IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

IA No. 58 of 2020
C.P. (IB)No.17/BB/2019
U/s.43 of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of:
Velayudham Jayavel
Liquidator of IDEB Projects Private Limited
F1, Windsor Meenakshi,
5th Street, Pai Layout, Hulimavu
Bengaluru-560076 - Applicant/Liquidator

Versus

1.Harkirat Singh Bedi
1-77, Diamond District
Old Airport Road, Kodihalli
Bengaluru- 560008 - Respondent No.1

2. Avneet Bedi
1-77, Diamond District
Old Airport Road, Kodihalli
Bengaluru- 560008 - Respondent No.2

3. IDEB Grand Reality Pvt. Ltd
9th & 10th Floor,
Sigma Soft Tech Park Delta Towers,
Whitefield Main Road
Bengaluru – 560066 - Respondent No.3

Order Delivered on : 13.04.2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Sh. Harish Narasappa, Sr. Counsel
a/w Sh. Aakash Sherwal

For R1 and R2 : Sh. Ajeesh Kumar Shankar
a/w Sh. Srihari S

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The Liquidator of the Corporate Debtor M/s IDEB Projects Private Limited filed the instant IA on 22.01.2020 against the Respondents under Section 43 of Insolvency and Bankruptcy Code,2016 read with Rule 11 of the National Company Law Tribunal Rules,2016 seeking the following reliefs:

   a) *"Declare that the transaction of payment of Rs. 7,23,61,260/- (Rupees Seven crores Twenty-Three Lakhs Sixty One Thousand Two Hundred and Sixty only) to the Respondent No.3 by the Corporate Debtor constitutes a preferential Transaction violating Section 43 of the IBC;*

   b) *Direct IDEB Grand Reality Pvt.Ltd. and/or Respondents 1 and 2 to transfer an amount of Rs.7,23,61,260/- (Rupees Seven crores Twenty-Three Lakhs Sixty One Thousand Two Hundred and Sixty only) to the Applicant; and*

   c) *Pass such other Orders and further orders, as this Hon'ble Tribunal may deem fit and appropriate and thus render justice."*

2. The facts of the case are mentioned below:

   a) It is submitted that, the Applicant had appointed M/s. M M Reddy & Co. Chartered Accountants to carry out the review of financial transactions for the last two financial years prior to the date of initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor. The CA's report pointed out to the transactions which were covered under section 43 of the IBC, 2016 requiring the attention of the Resolution Professional/Liquidator being Preferential Transactions.

   b) It is stated in the Transaction Audit Report that Corporate Debtor had paid huge amounts to clear the credit balance of one of its subsidiary companies i.e., IDEB Grand Reality Pvt Ltd, the Respondent No.3 during the period from January 2018 to April 2018. It is to be noted that IDEB Grant Reality Pvt Ltd is a related party of the Corporate Debtor and the aforesaid period comes within the scope of relevant period as per Section 43((4)(a) of the IBC, being within a period of two years preceding the insolvency commencement date.

c) It is submitted that an amount of Rs. 7,23,61,260/- (Rupees Seven Crores Twenty-Three Lakhs Sixty One Thousand Two Hundred and Sixty only) was paid by the Corporate Debtor to the 3rd respondent and that these payments were made to settle the amount payable by the Corporate Debtor to the 3rd respondent during the relevant period as stipulated under Section 43(4) of the IBC, in preference to other creditors. There are payments made to a creditor being a related party, who would otherwise have been lower in the distribution waterfall as per Section 53 of the IBC.

d) Upon inquiry with the Respondent No.1, the Liquidator was informed that the amount was paid to clear an antecedent debt owed by the Corporate Debtor to IDEB Grand Reality Pvt Ltd., pursuant to certain transactions that took place in 2010 and 2011. However, it is noteworthy that the details of these transactions were neither mentioned under the head of Related Party Transactions in the 2009-10 or 2010-11 annual reports of the Corporate Debtor nor was it highlighted in the financial reports of the Corporate Debtor for the financial years 2009-10 or 2010-11.

3. On 04.09.2020, vide diary no 2575, common objection has been filed on behalf of the Respondent Nos 1 and 2, who are the suspended director of the Corporate Debtor, opposing the IA and given para wise objection;

Undisputed Facts

(1) It is submitted that the company under liquidation M/s IDEB Projects Private Limited had the following shareholding as on 31st March 2018:

Equity Shares:

Sl.No	**Share Holders**	**No. of Shares**	**Percentage**
1	Mr. Harkirat Singh Bedi	1,12,96,079	60.01
2	Mr. Avneet Bedi	64,07,889	34.04
3	Ms. Neharika Bhattacharya	3,20,000	1.70
4	Mrs. Anurag bedi	1,40,000	0.74
5	P S Bedi & Co Pvt Ltd	60,000	0.32
6	Mr. Harinder Singh Bedi	2,00,000	1.06
7	Mr. M S Bedi	2,00,000	1.06
8	Mr. R S Bedi	2,00,000	1.06
9	Willeroo Investments Limited	100	0.00
	Total	**1,88,24,068**	**100**

(2) It is submitted that upon the failure of M/s IDEB Projects (P) Ltd., to meet the outstanding liability to suppliers of steel of a sum of Rs.8.64,29,311/- the said parties had initiated the following proceedings for an amount of Rs. 9,73,04,533/- :

(a) A complaint before the Assistant Commissioner of Police (Economic Offences Wing) Crime Branch, Delhi

(b) A complaint under section 138 of the Negotiable Instruments Act to recover a sum of Rs.8,50,09,520/-

(c) A suit O.S No. 895/2011 and IA No.5857/2011 before the Hon'ble High Court of Delhi for recovery of a sum of Rs. 1,22,95,033/-.

2.1. There was no debt due by M/s IDEB Grand Reality Private Limited to the aforesaid Creditors and as such the latter Company has no transaction with the said creditors of M/s IDEB Projects (P) Ltd.

2.2. On request by the parties i.e., M/s IDEB Projects (P) Ltd. and the creditors, the Hon'ble High Court of Delhi referred the matter to the Mediation and Conciliation Centre on 25th August 2011.

2.3. The Respondent No.1 herein being the Managing Director of M/s IDEB Projects (P) Ltd. reached a settlement with the aforesaid creditors for a sum of Rs. 7,27,00,000/- against an amount due of Rs.8,64,29,311/-, thus was able to reduce the liability of M/s IDEB Projects (P) Ltd. by Rs.1,37,29,311/-.

2.4. As M/s IDEB Projects (P) Ltd. did not have the money to meet the aforesaid settlement, it requested the Respondent M/s IDEB Grand Reality Pvt Ltd. to facilitate the settlement by selling 4 houses at the project known as Villagio Toscana situated at NIBM Road, Kondhwa, District Pune. As the Respondent, M/s IDEB Grand Reality pvt Ltd. was discharging the liabilities of M/s IDEB Projects (P) Ltd., M/s IDEB Projects (P) Ltd. agreed to repay the said sums to the latter.

(3) It is submitted that until 9th February 2018 the Respondent herein was the Promoter of M/s. IDEB Grand Reality (P) Ltd. and subsequently by a share Transfer Agreement executed on 9th February 2018 for a sum of Rs.1,00,000/-, the shareholding was transferred to i.e. Mr. Brajesh Singh Deo (99%) and Rakesh Singh Deo (1%).

(4) As per the audited balance sheet of 31st March, 2017, there was an outstanding debt by M/s. IDEB Projects (P) Ltd. to M/s. IDEB Grand Reality (P) Ltd. of Rs. 12,64,82,913.87.

(5) It is submitted that in order to discharge the dues legitimately owed by M/s. IDEB Projects (P) Ltd.to M/s. IDEB Grand (Reality P) Ltd., payments were made in the following manner:

Date	**Particulars**	Amount

24-01-2018	Amount paid to IDEB Grand Reality Pvt Ltd	1,00,000
24-01-2018	Amount paid to IDEB Grand Reality Pvt Ltd	1,00,000
28-02-2018	Amount paid to IDEB Grand Reality Pvt Ltd	20,00,000
22-03-2018	Amount paid to IDEB Grand Reality Pvt Ltd	50,00,000
22-03-2018	Amount paid to IDEB Grand Reality Pvt Ltd	50,21,760
27-03-2018	Amount paid to IDEB Grand Reality Pvt Ltd	100,00,000
28-03-2018	Amount paid to IDEB Grand Reality Pvt Ltd	100,00,000
09-04-2018	Amount paid to IDEB Grand Reality Pvt Ltd	100,00,000
12-04-2018	Amount paid to IDEB Grand Reality Pvt Ltd	100,00,000
12-04-2018	Amount paid to IDEB Grand Reality Pvt Ltd	100,00,000
13-04-2018	Amount paid to IDEB Grand Reality Pvt Ltd	101,39,500
	Total:	**7,23,61,260**

(6) It is submitted that, in view of IDEB Grand Reality Pvt Ltd having paid the money to the creditors in the year 2011, the total amount of debt due as on 31.03.2017 by M/s. IDEB Projects (P) Ltd. was a sum of Rs. 12,64,82,913.87/-, which was settled for a sum of Rs. 7,23,00,000/- and therefore, M/s. IDEB Projects (P) Ltd. saved a sum of Rs. 5,27,96,285.87/-.

(7) Thus it is contended that M/s. IDEB Projects (P) Ltd. has been able to settle the dues of the creditors of year 2011 by borrowing funds from M/s. IDEB Grand Reality (P) Ltd., saving the company Rs. 1,37,29,311.00 and thereafter settling the dues of IDEB Grand Realty Pvt. Ltd. by further saving an amount of Rs. 5,27,96,285.87. It is submitted the aforesaid conduct is in the normal course of business and in pursuance to the settlement dated 25th August, 2011 before the Hon'ble High Court of Delhi, which settlement has become a decree.

(8) It is submitted that as on the date of making the payment by M/s. IDEB Projects (P) Ltd. to M/s. IDEB Grand Reality Pvt Ltd, the Respondent 1 and 2 herein were not even the shareholders of the said company. The payment were made by raising of debts by M/s. IDEB

Projects (P) Ltd. to M/s. IDEB Grand Reality Pvt Ltd. It is submitted that as reflected in the balance sheet dated 31.03.2018 and 31.03.2019 of M/s. IDEB Projects (P) Ltd. the said sums were raised from the following persons.

Date	**Particulars**	Amount
24-01-2018	Received from SSTP Property Management Services LLP	6,00,000
28-02-2018	Received from IDEB Buildcon Pvt Ltd	20,00,000
22-03-2018	Received from IDEB Buildcon Pvt Ltd	50,00,000
22-03-2018	Received from IDEB Buildcon Pvt Ltd	50,21,760
27-03-2018	Received from Bani Kaur Bedi	100,00,000
28-03-2018	Received from Bani Kaur Bedi	100,00,000
09-04-2018	Received from Bani Kaur Bedi	100,00,000
12-04-2018	Received from Bani Kaur Bedi	100,00,000
12-04-2018	Received from Bani Kaur Bedi	100,00,000
13-04-2018	Received from Bani Kaur Bedi	101,39,500
	Total:	**7,27,61,260**

It is submitted that not only did it increase its income by Rs. 5,27,96,285.87 but also substituted its creditor, M/s. IDEB Grand Reality Pvt Ltd. by other creditors as named aforesaid for a much lesser amount from Rs. 12,64,82,913.87 to only Rs. 7,27,61,260.00.

4. The applicant thereafter filed rejoinder vide diary no 2327 dated 14.08.2020 to the original reply filed on behalf of Respondent No. 1 & 2 and also the para wise comments while reiterating the basic contention made in the overall rejoinder, as under:

a) It is submitted that the objections filed by the respondents are not maintainable either in law or on facts. At the outset, it is pertinent to highlight the opinion of the independent auditor made in the financial statements for the year 2017-18 with respect to the conduct of the affairs of the Corporate Debtor at which time the respondents 1 and 2 were still the promoters of the Corporate Debtor.

b) The independent auditor in its report has stated as follows: "In our opinion, the Company has not established its internal financial control over finance reporting on criteria based on or considering the essential components of internal control stated in the Guidance Note issued by the Institute of Chartered Accountants of India. This disclaimer issued by the independent auditor shows that the numbers as has been stated in the financial statements of the Corporate Debtor at the time they were being managed by the respondents 1 and 2 are not necessarily accurate.

c) It is submitted that the respondents 1 and 2, being the erstwhile promoters of the Corporate Debtor, have engaged in preferential transactions with a related party of the Corporate Debtor i.e. the respondent 3 herein. As has been stated in the application, a sum of INR 7,23,61,260 (Rupees Seven Crores Twenty-Three Lakhs Sixty-One Thousand Two Hundred and Sixty) has been transferred from the Corporate Debtor to respondent 3.

d) It is pertinent to mention that the Corporate Debtor waited till 2018 to transfer the sum of INR 7,23,61,260 (Rupees Seven Crores Twenty Three Lakhs Sixty-One Thousand Two Hundred and Sixty) to the respondent 3 when the settlement agreement itself was executed in 2011. As per the respondent's own documentary admission, it is important to highlight the particulars by which this transaction was effected: the Corporate Debtor transferred a sum of INR 2,00,000 on January 24, 2018 to respondent 3. Later, vide a share purchase agreement dated February 09, 2018, the entire shareholding of the respondents 1 and 2 in respondent 3 was transferred to Mr. Brajesh Singh Deo and Mr. Rakesh Singh Deo for a very low consideration of INR 1,00,000 (Rupees One Lakhs only). Pursuant to the settlement agreement, the Corporate Debtor subsequently transferred the remaining sum of INR 7,21,61,260 (Rupees Seven Crores Twenty

One Lakhs Sixty One Thousand Two Hundred and Sixty) within a short span of two months. It is unclear as to how the shares held by respondents 1 and 2 in respondent 3, being the entire shareholding of respondent 3, could have been valued at just INR 1,00,000, when the Corporate Debtor transferred a much larger sum to respondent 3 at around the same time.

8. It is submitted that the actions of the respondents 1 and 2 in transferring their entire shareholding in respondent 3 for a very low consideration and, shortly thereafter transferring significant amounts from the Corporate Debtor to respondent 3 amounts to a circular transaction. The said circular transaction has ostensibly been made to escape the scrutiny of a related party transaction whereas the actual aim of transferring the amounts has been to siphon off the assets of the Corporate Debtor to the detriment of its creditors.

5. Heard the learned counsel for the Petitioner and Respondents and perused the records available. This Tribunal on 16.12.2022 & 24.01.2023 directed both the Counsels to file written submissions. The compliance to the above order was filed vide diary no 847 dated 13.02.2023 in which it was explained by the petitioner as under:-

a) It is submitted that the CIRP and liquidation of the Corporate Debtor was initiated by this Hon'ble Tribunal vide order dated 29.03.2019 and 08.11.2019, respectively. Subsequently, the Applicant with the aid of professional advisors had identified a payment of Rs 7,23,61,260 by the Corporate Debtor to Respondent No. 3 ("Preference Transaction") as a preference payment under Section 43 of the Code. The Preference Transaction was undertaken through 11 payments made between 24.01.2018 to 13.04.2018 by the Corporate Debtor to Respondent No. 3. (Annexure A @ Page 23 of the Application). It is pertinent to note that the Respondents have not disputed the 11 payments made by the Corporate Debtor to Respondent No. 3.

b) It is submitted that Section 43 of the Code is a deeming provision. If a transaction falls within the preference period and leads to a creditor enjoying a higher beneficial position under the waterfall mechanism provided under Section 53 of the Code, then orders under Section 44 of the Code are required to be passed by the Hon'ble Tribunal.

c) Section 43(4)(i) of the Code provides that a preference shall be deemed to be given at a relevant time, if it is given in relation to a related party during the period of two years preceding the insolvency commencement date. The relevant preference period for a related party of the Corporate Debtor is 28.03.2017 to 28.03.2019. Similarly, Section 43(4)(ii) of the Code provides that a preference shall be deemed to be given at a relevant time, if it is given in relation to an un-related party if it occurs during the period of one year preceding the insolvency commencement date. The relevant preference period for an un-related party of the Corporate Debtor is 28.03.2018 to 28.03.2019.

d) It is submitted that Respondent No. 3 was a related party to the Corporate Debtor as per Section 3(24)(d) of the Code, as the directors of the Corporate Debtors (i.e., Respondent No. 1 and Respondent No. 2) were shareholders of Respondent No. 3("Director's Shareholding"). It is submitted that Respondent No. 1 & 2 have not denied the existence of Director's Shareholding. Further, Respondent No. 1 & 2 have contended that Director's Shareholding was transferred as of 31.03.2018 pursuant to a share transfer agreement dated 09.02.2018. It is pertinent to note that the consideration for the transfer of Director's Shareholding is only Rs 1,00,000.

e) A part of the Preference Transaction is covered within the period of two years (28.03.2017 to 28.03.2019), when Respondent No. 3 was a related party of the Corporate Debtor due to Director's

Shareholding. Further, as Respondent No. 3 became an un-related party (as of 31.03.2018) due to transfer of Director's Shareholding, a part of the Preference Transaction is covered within the preference period of 1 year (i.e. 28.03.2018 to 28.03.2019). A table depicting the transaction amount along with relevant dates and preference period is reproduced below for reference.

<table>
<tr><th>S.No.</th><th>Date of Transaction</th><th>Transaction Amount (in Rs)</th><th>Relevant Period</th></tr>
<tr><td>1.</td><td>24-01-2018</td><td>1,00,000</td><td rowspan="7">Preference Period for Respondent No. 3 as a Related Party</td></tr>
<tr><td>2.</td><td>24-01-2018</td><td>1,00,000</td></tr>
<tr><td>3.</td><td>28-02-2018</td><td>20,00,000</td></tr>
<tr><td>4.</td><td>22-03-2018</td><td>50,00,000</td></tr>
<tr><td>5.</td><td>22-03-2018</td><td>50,21,760</td></tr>
<tr><td>6.</td><td>27-03-2018</td><td>100,00,000</td></tr>
<tr><td>7.</td><td>28-03-2018</td><td>100,00,000</td></tr>
<tr><td>8.</td><td>09-04-2018</td><td>100,00,000</td><td rowspan="4">Preference Period for Respondent No. 3 as an un-related Party</td></tr>
<tr><td>9.</td><td>12-04-2018</td><td>100,00,000</td></tr>
<tr><td>10.</td><td>12-04-2018</td><td>100,00,000</td></tr>
<tr><td>11.</td><td>13-04-2018</td><td>101,39,500</td></tr>
<tr><td></td><td>Total</td><td>7,23,61,260</td><td></td></tr>
</table>

f) It is submitted that the Respondents have claimed that the payment of Rs 7,23,61,260 by the Corporate Debtor to Respondent No. 3 was pursuant to Settlement Deed dated 25.08.2011 (See Annexure R-2, Pg 20 of Objections of Respondent No. 1 & 2). They have also claimed that Respondent No 3 had discharged the debt of the Corporate Debtor towards third parties for the purchase of Steel TMT as per the Settlement Deed dated 25.08.2011. Accordingly, the

Corporate Debtor owed an amount of Rs 7,23,61,260 crore to Respondent No. 3.

g) The nature of debt of the Respondent No. 3 towards the Corporate Debtor is in lieu of supply of TMT bars under the Settlement Deed dated 25.08.2011. shall constitute operational debt. Under the waterfall mechanism as per Section 53 of the Code, the debt of Respondent No. 3 would be categorized for distribution only after payment to financial creditors. In this regard, it is pertinent to note that the Applicant has received claims to the tune of approx. Rs 1732 crores from the financial creditors of the Corporate Debtor. The proceeds from the sale of the assets under the liquidation estate is insufficient to meet the claims of the financial creditors of the Corporate Debtor.

h) It is submitted that the discharge of debt by the Corporate Debtor to Respondent No. 3 has led to Respondent No. 3 enjoying a higher beneficial position under Section 53 of the Code. Accordingly, it is submitted that the Corporate Debtor shall be deemed to have given a preference to Respondent No. 3 as per Section 43(2) of the Code.

i) It is submitted that the Respondent’s argument that the payment by the Corporate Debtor to Respondent No. 3 is not covered by Section 43 is without merit. At the outset, it is pertinent to note that Corporate Debtor’s payment to Respondent No. 3 occurred 6.5 years after Respondent No. 3 discharged the debt of the Corporate Debtor pursuant to the Settlement Deed. Further, the counsel for Respondent No. 1 & 2 during arguments has also stated that the funds utilized to re-pay Respondent No. 3 by the Corporate Debtor were sourced through the daughter of Respondent No. 1 & 2 i.e., Ms. Bani Bedi.

j) It is submitted that Respondent No. 1 & 2 in their objections have made no reference to the source of funds utilized by the

Corporate Debtor to discharge the debt to Respondent No. 3. Further, it is submitted that the source of funds utilized by the Corporate Debtor to discharge a debt has no bearing on the ambit of Section 43 of the Code, which makes amply clear than any transaction that meets the requirements of Section 43 shall be deemed to constitute a preference transaction.

6. The compliance to the order dated 24.01.2023 was filed vide diary no 658 dated 03.02.2023 in which it was explained by the respondents No.1 & 2 as under:-

(i) It is submitted that the important aspects leading to the instant Application being filed under Section 43 of the IBC, 2016 are as hereunder:

(a) Petition filed on 12.12.2018

(b) Petition admitted on 29.03.2019

(c) Under Regulation 35-A of the Insolvency Resolution Process for Corporate Persons Regulations, the Resolution Professional should have formed an opinion regarding preferential transaction under section 43 of the code within 75 days from the insolvency commencement and should have made a determination on or before 115th day of the insolvency commencement date.

(d) If the Resolution Professional had made such a determination, he ought to have made an application to the Adjudicating Authority for appropriate relief on or before 135th day of the insolvency commencement date, under intimation to the Board as per Regulation 35-A (3) of the Insolvency Resolution Process for Corporate Persons Regulations, 2016 i.e., not later than October 1st 2019. However, the Application is filed on 22.01.2020, which is way past the period prescribed under the aforesaid regulation. There is no application under section 5 of the Limitation Act filed.

(e) The Auditor's Report appended to the Application is prepared for the period of 1st April 2017 to 29th March 2019. This is not preceded by any determination under 35 A(1) or (2) of the Regulations.

(f) That in the Auditor's Report, there is disclaimer, and the disclaimer is extracted here under:

> "7. *This Report is based exclusively on the facts and circumstances described during the engagement of the team for conducting Transaction Audit and is given based on the representations, express or implied, and based on our interpretation of law, which may differ to other person. Existence of any other factual or historical background not provided to us might require a conclusion different from the one expressed herein.*"

(g) There is no independent application of mind by the Resolution Professional arrived at on the claim as to if there is a preferential transaction. The Auditors report cannot be relied on.

(h) That as per the judgment of the Supreme Court in Anuj Jain vs. Axis Bank Limited and Others (2020) 8 SCC 401, the meaning of Ordinary course of business or financial affairs is explained and the responsibility of the Resolution Professional has to come to a conclusion as to if there is a preferential transaction. Further, the earlier submission regarding the settlement and meeting of obligation by IDEB Grand Reality Pvt. Ltd. was reiterated; for the contention that the transaction was in the ordinary course of business.

(ii). It is submitted that in CS (OS) No. 895/2011 in a dispute between the Corporate Debtor and a third-Party being Yogesh Sharma & Others vs. M/s. IDEB Projects Pvt. Ltd. and Ors., the Corporate Debtor was saddled with a claim of Rs. 9,73,04,553, against an admitted amount of Rs.8,64,29,311/- as per the Audited Balance Sheet of the Company as on 31.03.2011. As against this, an amount of Rs.7,23,61,260/- only was determined as payable to the third party by way of settlement, thus effecting saving of Rs.1,37,29,311/- to the corporate debtor. As a result, IDEB Grand Reality Pvt. Ltd substituted Yogesh Sharma and others as the creditor.

(iii). Further, there was an outstanding debt of M/s. IDEB Projects (P) Ltd. to M/s IDEB Grand Reality Private Limited of Rs.12,64,82,913.87 which was settled for a sum of Rs.7,23,00,000/- and therefore, a saving was made by the corporate debtor IDEB Projects Pvt Ltd, of a sum of Rs.5,27,96,285.87/-.

(iv). It is submitted that in order to meet the dues of the IDEB Grand Reality Pvt. Ltd. and in order to reimburse the sums paid on behalf of the Corporate Debtor, the daughter of the Promoter being Ms Bani Kaur Bedi and others advanced a sum of Rs.7,27,61,260/- as stated in para 17 of the Statement of Objections. (Para 3(8) above).

(v). It is further submitted that only on account of the daughter of the Promoter being Mrs. Bani Bedi and the sister concerns having advanced a sum of Rs.7,27,61,260/-, the Corporate Debtor repaid the money to the IDEB Grand Reality Pvt Ltd. and accordingly in the books of the Corporate Debtor the name of IDEB Grand Reality (P) Ltd was replaced with that of Ms Bani Kaur Bedi & others to the extent of Rs.7,27,61,260/- as Creditors.

(vi). It is stated that as per law declared by the Supreme Court and as per Section 43 (3) (a), these transactions were made in the ordinary course of the business or financial affairs, and there is no collusion between IDEB Grand Reality Pvt Ltd and this Respondent in order to make the payment as stated *supra.* Thus, this Respondent, by reaching out to IDEB Grand Reality and making sure the settlement with the 3rd party Yogesh Sharma & Others in CS (OS) No. 895/2011is honoured as per Settlement Deed dated 25/08/2011, has paid the company a sum of Rs.7,27,61,260/-. It is submitted that on the one hand the application is belated and on the other hand the transaction of the Respondent is a bonafide transaction.

7. We have considered the rival submissions and perused the material on record. The Applicant appointed M/s. M M Reddy & Co. CA to carry out the review of financial transactions for the last two years, which showed that certain transactions carried by the Corporate Debtor fell within the meaning of deemed Preferential Transactions. *The Audit Findings for preferential transaction in the Transaction Audit Report is as under:*

The company has paid huge amounts to clear the credit balance of one of its subsidiary company i.e. IDEB Grand Reality Pvt Ltd during the period January 2018 to April 2018. The details of transactions is as follows:

Date	*Particulars*		*Vch Type*	*Vch No.*	*Debit*
24-01-2018	*Cr*	*Dhanalaxmi Bank Ltd - 011606700001792*	*Bank Payment*	*BP-373*	1,00,000
24-01-2018	*Cr*	*Dhanalaxmi Bank Ltd - 011606700001792*	*Bank Payment*	*BP-374*	1,00,000
28-02-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-416*	20,00,000
22-03-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-445*	50,00,000
22-03-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-446*	50,21,760
27-03-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-452*	100,00,000
28-03-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-466*	100,00,000
09-04-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-23*	100,00,000
12-04-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-51*	100,00,000
12-04-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-58*	100,00,000
13-04-2018	*Cr*	*Punjab & Sind Bank - 10671100000027*	*Bank Payment*	*BP-60*	101,39,500
		Total Payment			*7,23,61,260*

8. It is seen that in respect of the Transaction Audit Report as well as the Bank statements, the respondents failed to dispute the bank statements basing on which the Auditors have prepared the Transaction Audit Report. Hence the amount referred above falls under the ambit of preferential

transaction in accordance with the deeming provisions. Hence the respondents are liable to transfer the same to the Corporate Debtor.

9. It is not in dispute that the amounts finalised against the Respondents was after due deliberations and discussions and the respondents stated in the objections there were the dues payable to Respondent No.3 It is also pertinent to note here that the respondent no 3 has changed its name from IDEB Grand Reality Private Limited to Dasscon Realty Private Limited on 13.10.2020.

10. In so far as the condition of the Respondents regarding delay in filing petition under section 43 is concerned, the Hon'ble NCLAT in the matter of *Jagdish Kumar Parulkar vs Vinod Agarwal & Ors. Company Appeal (AT) (Insolvency) No. 483 of 2022, dated 16.02.2023, observed as under:*

> *"we are of the considered opinion that CIRP Regulations 35-A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135th day of the ICD is only directory. Moreover, since Regulation 35-A must be read along with the statutory construct of IBC which by itself does not prescribe any time period for determination of opinion. Hence merely on account of delay in determination of opinion cannot by itself become a ground for non-maintainability of the petition."*

13. In the circumstances and for the aforesaid reasons, we are of the considered opinion that the instant I.A is to be allowed as under:

I. The payment of Rs.7,23,61,260 to the Respondent No.3 by the Corporate Debtor is declared as Preferential Transactions in terms of Section 43 of the I&B Code,2016

II. The respondent No.1, 2 and 3 are directed to transfer an amount of Rs. 7,23,61,260/- to the Corporate Debtor (under liquidation) within 30 days from the date of receipt of this order.

14. Accordingly, IA No.58 OF 2020 is disposed of.

-Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)