look-back period applicable to transactions with unrelated parties spans from 28.04.2016 to 27.04.2017. The impugned transactions, which occurred between 01.04.2016 and 27.04.2017, fall outside the scope of this look-back period. As per the calculations provided in Exhibit - F, the appellant is entitled to claim the benefit of transactions amounting to Rs. 6,11,20,189/- that took place during the period from 01.04.2016 to 27.04.2017. Therefore, these transactions are not subject to examination or avoidance under Section 43 of the Insolvency and Bankruptcy Code.

### **Common pleadings**

14. The Appellants submitted that the Adjudicating Authority erred in classifying the Appellant's purchase of Hot Roll Trimming (a byproduct) from the Corporate Debtor during the Financial Year 2016-17 as a preferential or undervalued transaction. The Appellants submitted that Hot Roll Trimming, being a scrap by-product, was correctly priced based on market forces, which determine pricing in the steel industry, and not by the contracting parties.

15. The Appellants submitted that the purchase of Hot Roll Trimming was conducted in the ordinary course of business. The Appellants engaged in regular trading of steel products, has a historical practice of buying and selling steel-related products from the Corporate Debtor. The Appellants submitted that this Appellate Tribunal in *Sahyog Infrastructure Pvt. Ltd. v. Anju Agarwal*

(Company Appeal (AT)(Ins) No.1367 of 2022) held that transactions in the “ordinary course of business” include those entered into in furtherance of the company’s business objectives, considering factors such as routine nature, frequency, and industry practice. The Appellants contended that its purchase of scrap was routine, repetitive, and aligned with its business of trading steel products, thus falling outside the purview of preferential or undervalued transactions under Sections 43 and 45 of the Code.

**16.** The Appellants submitted that they were wrongly made parties to M.A. No. 1265 of 2018 as third parties. The Appellants stated that the Hon’ble Supreme Court in ***Gluckrich Capital Pvt. Ltd. v State of West Bengal*** [(2023) ibclaw.in 75 SC] decided on 19.05.2023 , affirming ***Usha Ananthasubramanian v. Union of India*** [(2020) 4 SCC 122], held that the NCLT lacks jurisdiction to pass orders against entities other than the Corporate Debtor for business transactions under Section 66(1) of the Code. The Appellants contended that, as third parties, it cannot be held liable under Section 66, and any remedy against it must be pursued through civil proceedings, not under the insolvency framework.

**17.** The Appellants submitted that the Liquidator’s initial analysis of the impugned transactions on a financial year basis (FY 2016-17) does not align with the statutory requirement under Section 43(1) of the Code, which mandates a one-year look-back period from the insolvency commencement date (**ICD**), i.e., 28.04.2016 to 28.04.2017.

**18.** The Appellants relied on judgement of the Hon'ble Supreme Court in **Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd.** (Civil Appeal Nos. 8512-8527 of 2019,) where Apex court clarified that transactions with unrelated parties can only be scrutinized as preferential if these occur within one year prior to the insolvency commencement date. The Appellants contended that the transactions in question, occurring during Financial Year 2016-17, fall outside this one-year period and, being in the ordinary course of business, are exempt from scrutiny under Section 43 of the Code.

**19.** The Appellants submitted that the Respondent, Mr. Anil Goel, acted improperly by relying solely on a Forensic Audit Report prepared by M/s Khandelwal & Jain, which was commissioned without prior Adjudicating Authority approval. The Appellants contended that the report is fraudulent and adverse, causing harm to the Appellant's interests. Furthermore, the Respondent's suspension by the Insolvency and Bankruptcy Board of India on two occasions raises serious concerns about his conduct and credibility in filing M.A. No. 1265 of 2018.

**20.** The Appellants submitted that the purchased Hot Roll Trimming was deteriorated scrap, lying at the Corporate Debtor's premises for 4-5 years, subject to corrosion and devaluation. The transaction were undertaken in good faith to mitigate losses due to the Corporate Debtor's failure to clear outstanding dues. The sales were at a discounted price, reflecting the diminished value of the scrap, and was transparent and aligned with prevailing scrap market rates. The

Appellants contended that these do not constitute preferential, undervalued, or fraudulent transaction under Sections 43, 45, or 66 of the Code.

21. The Appellants contended that the Respondent's reliance on forensic audit and Tally data to classify the transactions as "Purchase Returns" is misleading. The Corporate Debtor's books reflect no independent or fresh sale transactions of Hot Roll Trimming, and the Respondent has not substantiated claims of by-product sales with documentation. The Appellants asserted that HR Coils, being non-perishable, do not depreciate significantly, and the alleged discrepancies in transaction values lack commercial justification, as the transactions were legitimate purchases, not returns.

22. Concluding their arguments, the appellants requested this appellate tribunal to set aside the impugned order and allow their appeals.

23. Per contra, the Respondent denied all averments made by the Appellants as misleading and baseless.

24. The Respondent submitted that the Appellant's assertion of purchasing Hot Roll Trimming (a by-product) instead of HR Coils is wholly unsupported by any invoices, ledger entries, or corroborative documentation. The Respondent submitted that the Hon'ble Supreme Court in ***K.K. Verma vs. Union of India*** (AIR 1954 SC 476) has unequivocally held that the burden of proof rests with the party asserting a claim, and failure to substantiate such claims renders them legally untenable. The absence of evidence significantly undermines the

Appellant's case, as no records from the Corporate Debtor's books or the Forensic Audit Report support the claim of Hot Roll Trimming transactions.

25. The Respondent contended that the Appellant's argument regarding the purchase of Hot Roll Trimming was not raised before the Adjudicating Authority, despite the Appellants filing detailed replies in the original proceedings. The Respondent further submitted that the Hon'ble Supreme Court in ***State of Uttar Pradesh vs. Naresh [(1981) 3 SCC 309]*** and ***Deepak Tandon & Anr. vs. Rajesh Kumar Gupta (Civil Appeal Nos. 1537–1538 of 2019)*** has consistently ruled that introducing new arguments or evidence at the appellate stage, absent exceptional circumstances, violates the principles of res judicata and judicial discipline. The Respondent submitted that the Appellant have failed to demonstrate any exceptional circumstances, rendering their plea an afterthought and procedurally defective. This attempt to introduce a fresh cause of action unrelated to the impugned transaction undermines the fairness of the adjudicative process.

26. The Respondent asserted that the Appellant's reliance on ***Gluckrich Capital Pvt. Ltd. vs. The State of West Bengal and Ors. [(2023) ibclaw.in 75 SC]*** is legally erroneous and misleading. The cited judgment pertains to Section 66 of the Code, which addresses fraudulent transactions requiring proof of intent to defraud creditors. In contrast, the impugned transactions fall under Section 45 of the Code, which concerns undervalued transactions and does not necessitate proof of fraudulent intent, focusing instead on objective undervaluation. The Respondent submitted that this conflation of distinct legal standards is irrelevant

and an attempt to obscure the true nature of the transaction, thereby weakening the Appellant's case.

**27.** The Respondent contended that the Appellant's portrayal of the impugned transactions as "purchases" rather than "purchase returns" is a deliberate misrepresentation aimed at evading liability as ordered by the Adjudicating Authority. The Respondent submitted that the Corporate Debtor's records, including Tally data and the Forensic Audit Report, clearly establish these as purchase returns at significantly discounted prices, resulting in substantial losses to the Corporate Debtor.

**28.** The Respondent submitted that the CIRP of Loha Ispaat Ltd. was initiated by the Adjudicating Authority on 28.04.2017, pursuant to an application by Bright Steel India under Section 9 of the Code. The Respondent was appointed as Resolution Professional on 04.09.2017, and subsequently as Liquidator on 26.04.2018, due to the absence of a viable resolution plan. The Respondent contended that this procedural history provides the necessary context for evaluating the impugned transactions, which occurred during a period of financial distress for the Corporate Debtor.

**29.** The Respondent submitted that the Forensic Audit Report by Khandelwal Jain & Co., dated 13.01.2018, along with Tally data and financial statements, conclusively demonstrate that the Corporate Debtor engaged in purchase returns during FY 2015–16 and 2016–17. These transactions involved returning HR Coils to the Appellants and other Beneficial Transferees at significantly

undervalued prices, causing substantial losses to the Corporate Debtor's estate. The Respondent contended that these transactions were not conducted in the ordinary course of business, as they lacked commercial justification and disproportionately benefited specific parties.

**30.** The Respondent asserted that the impugned transactions fall into two categories: (a) preferential transactions under Section 43 of the Code, involving stock transfers in preference to certain creditors, which the Adjudicating Authority rejected; and (b) undervalued transactions under Section 45, where stocks were returned at prices significantly below market value, which the Adjudicating Authority allowed. The Respondent submitted that the Adjudicating Authority correctly held that purchase returns at heavily discounted prices constitute undervalued transactions, as these caused undue financial loss to the Corporate Debtor.

**31.** The Respondent submitted that in FY 2015–16, the Corporate Debtor returned stocks worth Rs. 68,19,71,955 to Beneficial Transferees, including the Appellants, at a reduced price of Rs. 49,57,31,767, resulting in a loss of Rs. 18,62,40,188. In FY 2016–17, stocks worth Rs. 90,03,07,622 were returned at Rs. 55,39,12,089, leading to a loss of Rs. 34,63,95,534. The Respondent contended that these losses, totalling Rs. 53,26,35,722 across both years, reflect a pattern of undervalued transactions designed to benefit specific parties at the expense of creditors. Specifically, the Appellants were directed to pay reflecting the loss from returning stocks.

32. The Respondent submitted that the Corporate Debtor returned HR Coils to the Appellants, in FY 2015–16 and 2016–17, despite retaining the materials for over a year. The Respondent contended that HR Coils are non-perishable commodities, and their value does not typically diminish significantly over time, except in cases of gross negligence such as rusting due to improper storage. The prolonged retention undermines the Appellant’s claim of quality defects, suggesting that the returns were a pretext for undervalued transactions.

33. The Respondent asserted that the Forensic Audit Report and Tally data, including the stock item register for HR Coils, confirm that the transactions involved HR Coils, not Hot Roll Trimming as claimed by the Appellants. No records indicate sales of Hot Roll Trimming, and the Corporate Debtor recorded 0% non-return sales in FY 2016–17. The Respondent submitted that the Appellant’s failure to provide invoices or documentation further validates the Corporate Debtor’s records, which classify the transactions as purchase returns.

34. The Respondent submitted that the average rates for HR Coils reveal significant undervaluation. The Respondent explained that for the Appellant in FY 2015–16, the opening stock was valued at Rs. 37,414 per MT, purchased at Rs. 32,346 per MT, returned at Rs. 27,300 per MT, and closing stock valued at Rs. 25,915 per MT. In FY 2016–17, the opening stock was valued at Rs. 25,915 per MT, returned at Rs. 21,808 per MT, with no closing stock. The Respondent contended that these discounted returns lack commercial justification, as HR

Coils' value does not typically depreciate significantly, indicating deliberate undervaluation.

35. The Respondent asserted that the Corporate Debtor's account was declared a Non-Performing Asset (**NPA**) in September 2014 by consortium lenders, suggesting that the impugned transactions were undertaken to divert assets beyond the reach of creditors, particularly secured creditors. The Respondent submitted that financial distress context supports the classification of the transactions as undervalued under Section 45, as these were not conducted in the ordinary course of business.

36. The Respondent contended that the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. vs. Union of India** [(2019) 4 SCC 17] has emphasized that transactions at significantly less than market value, intended to prefer certain creditors, fall under Section 45. Similarly, in **Anuj Jain IRP of Jaypee Infratech Ltd. vs. Axis Bank Ltd.** (Civil Appeal Nos. 8512–8527 of 2019), the Hon'ble Supreme Court clarified that transactions causing losses to the estate through undervaluation are subject to avoidance. The Respondent submitted that these precedents affirm the Adjudicating Authority's findings.

37. The Respondent submitted that the Beneficial Transferees, including the Appellants, have inconsistent office addresses across audit reports by Deloitte (2012–2014), Amit Ray & Co. (2012–13, 2014–15), and Khandelwal Jain & Co. The Appellant's address in the Appeals differs from prior addresses, raising doubts about their genuineness. The Respondent contended that these entities,

dealing in transactions exceeding Rs. 100 crores, lack credible business premises, suggesting potential manipulation to siphon funds.

38. The Respondent asserted that Section 45 of the Code defines undervalued transactions as those where the value received is significantly less than the asset's market value. The impugned transactions meet this criterion, with HR Coils returned at prices causing losses of Rs. 18,62,40,188 in FY 2015–16 and Rs. 34,63,95,534 in FY 2016–17. The Respondent submitted that these transactions lack commercial rationale and were not in the ordinary course, as they disproportionately benefited the Appellant and others.

39. The Respondent contended that the impugned transactions, involving significant discounts, lack of documentation, and a pattern of benefiting specific parties, are not in the ordinary course of business. The Appellant emphasised that the Hon'ble Supreme Court in *Anuj Jain* (supra), *N.R. Dongre vs. State Bank of India* (2017), and *Gopal Krishna Shetty vs. State Bank of India* (Civil Appeal No.1499 of 2020), and this Appellate Tribunal in *Sreevatsa Industries Ltd. vs. Bank of India* [Company Appeal (AT) (Ins) No. 363 of 2020], *Crisll Ltd. vs. M/s. Venkatesh & Co.* [Company Appeal (AT) (Ins) No. 34 of 2020], and *International Assets Reconstruction Company Ltd. vs. Shriram Transport Finance Co. Ltd.* (Company Appeal (AT) (Ins) No. 662 of 2020) have consistently held that transactions with substantial undervaluation and preferential intent fall outside ordinary business operations. The Respondent

submitted that the transactions' scale, timing, and lack of commercial justification align with these precedents.

40. The Respondent submitted that the Appellant's reliance on **Gluckrich Capital** (supra) is misplaced, as it pertains to Section 66, which requires fraudulent intent, whereas Section 45 focuses on objective undervaluation. The Respondent contended that no relief under Section 66 was sought in the Avoidance Application, rendering the Appellant's reference to third-party transactions under Section 66 irrelevant and misleading.

41. The Respondent asserted that no Tally records or documentation reflect sales of Hot Roll Trimming in FY 2016–17, with 100% of recorded transactions being purchase returns of HR Coils. The Respondent contended that the Appellant's claim of purchasing a by-product lacks substantiation and contradicts the Corporate Debtor's records, which are corroborated by the Forensic Audit Report.

42. The Respondent submitted that 99% of sales in FY 2015–16 and 100% in FY 2016–17 were recorded as purchase returns, indicating a pattern inconsistent with regular business conduct. The revised loss for the look-back period (April 28, 2016–March 31, 2017) is Rs. 24 crores, reinforcing the undervalued nature of the transactions. The Respondent contended that the questionable authenticity of the Beneficial Transferees and the NPA status in 2014 suggest an intent to divert assets, further evidencing non-ordinary course transactions.

43. The Respondent contended that the Appellant's reliance on Anuj Jain (2020) (supra) to argue that separate applications are required under Sections 43, 45, and 66 is misplaced. The Respondent submitted that MA No. 1265/2018 was filed in 2018, before the Anuj Jain judgment, and was well-bifurcated to address each section's requirements. The Respondent submitted that the Adjudicating Authority rightfully allowed the composite application, as it satisfied the ingredients of undervalued transactions under Section 45 of the Code.

44. Concluding arguments, the Respondent requested this Appellate Tribunal to dismiss all these Appeals with cost.

## **Findings**

45. Based on the above discussion and the record available with us, following issues are required to be determined in order to decide these three appeals.

**Issue No. I** Are the transactions covered in forensic audit and Impugned Order in nature of purchased return as alleged by the Liquidator or are they in nature of fresh purchase as submitted by the Appellants.

**Issue No. II 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 or period is to be treated as full financial year preceding the CIRP date.

c) Whether calculations were correctly made in the present case with respect to stipulated Look-back period in the Code.

**Issue No. III** Whether the alleged misconduct by the Resolution Professional in some other cases as well as non- approval of appointment of Forensic Auditor by Adjudicating Authority will have any bearing or impact in the present appeals.

**Issue No. IV** Whether the impugned transaction covered under forensic report as well as impugned order, are arising out of ordinary course of business of Corporate Debtor or otherwise.

**Issue No. V** Whether, the transactions done by the Third Party can be covered under Section 45 of the Code.

**46.** At the outset, we would like to refer to the relevant Sections and the Regulations which affects the present appeal. These sections are Section 20 (2) (a), 25(2) (d), 45 of the Code and Regulation 34 of the IBBI CIRP Regulation, 2016, which reads as under: -

***“Section 20: Management of operations of corporate debtor as going concern.***

*\*20. (1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern<sup>J1</sup>.*

*(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority—*

(a) to appoint accountants, legal or other professionals as may be necessary;

**Section 25: Duties of resolution professional.**

*\*25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:*

—  
*(d) appoint accountants, legal or other professionals in the manner as specified by Board;*

**“Section 45: Avoidance of undervalued transactions.**

*45. (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) 1[\*\*] 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 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.”

**Regulation 34: Resolution professional costs.**

34. The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses<sup>1</sup> shall constitute insolvency resolution process costs.

<sup>2</sup>[Explanation. – For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.]”

(Emphasis Supplied)

47. Similarly, we have taken into consideration the relevant portion of the forensic audit, opinion of the Resolution Professional on such forensic audit while submitting avoidance application under Section 45 of the Code and the Impugned Order on the subject.

48. **Issue No. I** Are the transactions covered in forensic audit and Impugned Order in nature of purchased return as alleged by the Liquidator or are they in nature of fresh purchase as submitted by the Appellants.

(i) It is the case of the Appellants that the transactions which have been treated as undervalued transactions by the forensic auditor, Liquidator and finally approved by the Adjudicating Authority in the Impugned Order, were in the nature of fresh purchase from the Corporate Debtor and not purchase return by the Corporate Debtor to the Appellants.

- (ii) We note the contentions of the Appellants that they were in business relationship with the Corporate Debtor for a reasonably long period and of such transactions were done in an ordinary course of business.
- (iii) On the other hand, the Liquidator submitted that after examination of tally books, balance sheets read with forensic audit report, it is evident that the Corporate Debtor had purchased the same items from the Appellants and later given back to the Appellants at heavy discounts indicated as purchased return in the books of the Corporate Debtor during financial year 2015-16 and 2016-17. These transactions were done at much reduced price and not at the original purchased price.
- (iv) We also note from the submissions of the Liquidator that purchases were made by the Corporate Debtor from various parties including three appellants worth Rs. 158,22,79,577/-, however, the same material was returned back to the beneficiary parties including the Appellants at a much lower price of Rs. 104,96,43,856/- thus, causing a loss of Rs. 53,26,35,721/-.
- (v) Thus, we need to differentiate terms like the purchase, sales, purchase return and sales return. In essence all these four terms, form the core of Corporate Debtor's trading activities.
- (vi) A purchase typically refers to the acquisition of goods from another supplier which are required for the business operations of the Corporate Debtor. These goods may include raw material, finished goods,

consumable, plant and machinery etc. Whenever Corporate Debtor purchase goods, it usually pays GST to the supplier which is input tax credit. The Corporate Debtor can claim input tax credit (ITC) for GST purchase on the purchases, if such purchases are used for making taxable supplies i.e., GST paid on the input can be set off against GST calculated on sales (output tax liability). As regard, the purchase return also called as return outward, occur when Corporate Debtor returns back goods it purchased from supplier. There may be several reasons for such purchase returns like defective or damaged goods, incorrect items or quantity delivered, goods not as per specification etc. When company return goods to supplier, the supplier issues the credit note to the Corporate Debtor which effectively reverse the original tax liability for the supplier and allows the company to reverse the ITC it had claimed on the return goods.

- (vii)** In contrast, sales refer to revenue generated by a company from selling its goods to customers and is required to collect GST from its customers i.e., output tax and finally the company make the payment to government of such calculated GST after adjusting it with ITC available from its own purchases. Sales return, also called as return inward, occur when customers return goods, they have previously purchased which may be due to quality or quantity issues, damaged during transit, deviation from specification on quality issues etc.

- (viii)** As noted earlier, when a customer return goods, the company issue a credit note to the customer which allow the company to reduce its original output tax liability (GST calculated on sales) since the sale has been reversed.
- (ix)** During pleadings before us, the Appellants tried to impress upon that these goods were purchased from the Corporate Debtor in ordinary course of business and the Corporate Debtor sold these goods to the Appellant and thus these goods were not purchased returns. However, at no stage of pleadings before us nor in the appeal paper book or written submissions, the Appellants have brought out the facts regarding GST payments on these transactions which might have helped the claims of the Appellants. Similarly, no documentations have been submitted to substantiate their claims of fresh purchases.
- (x)** We also note that the Appellants have not denied the fact that the Appellants had sold the same/ similar material to the Corporate Debtor in earlier years. Thus, the contentions of the Appellants seem to be on weak wicket.
- (xi)** On the other hand, we note that the forensic audit clearly brings out the facts that the same material was purchased by the Corporate Debtor from the same Appellants earlier at much higher prices and were returned during Financial Year 2015-16 and 2016-17 at substantial reduced prices, causing losses to the Corporate Debtor.

- (xii)** We also find merit in the contentions of the Liquidators that by nature, HR Coil etc are non-perishable items and do not deteriorate, therefore, there was no reason for Corporate Debtor to return back i.e, purchase return at later stage at heavy discounted price which was done purely with intentions of giving undue benefit to the Appellants.
- (xiii)** We tend to agree with the logic of the Respondent. We also find that the forensic auditor and the Resolution Professional/ Liquidator, based on the tally books, balance sheets and other records, have established these facts and the contentions of the Appellants could not be corroborated with respect to books as maintained by the Corporate Debtor.
- (xiv)** In this connection, we have already noted the relevant portion of the forensic audit, opinion framed by the Liquidator and on the Impugned Order forensic audit which they submitted to the Adjudicating Authority while filing avoidance application under Section 45 of the Code. We do not find any mistake.
- (xv)** Based on the above analysis, we do not find any error in the Impugned Order on this account.

**49. Issue No. II 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 or period is to be treated as full financial year preceding the CIRP date.

c) Whether calculations were correctly made in the present case with respect to stipulated Look-back period in the Code.

(i) The Code provides specific look back period for different type of avoidance transactions. The look back period, twilight period, or relevant period stipulates as to how far back the Resolution Professional or Liquidator can investigate and challenge transactions to bring assets back into the Corporate Debtor estate. The avoidance transactions are primarily covered under Section 43 (preferential transaction), Section 45 (undervalued transaction), Section 50 (extortion transaction) and Section 66 (fraudulent transaction) under the Code.

(ii) Since, the present appeals are with respect to undervalued transactions, we shall confine our examination only with respect to Section 45 of the Code. The look back period for all transactions covered under Section 43, 45, 50 have been bifurcated into two categories i.e., transactions with related parties and transactions with unrelated parties. As per Code, for related parties, (as defined in Section 5(24) of the Code) look back period has been defined as two years preceding the CIRP date, whereas for unrelated parties, the look back period has been specified as one year from the CIRP date.

(iii) We note that the Code specifically stipulate that look back period are to be counted from insolvency commencement date. We further observe that the

Resolution Professional has a statutory duty under Section 25(2) (j) of the code r/w Regulation 35 (a) of CIRP Regulation, to investigate and form an opinion on whether the Corporate Debtor has been subjected to any avoidance transactions including under Section 45 of the Code. Thus, the Resolution Professional has to act within the laid down time limits as provided in the Code and cannot go further back. The Resolution Professional is also required to file an application for avoidance transactions before the Adjudicating Authority only for the relevant period covering the relevant transactions of such nature. This is unlike no look back period under Section 66 of the Code i.e., fraudulent transaction, where the Resolution Professional/ Liquidator can go to any extent and examine any transactions since inception of the Corporate Debtor.

- (iv) Having noted these facts, we note that the CIRP commenced on 28.04.2017, thus, the relevant period of look back period has to be between 28.04.2016 to 28.04.2017. Thus, we tend to agree with the contentions of the Appellants that transactions beyond the look back period could not have been covered in the avoidance applications and consequently, the Adjudicating Authority could not have passed the Impugned Order with respect to such transaction beyond the look back period.
- (v) While orders were being reserved, opportunities were given to by the parties including the Respondent/Liquidator to submit the written submissions with correct revised calculations strictly with respect to

correct look back period. We specifically advised Liquidator to re-work out the calculations based on the look back period of one year i.e., 28.04.2016 to 28.04.2017. In the written submissions the Liquidator has submitted that the correct figures in the tables in all three appeals. These tables read as under: -

**Table for FY 2016-2017 (as Annexed in the Reply as Annexure R-4, Pg. 304)**

|   |                       | Stock Name | Value of Stock as per Books |             |                 | Transaction of Purchase Return |             |                 | Losses Due to Return |
|---|-----------------------|------------|-----------------------------|-------------|-----------------|--------------------------------|-------------|-----------------|----------------------|
|   |                       |            | Qty In MT                   | Rate Per Mt | Amount in Crore | Qty In MT                      | Rate Per Mt | Amount in Crore |                      |
| 1 | Arihant International | HR Coil    | 4896.017                    | 25915       | 12.69           | 4896.017                       | 21057.77    | 10.31           | -2.38                |
| 2 | Greenfield Overseas   | HR Coil    | 13370.705                   | 25915       | 34.65           | 13370.71                       | 21807.28    | 29.16           | -5.49                |
|   |                       | Channel MS | 740.328                     | 25915       | 1.92            | 740.328                        | 9750        | 0.72            | -1.2                 |
|   |                       | CRCOIL     | 2312.686                    | 25915       | 5.99            | 2312.686                       | 9902.32     | 2.29            | -3.7                 |
| 3 | Marque Global         | GP         | 153.567                     | 25915       | 0.4             | 153.567                        | 10000       | 0.15            | -0.25                |
|   |                       | HR         | 5310.924                    | 25915       | 13.76           | 5310.924                       | 9516.06     | 5.05            | -8.71                |
|   |                       | HR Coil    | 7956.565                    | 25915       | 20.62           | 7956.565                       | 9682.6      | 7.7             | -12.92               |
|   |                       |            | <b>34740.792</b>            |             | <b>90.03</b>    | <b>34740.79</b>                |             | <b>55.38</b>    | <b>-34.65</b>        |

**New Table as per Fresh Calculation for the Period 28.06.2016 to 31.03.2017**

|   |                       | Stock Name | Value of Stock as per Books |              |                     | Transaction of Purchase Return |                 |                     | Losses Due to Return |
|---|-----------------------|------------|-----------------------------|--------------|---------------------|--------------------------------|-----------------|---------------------|----------------------|
|   |                       |            | Qty In MT                   | Rate Per Mt  | Amount in Crore     | Qty In MT                      | Rate Per Mt     | Amount in Crore     |                      |
| 1 | Arihant International | HR Coil    | 838.489                     | 25915        | 2,17,29,442         | 664.149                        | 21057.77        | 1,39,85,497         | - 77,43,946          |
| 2 | Greenfield Overseas   | HR Coil    | <b>6594.312</b>             | <b>25915</b> | <b>17,08,91,595</b> | <b>6594.312</b>                | <b>21807.28</b> | <b>14,38,04,008</b> | <b>- 2,70,87,587</b> |
|   |                       | Channel MS | 740.328                     | 25915        | 1,91,85,600         | 740.328                        | 9750            | 72,18,198           | -1,19,67,402         |
|   |                       | CRCOIL     | 2312.686                    | 25915        | 5,99,33,258         | 2312.686                       | 9902.32         | 2,29,00,957         | -3,70,32,301         |
|   |                       | GP         | 153.567                     | 25915        | 39,79,689           | 153.567                        | 10000           | 15,35,670           | -24,44,019           |
| 3 | Marque Global         | HR         | 5310.924                    | 25915        | 13,76,32,595        | 5310.924                       | 9516.06         | 5,05,39,071         | - 8,70,93,524        |
|   |                       | HR Coil    | 4195.105                    | 25915        | 10,87,16,146        | 4195.105                       | 9682.6          | 4,06,19,524         | -6,80,96,622         |
|   |                       |            | <b>20145.411</b>            |              | <b>522068326.1</b>  | <b>19971.07</b>                |                 | <b>280602925</b>    | <b>-24,14,65,401</b> |

(vi) From the above table, we see that there is a significant difference in the amounts mentioned by the Respondent/Liquidator. The first table shows a total loss of Rs. 34.65 Crores (approx.) which has now been revised by the Respondent/ Liquidator, which works out to be Rs. 24.14 Crores (approx.), as shown in the table above.

(vii) Thus, we agree with the contentions of the Appellants to limited extent based on reworked out figures, which can legally be enforced, as calculated by the Liquidator and submitted to us in the written submissions.

(viii) We accept the reworked out figures of the Liquidator and hold that M/s Greenfield Overseas will be entitled to reduce figures of Rs. 2,70,87,587 from Rs. 5.49 Crores (approx.); M/s Arihant International will be entitled to reduce figure of Rs. 77,43,946 from Rs.2.38 Crores (approx.); M/s Marque Global will be entitled to reduced figure of Rs. 20,66,33,868 from Rs. 26.76 Crores. The Respondent will pursue recovery from the Appellants as per Liquidator's reworked out revised figures.

50. **Issue No. III** Whether the alleged misconduct by the Resolution Professional in some other cases as well as non-approval of forensic auditor by the Adjudicating Authority will have any bearing or impact in the present appeals.

(i) Although, no such ground has been taken regarding alleged misconduct of the Liquidator Mr. Anil Goel in the appeals, however, the Appellants, during pleadings as well as in the written submissions, have raised issue regarding conduct of the Resolution Professional/ Liquidator. The Appellants brought out that the Liquidator has got conducted forensic audit from M/s Khandelwal and Jain of the Corporate Debtor without approval of the Adjudicating Authority.

(ii) The Appellants also brought out that Mr. Anil Goel/ Liquidator of the Corporate Debtor was suspended twice by IBBI on 29.10.2020 and 16.05.2024 and have attached the IBBI's orders in the written submissions and the Appellants further stated that on 28.05.2024, a complaint was also

filed by Mr. Rajesh Begur with IBBI against the Liquidator/ Anil Goel for professional misconduct.

- (iii)** As regards, appointment of forensic auditors, the reference is required to be made to Section 20(2)(b) and 25 (d) of the Code which we have already noted in earlier discussions. It is clear from these sections that it is purely in the domain of Interim Resolution Professional/ Resolution Professional to appoint the forensic auditor. It also needs to be understood that the CoC is empowered to approve the cost of such forensic auditor since, the same will form the CIRP cost. Nowhere, in the Code or Regulation it has been stipulated that the approval of the Adjudicating Authority is required. Hence, we do not accept the contention of the Appellants in this regard where they have alleged misconduct against the Liquidator for not taking approval of the Adjudicating Authority before appointing M/s Khandelwal and Jain as forensic auditors.
- (iv)** As regard, other two alleged misconduct by the Respondent/Liquidator which the Appellants has raised, where IBBI had suspended the liquidator, we observe that in reply, the Liquidator has not submitted any facts or counter viewpoint. Be that it may, we find that alleged misconduct of Liquidator in other cases, will not have any impact on the present case unless present case was also covered by such misconduct and thus, we shall not go any further into this aspect. We do not find merit in the pleadings of the Appellants on this ground.

**51. Issue No. IV** Whether the impugned transaction covered under forensic report as well as impugned order, are arising out of ordinary course of business of Corporate Debtor or otherwise

- (i)** It is the case of the Appellants that the Appellants were engaged with the Corporate Debtor for a long period and all transactions were carried out in ordinary course of business.
- (ii)** We need to understand as to what is the ordinary course of business. Generally speaking, the transactions which are carried by the Corporate Debtor with counter parties, which are related its companies business objective and are carried out on regular basis in furtherance of coil of the company, are to be treated as done in the ordinary course of business. Such factors can be determined based on Memorandum of Association, Annual financial statements, nature of transactions, frequency of transactions to establish that these transactions done time and again like ordinary purchase and sale of raw material for manufacturing industries. There can be dozens of parameters to determine whether transactions were in ordinary course of business or not.
- (iii)** We understand that the Corporate Debtor, Loha Ispat Limited, was primary involved in steel processing and related activities. The Corporate Debtor used to purchase its requirements from suppliers including the Appellants. The Corporate Debtor was involved in serving the requirement of various industries like automobiles, fabrication, packaging, general engineering,

manufacturing, white goods, infra, construction, etc. For this purpose, the Corporate Debtor used to procure various types of goods from the vendors. It is not disputed fact that there was a relationship between the Corporate debtor and the Appellants and the Corporate Debtor used to procure material from the Appellants.

- (iv) The Appellants have submitted that owing to Corporate Debtor's failure to clear its outstanding dues and few of deteriorating financial conditions of the Corporate Debtor, the Appellants under commercial compulsion, had to purchase the available material which were in nature of scrap from the Corporate Debtor to mitigate their losses. During pleadings, the Appellant reiterated same facts. In fact, in the written submission the Appellants have recorded "the purchase of such material was not an act of acquiring fresh inventory or useable raw material the scrap which were lying in the premises of the Corporate Debtor were sold to the Appellants to adjust outstanding debts".
- (v) On the other hand, we have noted from submissions of the Liquidator that such transactions were not in ordinary course of business. The Respondent strongly pleaded that the goods purchased by the Corporate Debtor from the same vendors and after passage of some time, returned back to the Appellants at huge discount which has been established by the forensic auditors in their forensic report.

- (vi) We note that the liquidator could not verify the alleged fresh purchases by the Appellants as pleaded in the Appeal Paper Books with respect to tally books and other accounts available with the Corporate. We take into consideration the fact that material like HR coil or even hot roll trimming (bye product) are not prone to deterioration. Therefore, we find logic in the contentions of the Liquidator that such huge discount cannot be treated as done in ordinary course of business.
- (vii) Taking overall view, thus we do not find merit in the arguments of the Appellants on this ground and reject the same.

**52. Issue No. (V)** Whether, the transactions done by the Third Party can be covered under Section 45 of the Code.

- (i) It is the case of the Appellants that they had no relationship with the Corporate Debtor. We also note that the Appellants were not declared as related party. The Appellants pleaded that third party could not be roped into the avoidance transactions application by the Resolution Professional/ Liquidator and to buttress their point, they cited the judgment of Gluckrich Capital Private Limited (Supra).
- (ii) At the outset, we would like to make it clear that the above cited judgment delivered by the Hon'ble Supreme Court of India was with respect to Section 66 of the Code i.e., regarding fraudulent transactions and not with respect to under valued transactions which has been challenged in the present appeals. We must understand that both preferential and under

valued transactions involved transfer of assets or an interest therein from the Corporate Debtor to another party. Another party can be a related party or third party.

- (iii)** The intent of Section 45 of the Code is with respect to transactions done by the Corporate Debtor which involves transfer of one or more assets for a consideration the value of which is significantly less. Thus, such third parties, like the Appellants in the present three appeals, become beneficiary of undervalued transactions. We also take into consideration the fact that intention Section 45 of the Code, is to reverse the effect such transfers and bring back assets or their value back to the Corporate Debtor's estate for the benefit of all creditors. We note that transactions, as in the present case, were done by way of purchase returns by the Corporate Debtor to the Appellants at significantly low prices.
- (iv)** Naturally and logically, such third parties are required to be examined while going in details of the avoidance transactions. If the arguments of the Appellants are to be accepted as gospel truth, then avoidance application need to be restricted only to the related party. The Code do not make such differentiation.
- (v)** In fact, the Code provides two different lookback period with respect to related party and unrelated party and the third party falls in the category of unrelated party. Therefore, the contentions of the Appellants, that being

unrelated party, they could not have been proceeded against under Section 45 of the Code, do not warrant any merit and stand rejected.

53. Thus, on all accounts, except the impugned transactions beyond stipulated look back period as per code, the appeals fail and stand dismissed. However, the Appellants are entitled to relief based on reduced figures as reworked out by the Liquidator and submitted to us in the written submissions. The impugned order stands modified to this limited extent and the Respondent is directed to pursue recoveries based on his revised calculations submitted to us in written submissions subject to final verifications by the liquidator. On all other counts, we dismiss the appeals.

54. I.As, if any are closed. No cost.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Justice Mohammad Faiz Alam Khan]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

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