

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301- IA/663(AHM)2023

In
CP(IB) 5 of 2018

Under Section 43, 49 & 60(5) IB Code, 2016

IN THE MATTER OF:

Rajendra sanghi Liquidator of Nagaur Water Supply
Company Pvt Ltd

V/s

Rakshit Dhirajlal Doshi & Ors

.....Applicant

.....Respondents

Order delivered on: 28/09/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-
SANJEEV SHARMA
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT- I, AHMEDABAD**

**IA No.633 (AHM) 2023
in
CP (IB) No. 5 of 2018**

*(An application filed under Section 43, 49 and 60(5) of the
Insolvency and Bankruptcy Code, 2016)*

In the matter of:

Mr. Rajendra Sanghi

Liquidator of

M/s. Nagaur Water Supply Company Pvt. Ltd.

2D, B Tower Siddh Chhakra Apartment

Near Sargam Shopping Center, Parle Point

Surat, Gujarat - 395007

.... Applicant

VERSUS

1. Rakshit Dhirajlal Doshi

Suspended Director of the Corporate Debtor

27, Ramila Baug, Basant Bahar- III,

Opp. Homeopathic Medical College,

Parul University, Bopal- Ghuma Road,

Bopal, Ahmedabad-380058

2. Amit Doshi

Erstwhile Director of the Corporate Debtor

A-103-10, Tirth Bhoomi,

Near Law Garden, Ellisbridge,

Ahmedabad -380006

3. Pacific Pipe Systems Private Limited

Through its Liquidator

Mr. Pradeep Kumar Kabra

M-19-20-21, Metro Tower, Ring Road,

Surat-395002

4. Pacific Composites Private Limited

301, Paramount Residency, 141,
Sunrise Park, Behind Asia School,
Drive in Road, Ahmedabad, GJ 380054 IN

5. Doshion Water Solution Private Limited

Through its Liquidator

Mr. Vikash Gautamchand Jain 204,
Wall Street-1, Opp. Orient Club, Nr. Gujarat College,
Ellisbridge, Ahmedabad-380006

6. Fivebro International Private Limited

A - 103/10 Tirth Bhumi Apartment,
Near Law Garden Ellisbridge,
Ahmedabad-380 006, Gujarat

...Respondents

Order pronounced on: 28.09.2026

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E :

For the Applicant : Mr. Dhananjay Sud, Adv. a. w.
: Mr. Rajendra Sanghi, Liquidator

For Respondents : Mr. Vaishnavi Viswanathan, Adv.R-1
& R-2
Mr. Nipun Singhvi, Adv. for R-5
: Mr. Monaal Davawala, Adv. for R-6

ORDER
(Per Bench)

1. This Interlocutory Application has been filed on 02.06.2023 under Sections 43, 44, 49 and 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking avoidance of the transactions pleaded as preferential and transactions

defrauding creditors. The application was filed by **Mr. Parag Sheth** Resolution Professional of **M/s. Nagaur Water Supply Company Pvt. Ltd.**

2. The Application was initially filed by the Resolution Professional of M/s. Nagaur Water Supply Company Pvt. Ltd. This Adjudicating Authority, vide order dated 08.04.2024, allowed substitution of Mr. Rajendra Sanghi as Applicant in place of the erstwhile Resolution Professional and the consequential amendment was carried out on 17.07.2024.
3. Respondent Nos.1 and 2 were Directors of the Corporate Debtor during the relevant period. Respondent Nos.3 to 6 are stated to be related parties. The Applicant has relied principally upon the Transaction Audit Report dated 27.02.2023 and clarification dated 06.03.2023.
4. The Application seeks the following reliefs: -
 - a) *Allow the present Application;*
 - b) *Pass appropriate orders directing the Respondent No. 1 to 5 to jointly and/or severally, to pay sum to the tune of Rs. 16,26,82,000/- to the account of the Corporate Debtor, Nagaur Water Supply Company Private Limited for distribution as per law;*

- c) *Pass appropriate orders directing the Respondent No. 1, 2 and 6 to jointly and/ or severally, to pay sum to the tune of Rs. 36,40,000/-to the account of the Corporate Debtor, Nagaur Water Supply Company Private Limited for distribution as per law;*
- d) *Pass appropriate order/ directions against the respondents in terms of section 43, 44 and 49 of the Code; and/or*
- e) *Such other and further relief(s) as may deem fit in the interest of justice.*

5. The facts as available in the Application are stated below: -

5.1 The present Interlocutory Application has been filed by the Applicant/Resolution Professional under Sections 43, 49 and 60(5)(c) of the IBC, 2016, seeking appropriate directions in respect of certain transactions undertaken by the Corporate Debtor prior to commencement of CIRP.

5.2 Phoenix ARC Pvt. Ltd. had filed a Section 7 application, being CP (IB) No. 5 of 2018, against M/s. Nagaur Water Supply Company Pvt. Ltd. The application was initially dismissed by this Adjudicating Authority on 27.05.2020. The Hon'ble NCLAT, vide order dated 01.04.2021 in Company Appeal (AT) (Ins.) No. 690 of 2020, set aside the dismissal and directed admission of the application. Accordingly, the Corporate Debtor was admitted into CIRP on 17.08.2021.

5.3 In the 2nd CoC meeting held on 02.11.2022, the CoC approved the appointment of M/s. C.R. Shah &

Associates, Chartered Accountants, as Transaction Auditor to examine the transactions of the Corporate Debtor falling within the ambit of the Code. The Transaction Auditor conducted the audit for the period 18.08.2019 to 17.08.2021 and submitted the Transaction Audit Report dated 27.02.2023, followed by an additional clarification dated 06.03.2023.

- 5.4 During the audit, queries were raised regarding various transactions and forwarded to the suspended management. The Applicant states that the detailed response was furnished only on 16.02.2023, causing delay in completion of the audit and submission of the report.
- 5.5 The Corporate Debtor allegedly advanced Rs.11.75 Crore to Pacific Pipe Systems Pvt. Ltd., a related party, which was subsequently written off from the books on 31.03.2021. The Applicant alleges that the transaction conferred an undue preference upon Respondent No.3. The Corporate Debtor allegedly advanced Rs.3.60 Crore to Pacific Composites Pvt. Ltd., which remained outstanding as on the CIRP commencement date and was not recovered despite demands made by the Applicant.
- 5.6 Preferential Transaction – Respondent No.5: An amount of approximately Rs.44.23 lakh was allegedly advanced to Doshion Water Solution Pvt. Ltd., which also remained unpaid as on commencement of CIRP.

- 5.7 Preferential Payments to Respondent Nos.1 & 2: The Transaction Audit Report allegedly identified payments in the nature of salary amounting to Rs.24 lakh to Respondent No.1 and Rs.22.50 lakh to Respondent No.2, which are alleged to constitute preferential payments.
- 5.8 Aggregate Preferential Transactions: According to the Applicant, the aforesaid transactions constitute preferential transactions aggregating to Rs.16,26,82,000/-, attracting the provisions of Section 43 of the IBC.
- 5.9 Transaction Defrauding Creditors – Respondent No.6: The Corporate Debtor allegedly sold its plant and machinery to Fivebro International Pvt. Ltd., a related party, for Rs.17.70 lakh on 25.06.2020 and Rs.18.70 lakh on 28.06.2021, aggregating to Rs.36.40 lakh.
- 5.10 Alleged Fraudulent Intent: The Applicant contends that the aforesaid sale was not undertaken in good faith, that the suspended management failed to furnish supporting documents, and that the transaction was entered into with the intent to defraud the creditors of the Corporate Debtor, thereby attracting Section 49 of the IBC.
6. That on issuance of the notice in the Interlocutory Application, the notices were served upon the Respondent No.1 to 6 through e-mode on 21.07.2023. However, despite

due service of notice through e-mode the Respondent No.3 and 4 neither appeared nor filed any reply in the matter.

7. The Respondent No. 5 (Doshion Water Solutions Pvt. Ltd) appeared and filed its Affidavit in Reply on 12.10.2023 vide inward dairy no. D- 4010 raising objection with regard to the maintainability of the application. Wherein following submission were made in :-

7.1 **Transaction not preferential:** Respondent No. 5 submits that the alleged loan of Rs.44.22 lakh advanced by the Corporate Debtor to Doshion Water Solution Pvt. Ltd. cannot be treated as a preferential transaction under Section 43 of the IBC.

7.2 **Auditor's finding was only tentative:** The Transaction Auditor, at page 99 of the Applicant's application, noted the alleged loan of Rs.44.22 lakh and observed that, based on the available Tally data and documents, the transaction appeared to have been made on a preferential basis. However, the Auditor specifically recommended further inspection/investigation before classifying the transaction.

7.3 **Look-back period under Section 43(4):** Since the CIRP of the Corporate Debtor commenced on 17.08.2021, a transaction with a related party could constitute a preferential transaction only if

undertaken during the two years preceding the insolvency commencement date, i.e. during the applicable look-back period.

7.4 Transaction allegedly outside look-back period:

Respondent No. 5 contends that the alleged loan was not advanced during the prescribed two-year look-back period. It is therefore submitted that the transaction cannot be classified as preferential merely because Respondent No. 5 was a related party.

7.5 CIRP of Respondent No. 5: It is further submitted that the CIRP of Doshion Water Solution Pvt. Ltd. had already commenced prior to the relevant look-back period. Hence, the alleged outstanding loan could not automatically be treated as a preferential transaction under Section 43.

7.6 No claim filed by Applicant: Respondent No. 5 submits that, if the alleged Rs.44.22 lakh loan was actually outstanding, the Applicant ought to have lodged a claim against Respondent No. 5 in the prescribed form during its insolvency/liquidation proceedings. However, no such claim has been filed by the Applicant.

7.7 Transaction not reflected in Respondent No. 5's records: The alleged loan of Rs.44.22 lakh is stated to be not reflected in the available financial records of Respondent No. 5.

- 7.8 **Documents sought from Suspended Board:** In view of the discrepancy, the Liquidator of Respondent No. 5, vide email/letter dated 10.10.2023, sought details and supporting documents concerning the alleged loan transaction from the suspended Board of the Corporate Debtor.
- 7.9 **Maintainability:** On the aforesaid grounds, Respondent No. 5 contends that the Application under Section 43 of the IBC is not maintainable against it, while reserving its right to file a detailed reply, if required.
8. The the Respondent No.2 (Amit Doshi) also appeared and filed its Affidavit in Reply through e- mode on 11.12.2023. Wherein following submission were made in: -
- 8.1 Respondent No.1, a suspended Director of the Corporate Debtor, denies the allegations in the IA and submits that the Application is founded upon an inconclusive Transaction Audit Report containing express disclaimers that its observations are only a guide, are not definitive pronouncements or legal opinions, and that the transactions may fall within Sections 43/49 of the Code, subject to further investigation.
- 8.2 It is contended that the Applicant/RP has failed to independently form the requisite opinion under Sections 43 and 49 of the Code and has mechanically

relied upon the tentative observations of the Transaction Auditor. The alleged inconsistencies between the Transaction Audit Report and the pleadings in the IA further demonstrate, according to Respondent No.1, that the Application has been filed without proper verification.

8.3 Pacific Pipe Systems Pvt. Ltd. – Respondent No.3- With respect to the alleged loan of Rs.11.75 crore, Respondent No.1 submits that the amount was advanced to Respondent No.3 in 2011, as reflected in the Corporate Debtor’s FY 2011–12 Balance Sheet, and therefore falls far outside the two-year look-back period under Section 43(4)(a), considering that CIRP commenced on 17.08.2021.

8.4 The allegation that the amount was irrationally written off is denied. It is submitted that Respondent No.3 had ceased operations in 2014, and the Corporate Debtor had itself lodged a claim for the outstanding loan before the Resolution Professional of Respondent No.3 in June 2020. Upon commencement of liquidation of Respondent No.3, the amount was subsequently written off from the books in accordance with applicable accounting practices. Hence, the transaction cannot constitute a preferential transaction.

8.5 Pacific Composites Pvt. Ltd. – Respondent No.4- Regarding the alleged loan of Rs.3.60 crore,

Respondent No.1 submits that the loan was also advanced in 2011, as reflected in the FY 2011-12 Balance Sheet, and therefore falls outside the two-year look-back period prescribed under Section 43(4)(a).

8.6 It is further submitted that the Corporate Debtor had taken steps to recover the amount by invoking the arbitration clause in the loan agreement and issuing notice dated 11.06.2019. The arbitration proceedings were subsequently interrupted due to commencement of CIRP. Thus, the allegation that the amount was merely advanced and irrationally written off without any recovery efforts is denied.

8.7 Doshion Water Solution Pvt. Ltd. – Respondent No.5- In respect of the alleged loan of Rs.44.23 lakh, Respondent No.1 submits that the Applicant has relied upon the Transaction Audit Report without independently verifying the transaction or forming the requisite opinion under Section 43. The Auditor itself had not conclusively classified the transaction as preferential and had recommended further investigation.

8.8 It is further submitted that several payments identified during the audit were made from funds infused by the Directors/individuals into the Corporate Debtor and were utilised towards legal/disputed matters, staff dues and other expenses necessary to keep the Corporate Debtor as a going concern. Accordingly,

such transactions cannot mechanically be characterised as preferential.

- 8.9 Payments to Respondent Nos.1 & 2- As regards the alleged preferential salary payments of Rs.24 lakh to Respondent No.1 and Rs.22.50 lakh to Respondent No.2, it is submitted that the payments represented salary/remuneration and other payments made in the ordinary course of business prior to commencement of CIRP.
- 8.10 The discrepancy between the Board Resolution and Form MGT-7/MGT-7 records is stated to be merely an inadvertent discrepancy concerning the date of the Board Resolution, which has no bearing on the entitlement to remuneration. Reliance is placed on Section 43(3)(a), which excludes transfers made in the ordinary course of business or financial affairs from the ambit of preferential transactions.
- 8.11 Fivebro International Pvt. Ltd. – Alleged Transaction Defrauding Creditors- The allegation under Section 49 concerning Fivebro International Pvt. Ltd. is denied on the ground that the description in the IA does not correspond with the Transaction Audit Report. While the IA alleges sale of plant and machinery, the detailed audit observation at paragraph 6.4 records receipt of rent income of Rs.17 lakh from Fivebro International Pvt. Ltd.

8.12 It is submitted that the transaction actually represented rental income from the DG set, along with labour and maintenance charges, intended to generate revenue and maintain the Corporate Debtor as a going concern. The Invoice dated 25.06.2020 and Ledger Account are relied upon in support thereof.

8.13 Respondent No.1 further submits that the relevant asset remained with the Corporate Debtor and the transaction did not prejudice the creditors. Moreover, Section 49 requires a transaction to involve an undervalued transaction falling within Section 45(2), whereas the Transaction Auditor has not established any undervaluation in respect of the alleged rental transaction.

8.14 Accordingly, Respondent No.1 contends that the transactions relied upon by the Applicant have been incorrectly characterised as preferential or creditor-defrauding transactions, and that the IA, being based on tentative and inconsistent audit findings without independent opinion formation by the RP, is liable to be dismissed.

9. That the Written Submissions on behalf of Respondent No. 5 were received on 08.01.2025, vide Inward Diary No. D-130. The Written Submissions on behalf of the Applicant were received on 20.02.2025, vide Inward Diary No. D- 1085, in compliance with the order dated 15.10.2024. Further, the

Written Submissions on behalf of Respondent No. 1 and 2 were received on 06.08.2025, vide Inward Diary No. D - 5093. Ld. Counsel appearing for Respondent No. 1 submits that the Written Submissions were filed through e-mode and that, apart from the same, compliance has already been made with regard to the deposit of costs in the *Prime Minister's National Relief Fund*. The same was taken on record.

- 10.** That the Affidavit in Reply on behalf of the Respondent No. 6 was received on 03.02.2026 vide inward dairy no. D 886. Wherein following submission were made in: -

10.1 It is submitted that the Applicant has sought to invoke Section 49 of the IBC against Respondent No.6 primarily on the allegation that the transaction was entered into with a related party and was not undertaken in good faith. Respondent No.6 contends that mere related-party status or an allegation of bad faith, by itself, is insufficient to attract Section 49.

10.2 Respondent No.6 submits that, in terms of Section 45 of the Code, a transaction can be regarded as undervalued where the Corporate Debtor transfers an asset for consideration which is significantly less than the value of the consideration provided, and the transaction is not in the ordinary course of business. It

is therefore contended that the Applicant has neither pleaded nor established that the alleged transaction was undertaken for consideration significantly below the value of the asset.

10.3 It is further submitted that the Transaction Audit Report itself contains material inconsistencies regarding the nature of the transaction. In paragraph 6.4, the Auditor recorded receipt of rent income of approximately Rs.17 lakh from Fivebro International Pvt. Ltd., whereas the concluding portion of the report described the same as a sale of plant and machinery to a related party. Respondent No.6 contends that the Applicant failed to reconcile this fundamental discrepancy before initiating proceedings under Section 49.

10.4 The additional clarification dated 06.03.2023 also allegedly failed to resolve the discrepancy. On the contrary, the Auditor stated that, due to lack of sufficient records and information, it was unable to conclude whether the transaction constituted an undervalued transaction under Section 45 and recommended further investigation.

10.5 Respondent No.6 therefore submits that the Auditor's report is tentative and inconclusive, containing express limitations and disclaimers that its observations are only guiding in nature, are not definitive findings

against any individual or the Corporate Debtor, and do not constitute legal advice or a legal opinion.

10.6 It is submitted that, in reality, the transactions represented receipt of rental income along with labour and maintenance charges, undertaken for the purpose of generating revenue and maintaining the Corporate Debtor as a going concern. The underlying asset continued to remain with the Corporate Debtor and, therefore, there was neither any depletion of its asset base nor prejudice caused to its creditors.

10.7 Respondent No.6 further contends that the Resolution Professional has merely reproduced the observations of the Transaction Auditor without independently examining the contradictory findings or forming the requisite opinion on the basis of material evidence. Consequently, the statutory preconditions for initiating proceedings under Sections 45 and 49 of the Code are stated to have not been satisfied.

10.8 In view of the absence of cogent evidence establishing undervaluation, fraudulent intent, or a transaction defrauding creditors, Respondent No.6 submits that the allegations under Section 49 of the Code are misconceived and untenable. Accordingly, Respondent No.6 seeks dismissal/rejection of the Application insofar as it concerns Respondent No.6 and prays for exemplary costs against the Applicant, while reserving

liberty to file further affidavits/submissions as may be necessary.

11. Chronology of dates and events is briefly stated below: -

Date	Event
2018	Application under section 7 was filed.
27.05.2020	The Section 7 application, being CP (IB) No. 5 of 2018, filed by Phoenix ARC Pvt. Ltd. against M/s. Nagaur Water Supply Company Pvt. Ltd., was dismissed by the Adjudicating Authority.
01.04.2021	The Hon'ble NCLAT, in Company Appeal (AT) (Ins.) No. 690 of 2020, set aside the dismissal order and directed admission of the Section 7 application.
17.08.2021	The Corporate Debtor, M/s. Nagaur Water Supply Company Pvt. Ltd., was admitted into CIRP pursuant to the directions of the Hon'ble NCLAT.
02.11.2022	In the 2nd CoC meeting , the CoC approved appointment of M/s. C.R. Shah & Associates, Chartered Accountants , as Transaction Auditor to examine transactions of the Corporate Debtor under the IBC.
18.08.2019 – 17.08.2021	The Transaction Auditor was appointed to examine the transactions undertaken during the relevant period for identifying transactions falling within the provisions of the IBC.
16.02.2023	The suspended management furnished its detailed response to the queries raised by the Transaction Auditor. The Applicant stated that the delayed response contributed to delay in completion of the audit.
27.02.2023	Transaction Audit Report was submitted by M/s. C.R. Shah & Associates.
06.03.2023	The Transaction Auditor issued an additional clarification to the Transaction Audit Report.
05.05.2023	The present IA No. 663 (AHM) 2023 was filed under Sections 43, 49 and 60(5)(c) of the IBC by the then

Date	Event
	Resolution Professional, seeking avoidance of alleged preferential and transactions defrauding creditors.
08.04.2024	This Adjudicating Authority passed an order pursuant to which an application was filed for substitution of the Applicant/Liquidator in place of the erstwhile Resolution Professional.
17.07.2024	The amendment/substitution in the present Application was carried out, bringing Mr. Rajendra Sanghi, Liquidator , in place of the erstwhile Resolution Professional.

- 12.** We have heard Ld. Counsel for the Applicant, Ld. Counsel for the appearing Respondents, carefully examined the Interlocutory Application, the reply filed by Respondents, Additional Affidavit, its reply and written statements.
- 13.** Respondent Nos. 1 and 2 were the directors of the Corporate Debtor at the time of relevant transactions were undertaken. Their written submissions filed on 28.07.2025 opposing the prayers require proper consideration. In addition to the transaction wise contentions, they have raised preliminary objections on maintainability of the Application based on: (1) application is premised entirely on the transaction audit report, which is imprecise and inconclusive, and (2) no subjective satisfaction of the Resolution Professional and no

reasoned determination of the Resolution Professional. We frame the following issues for determination: -

- A. Issue No.1:** - Whether the objections concerning the inconclusive nature of the report and no independent satisfaction of the Resolution Professional is supported by the facts of the case and whether such claims have any bearing on the decision of the application on merit?
- B. Issue No.2:** Whether the transactions undertaken by the Corporate Debtor with Pacific Pipe Systems Private Limited, Pacific Composites Private Limited and Doshion Water Solution Private Limited constitute *preferential transactions* within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016, having regard to the relevant period prescribed under Section 43(4) of the Code?
- C. Issue No.3:** - Whether the payments made to Respondent Nos. 1 and 2 towards salary/remuneration constitute preferential transactions under Section 43 of the Code, or whether such payments are excluded by virtue of Section 43(3)(a) as transactions undertaken in the ordinary course of business or financial affairs of the Corporate Debtor?
- D. Issue No.4:** - Whether the transactions entered into with Fivebro International Private Limited on 25.06.2020 and 28.06.2021 constituted sale/transfer of the Plant and Machinery of the Corporate Debtor for an undervalue, or were towards rent, labour and maintenance charges, and, if found to be transfers, whether the same constitute undervalued transactions and transactions undertaken with intent to defraud creditors within the meaning of Sections 45 and 49 of the Code?

OBSERVATION OF THE TRIBUNAL: -

14. Findings on Issue No.1: - Whether the objections concerning the inconclusive nature of the report and no independent satisfaction of the Resolution Professional is supported by the facts of the case and whether such claims have any bearing on the decision of the application on merit?

14.1 Copy of Transaction Audit Report is enclosed as Annexure D to the Application (Pages 78 to 133 of the Application). The Application under section 7 of the Code was filed by Phoenix ARC Private Limited as the CD had failed to pay about Rs 42 crores to it. The Application under section 7 was filed in the year 2018 however the same was rejected first but admitted on 17.08.2021 after the order of the Hon'ble NCLAT. Rakshit Dhiraj Lal Doshi and Amit Dhiraj Lal Doshi were appointed as directors on 26.03.2008 and remained till were suspended due to the commencement of the CIRP. Doshion Private Limited held 100% shares of the company. Claims of Rs 134.84 crores were admitted. Paragraph 6 of the Transaction Audit Report identifies various transactions which are covered under the provisions of sections 43, 45, and 49. The Report notes that the Auditor has asked data but the same was not provided by the erstwhile management.

14.2 The Transaction Audit Report records that information and supporting documents were sought from the erstwhile management and that certain

information was not made available. The Report also identifies the transactions which, according to the Auditor, required examination under the relevant provisions of the Code.

- 14.3 In regard to absence of independent satisfaction of the Resolution Professional, we note that Section 20(2) of the Code authorises the Resolution Professional to appoint accountants, legal or other professionals as may be necessary. Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, deals with the duties of the RP concerning preferential and other transactions and requires the RP to file an application with the Adjudicating Authority seeking relief based on formation of opinion on transactions covered under Sections 43, 45, 50 or 66 of the Code. We are of the view that such an opinion can be formed independently if the transactional analysis is carried out by the IRP/RP himself or assistance can be taken from an expert accountant or other specialised professional . In this case, the RP took assistance of a firm for carrying out the Transaction Audit for identifying the transactions considered as preferential or transactions defrauding creditors. We are of the view that the exercise carried out by the RP through an accountant is permissible and assisted in forming his opinion for filing the Application.

14.4 Further, page 25 of the TAR shows that the Corporate Debtor paid Rs 29.31 lakhs to Abhishek Asitbhai Doshi, Rakshit Dhirajlal Doshi, Amit Dhiraj Lal Doshi, and Kulkarni Sachin Prabhakar on 23.08.2011, 25.08.2021, and 26.08.2021 and these payments were made post commencement of the CIRP. The RP has not included these payments in the IA indicating that not all the transactions identified in the TAR has been included in the present Application.

14.5 Accordingly, we do not find any substance in the contention of the Respondents and accordingly rejected.

15. Findings on Issue No. 2 – Whether the transactions undertaken by the Corporate Debtor with Pacific Pipe Systems Private Limited, Pacific Composites Private Limited and Doshion Water Solution Private Limited constitute preferential transactions within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016, having regard to the relevant period prescribed under Section 43(4) of the Code?

15.1 Section 43 of the IBC,2016 reads as: -

Sec. 43 - Preferential transactions and relevant time.

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

preferential transactions and for, one or more of the orders referred to in section 44.

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

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

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

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

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

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

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

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

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

Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution

professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

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

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

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

- 15.2 The Transaction Audit Report (TAR), page 13, notes that loans and advances given to M/s Pacific Pipe Systems Private Limited amounting to Rs 1175.44 lakhs were written off from the books of accounts as on 31st March 2021. Loans and advances given to M/s Pacific Composites Private Limited (Rs 360.65 lakhs) and M/s Doshion Water Solutions Private Limited (Rs 44.23 lakhs) were not repaid till the transaction audit commencement dates.
- 15.3 The Respondents have submitted that loans and advances to Pacific Pipe Systems Private Limited were extended in 2011 as evidenced in the Corporate Debtor's balance sheet. It has also been submitted that Respondent No.3 ceased operations in 2014 and was ordered liquidation on 4.11.2020 and therefore the amounts were written off.
- 15.4 We agree with the Respondent that the amount was advanced during the year 2011 and is beyond the two

years period from the CIRP commencement date/initiation date. But writing off of the recoverable amount (which was not recovered during the last ten years) in the books of account within two years of the CIRP commencement date amounts to constructive payment by giving benefit to Pacific Pipe Systems Private Limited not to pay an antecedent financial debt of 1175.44 lakhs and we are of the view that the transaction is covered under the provisions of section 43 of the Code.

15.5 The Respondents have submitted that loan of Rs 3.60 crores to Pacific Composites Private Limited was advanced by the Corporate Debtor in 2011 as reflected in the Balance Sheet of the Corporate Debtor for FY 2011-2012. We agree with the contention of the Respondent in regard to this transaction and note that amounts were advanced much prior to the look back period of two years even from the CIRP initiation date and therefore this transaction does not get covered by section 43 of the Code.

15.6 In regard to loans and advances to Doshion Water Solutions Private Limited of Rs 44.23 lakhs, the Respondents have no effective reply except the repetition of contentions covered in Issue No.1 decided above.

15.7 The contention of the Respondents that the **original advances were made in 2011** cannot, by itself, defeat

the present application. The material placed on record shows that the amounts continued to remain receivable by the Corporate Debtor and, in the case of **Pacific Pipe Systems**, the substantial amount of approximately **Rs. 11.75 Crore was expressly written off on 31.03.2021**, i.e. during the period preceding commencement of CIRP on 17.08.2021. The relevant consideration, therefore, is not merely the date on which the original advance was made, but whether the subsequent act resulting in extinguishment or relinquishment of the Corporate Debtor's enforceable receivable constituted a transfer of its interest for the benefit of the related party.

- 15.8 The Hon'ble Supreme Court in **Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401**, has explained that Section 43 is attracted where there is a transfer of property or an interest therein for the benefit of a creditor in **respect** of an antecedent liability and such transfer places the beneficiary in a more beneficial position than it would have occupied under Section 53. Once the statutory ingredients and the relevant period are established, the deeming provision operates irrespective of whether the preference was intended.
- 15.9 In the present case, the **write-off of Rs. 11.75 Crore in favour of Pacific Pipe cannot be treated as an innocuous accounting entry**, particularly when no

satisfactory material has been produced to **demonstrate** a genuine commercial necessity for extinguishing such a substantial receivable during the relevant period. The effect of the transaction was to remove an asset/receivable of the Corporate Debtor and the Respondent No.3 got a benefit by writing off the payable and correspondingly relieve the related party of its liability. Such conduct, when viewed along with the related-party relationship and the financial position of the Corporate Debtor, satisfies the requirement of conferring a benefit upon the recipient at the cost of the asset pool available to the creditors.

15.10 We are conscious of the decision of the NCLAT in ***Vivek Prakash v. Dinesh Kumar Gupta***, Company Appeal (AT) (Insolvency) Nos. 196 & 828 of 2023, wherein it was held that mere writing off of an amount, without establishing the ingredients of **Section 43**, cannot by itself constitute a preferential transaction. The said principle, however, does not assist the Respondents where the surrounding material establishes that the write-off resulted in the extinguishment of a valuable receivable in favour of a related party and thereby diminished the asset pool available to the general body of creditors.

15.11 In this context, the fact that the **write-off itself occurred on 31.03.2021**, rather than merely the date on which the original advance was made, **assumes**

significance. The Applicant's case is not founded merely upon the making of the original advance in 2011, but upon the subsequent relinquishment/extinguishment of the Corporate Debtor's valuable receivable during the relevant period. The absence of any satisfactory material demonstrating that such relinquishment was an ordinary and bona fide commercial act, coupled with the related-party relationship and the substantial diminution of the Corporate Debtor's recoverable assets, supports the Applicant's contention that the transaction falls within the mischief sought to be addressed by Section 43.

15.12 Accordingly, we hold that, in the facts and circumstances of the present case, the write-off dated 31.03.2021 cannot be insulated from scrutiny under Section 43 merely because the underlying advance originated in 2011. The subsequent extinguishment/relinquishment of the Corporate Debtor's enforceable receivable, having conferred a corresponding benefit upon Pacific Pipe Systems and reduced the asset pool available for distribution amongst creditors under Section 53, constitutes a transfer of the Corporate Debtor's interest for the purposes of Section 43(2), subject to the other statutory requirements being satisfied. The objection of the Respondents based solely on the date of the original advance, therefore, is not sustainable.

15.13 **In respect of Doshion Water Solution Pvt. Ltd.**, the Transaction Audit Report specifically identified the advance of approximately **Rs. 44.22** lakhs, on the basis of the available records and response of the suspended management, treated the transaction as requiring examination from the perspective of preferential treatment. The Respondent's reliance upon the fact that Doshion itself entered CIRP on 31.08.2018 does not, by itself, establish that the Corporate Debtor was entitled to abandon or extinguish its receivable without taking appropriate steps for recovery.

15.14 It is also pertinent that the Respondents have not placed sufficient contemporaneous documentary material demonstrating that the **write-off, relinquishment or continued non-recovery of the aforesaid substantial receivables was undertaken in the ordinary course of business** of the Corporate Debtor. Under *Anuj Jain*, even where the requirements of Section 43(2) are satisfied, the beneficiary must bring the transaction within one of the statutory exclusions under Section 43(3). The material before us does not satisfactorily establish such exclusion.

15.15 Upon consideration of the pleadings, Written Submissions, Transaction Audit Report and the material available on record, we are of the considered view that the Applicant has established the essential

ingredients for attracting Section 43 of the Code in respect of the transactions with Pacific Pipe Systems Pvt. Ltd. and Doshion Water Solution Pvt. Ltd.

15.16 Accordingly, considering the cumulative effect of the related-party relationship, the subsistence and subsequent extinguishment/non-realisation of substantial receivables, the timing of the write-off/benefit during the relevant period, and the absence of satisfactory evidence demonstrating an ordinary-course commercial transaction, we hold that the transactions in question fall within the mischief of Section 43 of the IBC. The Applicant has, therefore, made out a case for avoidance of the preferential transactions and for passing appropriate orders under **Section 44 of the Code.**

16. Findings on Issue No.3 - Whether the payments made to Respondent Nos. 1 and 2 towards salary/remuneration constitute preferential transactions under Section 43 of the Code, or whether such payments are excluded by virtue of Section 43(3)(a) as transactions undertaken in the ordinary course of business or financial affairs of the Corporate Debtor?

16.1 We have considered the pleadings, the Transaction Audit Report, the documents placed on record and the rival submissions advanced by the parties. The Applicant/Liquidator has alleged that an amount of

Rs. 24.00 lakh paid to Respondent No.1 and Rs. 22.50 lakh paid to Respondent No.2, described as salary/remuneration, constitute preferential transactions within the meaning of Section 43 of the Code.

16.2 Per contra, the Respondents have contended that the aforesaid payments were made towards legitimate managerial remuneration for services rendered by them and were transactions undertaken in the ordinary course of business. Accordingly, reliance has been placed upon the exception contained in **Section 43(3)(a)** of the Code.

16.3 It is not in dispute that a payment towards salary or remuneration, if genuinely made in the ordinary course and as part of the normal financial affairs of the Corporate Debtor, may fall within the exception contemplated under Section 43(3)(a) of the Code. However, the mere nomenclature of a payment as “**salary**” or “**remuneration**” cannot, by itself, conclusively establish that the transaction was undertaken in the ordinary course of business.

16.4 In the present case, the Respondents were required to place before this Tribunal satisfactory material demonstrating the basis, authorisation and regularity of the impugned remuneration payments. In this regard, a discrepancy between the Board Resolution and the corresponding MGT-7 records has been

brought on record. Though the Respondents have sought to explain the same as an inadvertent discrepancy, the said explanation, in the absence of adequate contemporaneous supporting material, does not satisfactorily establish the basis upon which the impugned remuneration was determined and paid.

16.5 Further, the material placed on record does not sufficiently demonstrate that the impugned payments were made pursuant to a duly established and consistently acted-upon remuneration arrangement in the earlier years also, commensurate with services actually rendered and in the ordinary course of the financial affairs of the Corporate Debtor. The Transaction Audit Report has specifically identified the aforesaid payments as preferential transactions.

16.6 We are conscious of the fact that the mere status of Respondent Nos.1 and 2 as directors or related parties, by itself, would not render every payment made to them preferential. Nevertheless, once the Applicant has specifically questioned the nature and basis of the payments, the Respondents are not eligible to seek the benefit of Section 43(3)(a) merely on the assertion that the amounts represented salary or managerial remuneration. Section 43(4)(a) considered a transaction as deemed preferential but payment to an employee is excluded. The Respondents have claimed that it was made to an employee in the

ordinary course of the business and payment was at arm's length. The applicability of the statutory exception has to be established from the facts and material available on record. The respondents have not submitted any document to prove that they were employees, tax was deducted by the Corporate Debtor out of payment as applicable to salary and paid to the government account, they had filed their tax returns, and the amount was offered to tax as salary income. Further the payment is claimed to have been made at arm's length but neither the comparison with earlier years (based on the services and payment) nor in comparison to other employees is established.

- 16.7 In the facts and circumstances of the present case, when the Corporate Debtor was undergoing financial stress and the Respondents have failed to satisfactorily establish that the impugned payments of **Rs. 24.00 lakh and Rs. 22.50 lakh** were made in the ordinary course of the business or financial affairs of the Corporate Debtor so as to attract the protection of Section 43(3)(a) of the Code. The surrounding circumstances, including the discrepancy in the corporate records and absence of sufficient contemporaneous material establishing the basis and regularity of such remuneration, do not support the Respondents' contention.

16.8 Accordingly, we hold that the Respondents have failed to establish the applicability of the exception under Section 43(3)(a) of the Code in respect of the aforesaid payments. Consequently, the aggregate amount of **Rs. 46.50 lakh** is liable to be treated as falling within the scope of Section 43 of the Code, subject to the other statutory ingredients thereof being satisfied.

16.9 Accordingly, this issue is answered **in favour of the Applicant/Liquidator**. The payments of **Rs. 24.00 lakh to Respondent No.1 and Rs. 22.50 lakh to Respondent No.2**, aggregating to **Rs. 46.50 lakh**, are held to constitute preferential transactions under Section 43 of the Code, and the Applicant/Liquidator shall be entitled to the consequential reliefs in accordance with law.

17. Findings on Issue No. 4 - Whether the transactions entered into with Fivebro International Private Limited on 25.06.2020 and 28.06.2021 constituted sale/transfer of the Plant and Machinery of the Corporate Debtor for an undervalue, or were towards rent, labour and maintenance charges, and, if found to be transfers, whether the same constitute undervalued transactions and transactions undertaken with intent to defraud creditors within the meaning of Sections 45 and 49 of the Code?

17.1 The Applicant alleges that the Corporate Debtor transferred its Plant and Machinery to **Fivebro International Private Limited**, a related party, for

Rs. 17.70 lakh on 25.06.2020 and Rs. 18.70 lakh on 28.06.2021, aggregating to **Rs. 36.40 lakh**.

- 17.2 The Respondents, on the other hand, have disputed the very nature of the transactions. It is their case that the transaction dated 25.06.2020 was not a sale of Plant and Machinery but represented **rental income from the DG Set along with labour and maintenance charges**, undertaken with the object of generating revenue and maintaining the Corporate Debtor as a going concern. They have relied upon the Invoice dated 25.06.2020 and the corresponding Ledger Account and have contended that the asset continued to remain with the Corporate Debtor.
- 17.3 We note that, the Transaction Audit Report notes that the Corporate Debtor has sold plant and machinery to Fivebro International Private Limited on 19.03.2012⁹ amounting to Rs 153.28 lakhs. The Resolution Professional had asked the suspended management to provide details of e-way bills, tax invoice and justification for the said transaction.
- 17.4 The suspended management replied on 16.02.2023 that, “Plant and machinery sold value of Rs 1,11,95,619, the company does not maintain fixed asset register hence the sale of membrane of Rs 1,11,95,619 which is capitalised in plant and machinery in 2010 to 2012 and 5% residual value of purchase cost shown as written down value in plant

and machinery in books of accounts and purchase cost of sold membrane give us Rs 4,47,82,477. Profit of Rs 17,94,381 by considering 5% residual value of purchase cost as written down value. There was another sale of plant and machinery of Rs 114.31 lakhs to unknown party. For both these transactions, the suspended management has not provided any documents. The Resolution Professional has also not included these two transactions in the Application.

17.5 The Application refers to transactions of sale of plant and machinery to Fivebro International Private Limited, Respondent No.6, on 25.06.2020 at an amount of Rs 17,70,000 and on 28.6.2021 for an amount of Rs 18,70,000. The documents were requested from the suspended party, but no documents are provided by the suspended management.

17.6 The Transaction Audit Report under paragraph 6.4 refers to transaction defrauding creditors under section 49 of the IBC, 2016. The TAR notes that on 25.06.2020, the Corporate Debtor has received rent income from Fivebro International Private Limited amounting to Rs 17 lakh. The Resolution Professional was asked to provide the details. The management responded that the consideration is for providing rental services for machinery and other facilities borrowed from market for meeting emergency

requirement of Fivebro International Pvt. Ltd. This transaction was entered in to be Corporate Debtor after reservation of the order by Hon'ble NCLAT and therefore classified the same as defrauding the creditors.

- 17.7 Respondent No. R-6 has filed Reply on 31.01.2026. The Respondent has referred into discrepancy in the Transaction Audit Report and in the Application by the Resolution Professional. Paragraph 9 of the Reply states that the transaction is of receipt of rental income and underlying asset continues to remain with the Corporate Debtor and the transaction is not for sale of asset.
- 17.8 The Liquidator in his written submission filed on 17.02.2025 has again reiterated that it was sale of plant and machinery.
- 17.9 We have considered the records and note that the Resolution Professional has mixed both transactions that were separate transactions of sale of plant and machinery and rental income. The RP has taken the nature of sale of plant and machinery as the transaction but figure of transaction that pertained to rental income. The Resolution Professional has not included the transaction of plant and machinery in the Application as noted in paragraphs (c) and (d) above.

17.10 We agree with the Reply of Respondent No.6 that the transaction corresponding to Rs. 17.00 lakhs were of rental income and not for sale of plant and machinery.

17.11 There is an inconsistency in the description of the transaction in the audit report and the Application of the Resolution Professional. The Applicant has not correctly appreciated the transaction based on the transaction audit report and the transaction noted in the Application is not supported by facts given in the transaction audit report. Accordingly, this issue is decided against the Applicant.

18. In view of the findings recorded hereinabove, the following transactions are held to be covered under section 43 of the Code as preferential transactions and require order under section 44 of the Code: -

- (i) The write-off of the outstanding receivable of **Rs.11.75 Crore due from Respondent No.3 – Pacific Pipe Systems Private Limited on 31.03.2021**, having occurred during the relevant period and resulting in extinguishment/relinquishment of the Corporate Debtor's enforceable receivable, is held to constitute a transfer of the interest of the Corporate Debtor for the purposes of Section 43 of the Code and is accordingly liable to be avoided. Pacific Pipe Systems, being the beneficiary of the transaction, is directed to transfer the said amount to the Corporate Debtor.

- (ii) The Respondent No.5 - Doshion Water Solutions Private Limited is directed to pay Rs 44.23 lakhs to the Corporate Debtor as per provisions of section 44 of the Code.
- (iii) The Respondent No.1 & 2 - Rakshit Dhiraj Lal Doshi and Amit Dhiraj Lal Doshi are also directed to pay amounts of Rs 24.00 lakhs and 22.50 lakhs to the Corporate Debtor on account of benefits received by them.
- (iv) Consequently, in exercise of the jurisdiction under Sections 44 and 60(5) of the Code, Respondent Nos.1 and 2 are directed, jointly and/or severally, to deposit a sum of referred to in paragraphs (i) to (iii) above, in case recoveries are not possible from Pacific Pipe Systems and Doshion Water Solutions to the liquidator of the Corporate Debtor, M/s. Nagaur Water Supply Company Private Limited, as transactions were undertaken by them.
- (v) The Respondents are also directed to pay interest at the rate of 12.00% per annum on the amount stated above from the date of the transactions to the date of realization.
- (vi) The aforesaid amounts shall be deposited with the Liquidator within a period of **30 days** from the date of this Order.
- (vii) Upon receipt of the aforesaid amounts, the Liquidator shall deal with the same strictly in accordance with

the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable Regulations, and shall distribute the amounts amongst the stakeholders in accordance with law.

(viii) In the event of default in compliance with this order, the Applicant shall be at liberty to seek enforcement of this order by initiating appropriate execution proceedings in accordance with law before the competent forum.

(ix) The reliefs sought by the Applicant under Sections **43 and 44 and 49 of the Code** are accordingly granted to the aforesaid extent.

19. Accordingly, **IA No.633 (AHM) 2023** is **partly allowed** in terms of above directions. No order as to costs.

20. The Registry is directed to send a copy of this order to the IBBI for information and analysis, so that the Resolution Professional/Liquidator exercise proper care in the identification and reporting of transactions under sections 43,45,49, or 66 of the Act to the Adjudicating Authority.

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SANJEEV SHARMA
MEMBER (TECHNICAL)
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SHAMMI KHAN
MEMBER (JUDICIAL)