IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT- IV

IA.No.1154/2021
In
C.P.(IB) NO. 3060/(MB)/2019

[under Section 60 (5) read with Sections 45 and 46 of the Insolvency and Bankruptcy Code, 2016]

Mr. Prashant Jain, Resolution Professional of Good Day Ventures (India) Private Limited

... Applicant

Versus

Natural Life Speciality Private Limited & Ors.

.... Respondents

In the matter of

Micromax Informatics Limited

.... Operational Creditor

Versus

Good Day Ventures (India) Private Limited

..... Corporate Debtor

Pronounced: 05.08.2025

CORAM:

SHRI ANIL RAJ CHELLAN **SHRI K. R. SAJI KUMAR**
HON'BLE MEMBER (TECHNICAL) **HON'BLE MEMBER (JUDICIAL)**

Appearances: Hybrid

For Applicant	**:**	Adv. Mily Ghoshal a/w Adv. Sophia Hussain
For Respondent 1	**:**	Adv. Nausher Kohli a/w Adv. Saurasubha Ghosh, Adv. Sanaya Patel i/b Adv. Tushar Yelkar
For Respondent 2	**:**	None
For Respondents 3 & 4	**:**	None *(ex-parte)*

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This application has been filed by the Resolution Professional (RP) of Good Day Ventures (India) Private Limited (Corporate Debtor) under Section 60(5) read with Sections 45 and 46 of the Insolvency and Bankruptcy Code, 2016 (Code) seeking the following prayers:

   (a) The Tribunal be pleased to pass orders setting aside the transfer of shares owned by the Corporate Debtor in Respondent No.1 Company and direct that the said transfer of shares dated 31st August 2019 is void ab initio;

   (b) The Tribunal be pleased to pass orders directing the Respondent No.1 Company and the Respondent Nos. 3 and 4 to transfer the

ownership of the said shares (i.e. 5000 shares of the Respondent No.1 Company) back to the Corporate Debtor;

(c) *The Tribunal be pleased to pass orders directing the Respondent No.1 Company to reinstate the name of the Corporate Debtor as shareholder and extend all rights and co-operation to the Corporate Debtor as shareholder of the Respondent No.1 Company;*

(d) *Interim and ad interim orders in terms of prayers (a) to (c) above;*

2. **Facts of the Case**

2.1 The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated pursuant to the Order dated 05.12.2019, and moratorium under Section 14 of the Code was declared. By an order dated 23.11.2020, the Applicant was appointed as the Interim Resolution Professional (IRP).

2.2 The Respondent No.1 is a subsidiary company of the Corporate Debtor, wherein the Corporate Debtor held 50% of the total shareholding since its incorporation in 2015. The Respondent No. 2, who was a director of the Corporate Debtor (now suspended board of directors), is also the Chairman of the Respondent No. 1 Company, and his daughter, Ms. Tanya Batra, is a director in the Respondent No. 1 Company.

2.3 Pursuant to the initiation of CIRP, the Applicant requested Respondent No. 1 Company not take any major decisions with respect to the Respondent No. 1 Company, without calling a board meeting and without taking into consideration the interests and rights of the Corporate Debtor as the shareholder of the Respondent No. 1 Company. The said request was denied by Respondent No. 1 Company on the ground that the shares held by the Corporate Debtor in the Respondent No.1 Company had been allegedly transferred on 31.08.2019 to Respondent Nos. 3 and 4, who are the other shareholders of the Respondent No.1 Company.

2.4 As part of the CIRP, the Applicant made public announcement in Form-A on 07.12.2020, invited claims from the creditors of the Corporate Debtor, and formed Committee of Creditors (CoC). In the 1st meeting of the CoC held on 05.01.2021, the Applicant was confirmed as the Resolution Professional (RP).

2.5 In the 2nd CoC meeting held on 29.01.2021, the Applicant brought to the notice of CoC members that major transactions by the Corporate Debtor with its subsidiary and associate companies have been observed and thus sought permission from the CoC to take steps to take control of the management of the said associates/subsidiary companies as shareholder thereto.

2.6 The Applicant *vide* his letter dated 15.02.2021 informed the associates/subsidiary companies about the initiation of CIRP in respect of the Corporate Debtor and requested the Respondent No.1 Company not to take any major decisions other than decisions necessary to be taken in routine course of business of the Company and instead to call for board meeting and/or consult the Applicant (representing 50% shareholding of the Respondent No. 1 Company).

The Applicant also sought certain information from Respondent No.1 Company *vide* letter dated 15.02.2021.

2.7 The Respondent No. 1 *vide* letter dated 21.02.2021 informed the Applicant that the Corporate Debtor has transferred their equity in the Respondent No.1 company on 31.08.2019 through sale to Respondent Nos.3 and 4. The letter further stated that the due process had been followed by the Corporate Debtor for the sale. Furthermore, it was stated that the Corporate Debtor was merely an equity holder in the Respondent No. 1 Company and was not under any obligation to comply with the directions issued by the Applicant. In support of their contentions, the Respondent No.1 Company submitted copy of the resolution dated 15.07.2019, notice of offer dated 18.07.2019 to the existing shareholders of Respondent No.1 Company as required by the Articles of Association of the Company, board resolution dated 31.08.2019 approving transfer of 5,000 equity shares of Respondent No.1, security transfer form, etc.

3. **<u>Submissions of the Applicant</u>**

3.1 The Applicant submits that none of the documents submitted by the Respondent No.1 Company in support of its alleged sale and transfer of shares were available in the public domain and, prima facie, appeared to be doctored documents, and the transaction appears to be suspicious. The Applicant also requested Respondent No.1 Company to explain the valuation of shares and the mode of payment of consideration for the purchase of such shares to ascertain the validity.

3.2 Thereafter, the Applicant received a reply letter dated 07.04.2021, from an email on behalf of the suspended board of directors stating that the shares have been sold for Rs. 25,000/- each to the Respondent Nos. 3 and 4. However, other queries raised by the Applicant remained unanswered.

3.3 Subsequently, the Respondent No.1 *vide* letter dated 03.05.2021 justified the transfer stating that the Respondent No.1 Company had taken a loan from the Corporate Debtor and the said amount was due and payable by them to the Corporate Debtor. However, they were not in a position to repay the said amount. It is further stated that while working out the valuation of shares, the fact of the outstanding loan payable by Respondent No.1 Company to the Corporate Debtor was taken into consideration. It is submitted that neither Respondent No.1 Company nor the suspended board of directors demonstrate that the shares were transferred in transparent manner, after following due process of law, at a fair value, and that the said transfer was valid.

3.4 The Applicant submits that Respondent No.2, who is a suspended director of the Corporate Debtor, is also the Chairman of the Respondent No.1 Company, and his daughter Ms. Tanya Batra is a director of the Respondent No.1 Company. The above Respondents are conducting the business of the Respondent No.1 Company.

3.5 The alleged transfer of shares is invalid. The director's report for Annual General Meeting held on 30.09.2019 and copy of the attendance slip show that Mr. Anil Batra signed and attended the Annual General Meeting dated 30.09.2019 as representative of the

Corporate Debtor. If the shares were sold and transferred by the Corporate Debtor on 31.08.2019, there was no reason for the issuance of the notice of Annual General Meeting dated 24.09.2019 to the Corporate Debtor. Further, there is no reason justifying the attendance and presence of Respondent No.2 Mr. Anil Batra representing the Corporate Debtor in the Annual General Meeting of the Respondent No.1 Company.

3.6 Even on bare perusal of form MGT-7 for the financial year 2019-2020 of the Respondent No.1 Company shows its shareholding pattern, where 5000 shares are stated to be held by body corporate and not individuals. This clearly demonstrates that the shares were held by the Corporate Debtor when Form MGT-7 was filed with regard to the Annual General Meeting dated 31.12.2020. Further, on page 8 of Form MGT-7, the number of shareholders of the Respondent No. 1 Company was stated to be 3. If the shares were transferred/sold as at 31.08.2019, then the number of shareholders would have been stated as 4 and not 3.

3.7 The alleged date of transfer/sale, i.e., 31.08.2019, is shortly before the commencement of CIRP of the Corporate Debtor. The alleged transfer is merely to ensure that the Applicant does not have any control or rather access to Respondent No.1 Company and thus, to deprive the Corporate Debtor from receiving the benefit and potential value of the Respondent No.1 Company in the CIRP.

3.8 The price/value of the shares of any company has to be certified by the directors and the auditors, and thereafter the sale or transfer has to be effected. However, in the present case, no such valuation has ever been determined, and the shares have been allegedly transferred at a nominal value of Rs. 10/- each, without any basis of valuation.

3.9 The alleged transfer of shares of the Respondent No.1 Company owned by the Corporate Debtor in favour of the Respondent No. 3 and 4 is not only invalid but void ab initio. The alleged transfer is done at a nominal value without any valuation or basis of determination of value within 2 years prior to initiation of CIRP and with an intent to defraud the creditors, and hence, the same also deserves to be set aside under the provisions of Sections 45 and 46 of the Code.

4. **Reply of Respondent No.1 Company**

4.1 The Respondent No.1 Company filed its Affidavit in Reply stating the shares held by the Corporate Debtor in Respondent No.1 were transferred to Respondent Nos. 3 and 4 at the face value of Rs. 10/- per share. The Respondent No.1 Company had been running at losses during the last few years, and in this backdrop of financial crunch, the value of the shares had become *nil* on the date of transfer, i.e., 31.08.2019.

4.2 Though there was no valuation report as on the date of transfer, the Respondent Nos. 3 and 4 got the shares valued as on 31.08.2019 through a registered valuer (CA Pitam Goel) and obtained a valuation report dated 20.10.2021, as per which the value of the shares was *nil* per share.

4.3 The Suspended Director of the Corporate Debtor, in their reply to this application, has confirmed that the Corporate Debtor received Rs. 50,000/- against the transfer of shares, which was deposited in a South Indian Bank Account.

4.4 It is further contended that the relevant period for invoking Section 45 for avoidance of undervalued transactions is a period of one year preceding the insolvency commencement date in case the transaction is between unrelated parties. If the transaction in question is beyond the period of one year, it will not be considered as relevant period and the provisions of Section 45 cannot be invoked in the said transaction. Although the order admitting the Corporate Debtor to CIRP was passed on 05.12.2019, no IRP was appointed. The NCLT *vide* order dated 23.11.2020 appointed the IRP, which the IRP received on 04.12.2020 and thereafter, the IRP made public announcement on 07.12.2020. In view of the facts, the CIRP cannot be said to have commenced from the date of admission of the application, i.e., 05.12.2019. Although the transaction had taken place on 31.08.2019, the insolvency commencement date in this case is only w.e.f. 04.12.2020, the date on which the IRP received the order of 23.11.2019. Thus, the sale of shares had taken place beyond the relevant period of one year, and hence, the provisions of sections 45 and 46 cannot be invoked.

4.5 The validity of the transaction of sale of 5000 shares cannot be challenged and examined under Sections 45 and 46 of the Code. Form MGT-7 for the year ended 31.03.2020 also shows, among the list of shareholders, the names of Respondent Nos. 3 and 4. Thus, there is proper reporting of shareholding in Form MGT-7. The various queries raised by the Applicant have been duly replied to by the Respondent No.1 Company, and all the documents relating to the transactions have been furnished to the Applicant.

5. **Reply of Respondent No.2**

5.1 The Respondent No.2 filed his affidavit in reply dated 09.09.2023, denying the averments made by the Applicant. It is submitted that the Application has been filed on the basis of incorrect and incomplete data and falsely implicated the Respondent No.1 Company and other directors of the Corporate Debtor.

5.2 The Respondent No.2 has raised contentions on the veracity of the Applicant in filing the instant Application in a belated manner and contends that the Application is not in compliance with Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 (CIRP Regulations). The Respondent No.2 also disputed the veracity of the Transaction Audit Report relied upon by the Applicant.

5.3 The lookback period for alleged transactions under Sections 45 and 49 has to be as per Section 46 of the Code. As per Section 46 of the Code, the lookback period is one year from the date of commencement of CIRP in case of unrelated parties and two years from the date of commencement of CIRP in case of related parties. Thus, the Applicant has incorrectly considered the lookback period.

5.4 The entire accounts of the Corporate Debtor were handed over to the Applicant, in as is where is condition, and he got the accounts made up from some third party, who did not have any background knowledge of the business of the Corporate Debtor and/or the transactions done by the Corporate Debtor. As a result, the accounts prepared by the Applicant do not accurately reflect the true and correct financial position of the Corporate Debtor. Though the erstwhile management extended complete co-operation and help to the Resolution Professional and substantially submitted all the relevant documents, details, files, books of accounts, etc., as specified in the Code, the Applicant submitted incomplete and incorrect data to the Transaction Auditor, and as a result, the audit report has no reliability.

5.5 It is submitted that the audit report was prepared without complete facts and supporting documents, and the erstwhile management had no staff or access to the office to give a proper response to the transaction audit report. Furthermore, during this period, there were restrictions on movement due to COVID-19 Pandemic, and hence, it was difficult to submit any response. Without waiting for a response from the erstwhile management, the Applicant proceeded to file this Application on 19.07.2021.

5.6 Respondent No.1 Company is engaged in making products from agriculture and is still at an infant stage, wherein a lot of resources and funds are required to test its production and bring them to a marketable condition. It is for this reason that the Corporate Debtor has advanced loans to Respondent No.1. Since the Corporate Debtor was going through a difficult business phase and was having liquidity issues in 2019, it was not in a position to invest further in the Respondent No.1 Company. Thus, a decision was taken to sell the shareholding in Respondent No.1 Company to R3 and R4 so that

Respondent No.1 Company would repay its loans with an understanding that Respondent Nos. 3 and 4 would allot or transfer shares to new investors. Respondent Nos. 3 and 4, however, wanted Respondent No.2 and his daughter to continue as directors in Respondent No.1 Company till they find new investors, so that they could use their business acumen till they found new person to join the board. Accordingly, the shares were transferred to them.

5.7 The Respondent No.2 submits that the transfer of shares was done in the normal course of business, and with the intention to help the Respondent No.1 Company receive funds other than Corporate Debtor, as the Corporate Debtor was unable to grant funds due to its own problems. Further, the new investor could pump in money in the Respondent No.1 Company to repay the loan given by the Corporate Debtor.

5.8 The Respondent No.1 Company is still at the nascent stage, with its products still under development. Hence, the valuation of the Respondent No.1 Company as on the date of sale of shares would have been *nil* as it has no product, no market, and no income. Hence, the shares were sold to Respondent Nos.3 and 4 at par value of the shares, causing no loss to the Corporate Debtor. Therefore, the transaction is neither preferential nor undervalued.

5.9 Though the Corporate Debtor sold the shares on 31.08.2019 to Respondent Nos. 3 and 4, it is their duty to follow the due process to get their shares transferred in their names. Till such time the names were transferred in the names of Respondent Nos.3 and 4, the notice would be issued only to the Corporate Debtor and/or to attend the meeting. Since the Corporate Debtor received the notice, as per the oral request from Respondent Nos. 3 and 4, Respondent No.2 attended the meeting. Further, Respondent No.2 supported the pleadings of Respondent No.1 Company.

6. **Rejoinder of the Applicant**

6.1 The Applicant denied the averments that the value of the shares of Respondent No.1 Company had become *nil* on the date of transfer of shares, i.e., 31.08.2019. Admittedly, no valuation of the said shares was carried out at the time of transfer to support the contention of the Respondents. Further, the valuation report dated 20.10.2021, as annexed to the reply, fails to consider the intrinsic value of the Company and its intangible asset value. The methodology adopted is also not suitable for a company that is into specialty products.

6.2 The Applicant states that he has appointed an independent and IBBI registered valuer to ascertain the value of shares of Respondent No. 1 as on 31.08.2019. The report shows that the value of the Respondent No.1 Company is at least 2.5 crore to 3 crore (per equity share value could be in the range of 25,000 to 30,000 per share) on the basis of the available public data.

6.3 The Applicant states that the transaction took place during the relevant period as specified under Section 46 for invoking Section 45 of the Code.

6.4 As stated, the directors' report and attendance slip for the Annual General Meeting held on 30.09.2019 show Mr. Anil Batra attended the Annual General Meeting on behalf of the Corporate Debtor. Thus, the contention that the shares were sold and transferred by the Corporate Debtor on 31.08.2019 is not justifiable.

7. **Additional affidavit of Respondent No.1 Company**

7.1 The Respondent No.1 Company filed an additional affidavit dated 29.08.2023 in furtherance of the order dated 07.08.2023, wherein this Tribunal took a view that this Application may more appropriately fall under Section 49 of the Code and directed the parties to file the synopsis of the arguments. In the above background, the Respondent No.1 Company submitted that the presumption that the Corporate Debtor was its promoter was not correct. In or around 2015, the promoters of Respondent No. 1 Company were Mr. Malik A. Mulla and Mr. Ajay K George on behalf of Mrs. Anu Ajay George, who were planning to incorporate a company for the purpose of development, production and sale of the herbal solution treated sugar, rice, wheat and other allied products, which would offer healthy alternatives for those suffering from diabetes. At that point of time Mr. Malik A. Mulla and Mrs. Anu Ajay George, represented by Mr. Ajay K George, were introduced to the Corporate Debtor and its promoter, Mr. Anil Atmaram Batra, who showed their interest in investments in this herbal solution technology. Before this, the Corporate Debtor or Mr. Batra had no professional relationship with the original promoters of Respondent No.1 Company. It was in this context, the Respondent No.1 Company was incorporated in late 2015, wherein the main obligation of the Corporate Debtor was to bring in the required investments for entering into an agreement with the original inventor firm called

'Revolution'. The only business of Respondent No.1 Company is to manufacture and market low GI food products. Pursuant thereto, the Respondent No.1 Company entered into an agreement with 'Revolution' on 06.01.2016, whereby 'Revolution' undertook to manufacture and supply herbal solution to Respondent No.1 Company for them to market, distribute and sell the same worldwide. The consideration payable by Respondent No. 1 Company to 'Revolution' for performing their obligations under the agreement was also mentioned in Clause 6.1 of the agreement. Pursuant to the execution of the agreement, the Respondent No. 1 Company handed over a cheque of Rs.1 Crore to 'Revolution' towards part payment. The Respondent No. 1 Company undertook these payment obligations under the representations made by Corporate Debtor and its promoter that they would bring in these funds.

7.2 Despite the execution of the agreement, the Corporate Debtor and/or Mr. Anil Batra failed to bring in the requisite funds, which were necessary for procuring from 'Revolution' the technological know-how pertaining to the same. The procurement of technical know-how was essential for ensuring the continuance of the supply of herbal solutions from 'Revolution'. Hence, the Respondent No.1 Company had no choice but to go ahead with the agreement executed with 'Revolution'. Subsequently, Respondent No.1 Company was constrained to terminate the agreement executed with 'Revolution', which it did through its letter dated 29.12.2016. It was at this point that it became clear to Respondent No. 1 Company that the purpose of joining hands with Corporate Debtor and Mr. Anil Batra had been nullified as they failed to bring in the requisite investments for procuring the herbal solutions supply and know-how from 'Revolution'.

7.3 Though the agreement with Revolution was terminated, Mr. Batra and the Corporate Debtor continued to assure the Respondent No.1 that they would try to raise the funds as promised and represented by them while joining hands with the original promoters. This promise was never fulfilled, and Respondent No. 1 Company was ultimately left with no option but to seek other investors so that the Corporate Debtor could be effectively removed from the Company and the new investors could be granted shareholding in the company. Thus, it is clear that the Corporate Debtor and/or Mr. Anil Batra were never a promoter in the Respondent No.1 Company. It is, therefore, erroneous to suggest that the shares of the Corporate Debtor were transferred with an ulterior motive to dupe creditors of the Corporate Debtor.

7.4 It is submitted that the requirements under Section 49 are far more rigid. For an application to be maintainable under Section 49 of the Code, there must be an allegation of malafide and wrongful intent with the intent to defraud creditors. The instant Application does not contain a single pleading to the effect that fraud was committed in carrying out the transaction. Except for a bare line in paragraph 24 of the Application, there is absolutely no evidence produced to allege fraud and/or ill intent in the present case to dupe the creditors or that the impugned transaction was done with an ulterior motive to defraud the creditors, which is the basic requirement under Section 49 of the Code. Thus, there is no specific case pleaded in support of applying Section 49. Thus, this Application cannot be and ought not be treated as one under Section 49 of the Code.

7.5 The transfer of shares of Corporate Debtor to Respondent Nos. 3 to 4 were done in the ordinary course of business of Respondent No. 1 Company, and there is no ulterior motive in the same, as is sought to be alleged. Therefore, in the absence of a specific pleading, an application of this nature cannot be treated as an application under Section 49 of the Code without a specific pleading and evidence of defrauding the creditors and an intentional fraudulent act.

7.6 It is submitted that the impugned transaction does not meet either of the two conditions under section 49, for it to be termed as a transaction defrauding creditor. In view of the facts and circumstances stated in the reply, it is clear that there is no undervalued transaction.

7.7 The Application filed on the ground of undervaluation, as was raised under Section 45 of the Code, ought to be dismissed for the following reasons. The sale of shares of Respondent No. 1 Company had been for a consideration significantly less than the value of the consideration provided by the Corporate Debtor, and the transaction did take place in the ordinary course of business of the Corporate Debtor.

7.8 The value of shares of Respondent No.1 Company at the relevant time was *nil* as the Company had been incurring losses for few years. Secondly, the transaction was made in the ordinary course of business of the Corporate Debtor.

7.9 The Applicant's valuation report dated 06.08.2023 does not reflect the value of the shares on the date of the impugned transaction. The Applicant's valuation report is based on a fundamentally erroneous premise, utilising data from a period much beyond the impugned transaction to arrive at the valuation of the shares. Therefore, the report should be disregarded.

7.10 On the other hand, Respondent No.1 Company has placed on record a valuation report dated 20.10.2021 prepared by an independent, IBBI-registered valuer. This report reflects the correct valuation of the shares for the purpose of this Application.

7.11 The financial statements of Respondent No.1 Company clearly reflect the names of the four shareholders, including the two transferees of the impugned transaction. The loan of Rs. 58,76,743/- availed by the Company from the Corporate Debtor has no bearing on the valuation of the shares or the impugned transaction.

7.12 None of the materials produced by the Applicant shows that the impugned transaction is undervalued.

8. **<u>Reply to the additional affidavit by Applicant</u>**

8.1 The Applicant filed his reply, reiterated that the alleged transfer was done without any valuation or basis for determination of value, within 2 years prior to initiation of CIRP, and with an intent to defraud the creditors. The intent of undertaking the undervalued transaction is evident, as the Respondents are in cahoots to preclude the Corporate Debtor from being a shareholder of the Respondent No.1 Company and participating in the Company's growth, which would have benefited the creditors of the Corporate Debtor as it was entering CIRP.

8.2 The valuation report obtained at the time of filing the reply was with a malicious intention to cover the actual undervaluation of the shares transferred. Furthermore, the said Valuation Report dated 20.10.2021 fails to consider the intrinsic value of the company and the intangible asset value of Respondent No. 1 Company.

9. **Analysis and Findings**

9.1 We have heard the Ld. Counsel for the parties and perused the documents on record.

9.2 The facts of the case show that the Resolution Professional has filed this Application for the reversal of the transfer of shareholding that the Corporate Debtor made to Respondent Nos. 3 & 4 in the Respondent No.1 Company. Before proceeding further, it would be suitable to take note of the relevant provisions of the Code:

> ***"45. Avoidance of undervalued transactions***. –
> *(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating*

Authority to declare such transactions 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.

***46. Relevant period for avoidable transactions**. –*

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that –

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section."

9.3 As noticed, the only issue arising for our consideration is whether the transfer of shares by the Corporate Debtor to Respondent Nos. 3

and 4 on 31.08.2019 constitutes an undervalued transaction as per Section 45 of the Code.

9.4 The Applicant has stated that the Corporate Debtor was holding 50% of the total shareholding in Respondent No.1 Company, which was transferred to Respondent Nos. 3 and 4 without any valuation or basis of determination of value, and without following due process. This transfer occurred within two years prior to the initiation of CIRP and was allegedly intended to defraud the creditors. Therefore, the Applicant argues that the transfer deserves to be set aside under the provisions of Sections 45 and 46 of the Code.

9.5 The contesting Respondents refute the contentions made by the Applicant, asserting that the transaction in question cannot be classified as preferential or undervalued. They argue that Respondent No. 1 Company has been operating at a loss for the past few years, resulting in the value of the shares becoming *nil*. In this backdrop, the shares were transferred on 31.08.2019, which is beyond the relevant period of one year, and were sold at face value, thereby causing no loss to the Corporate Debtor. Additionally, the documents pertaining to the share transfer have been provided to the Applicant.

9.6 An undervalued transaction covered under Section 45(2) is one where the transfer of an asset of corporate debtor to a person as a gift, or for a value significantly less than the actual value of the asset transferred, and that is not in the ordinary course of business. Another requirement for declaring such transactions as void and reversing their effect is that the undervalued transactions must have taken place during the relevant period. As per Section 46 of the Code, the relevant period is reckoned, in two ways: (a) if the transaction is with a related party, the relevant period is two years preceding the insolvency commencement date; and (b) if the transaction is with person, other than related party, the relevant period is one year preceding the insolvency commencement date.

9.7 It is one of the contentions of the Respondents that the disputed transaction occurred more than a year prior to the insolvency commencement date. The Respondents point out that although the order admitting the Corporate Debtor to the CIRP was passed on 05.12.2019, an IRP was not appointed at that time. The Tribunal, by a subsequent order dated 23.11.2020, appointed the IRP, which was received by the IRP on 04.12.2020. Following this, the IRP made a public announcement on 07.12.2020. Consequently, the Respondents argue that the disputed transaction falls outside the relevant period.

9.8 As the relevant period is reckoned from the insolvency commencement date, it is important to notice the definition of the expression "insolvency commencement date", under Section 5(12) of the Code:

> *"insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be"*

9.9 In this case, Company Petition No.3060/2019 was filed by Micromax Informatics Ltd, as the Operational Creditor under Section 9 of the Code. It was admitted *vide* order dated 05.12.2019, and a moratorium was declared. Consequently, the insolvency commencement date is 05.12.2019. It is essential to note that actions such as the appointment of an interim resolution professional or the public announcement under Section 13 of the Code does not impact the admission of the Corporate Debtor to the CIRP. Therefore, the relevant period is to be reckoned from 05.12.2019, which is the date of commencement of CIRP in the instant matter. In view of the above, we find no merit in the argument that the disputed transaction on 31.08.2019 occurred more than one year prior to the insolvency commencement date.

9.10 It is also pertinent to note that a suspended director of the Corporate Debtor is also the Chairman of Respondent No.1 Company, and his daughter, Ms. Tanya Batra, is a director of the Respondent No.1 Company. Respondent No.2 in his reply stated that "*Respondent 3 and R4 however wanted R2 and his daughter to continue as a director in the company till they find new investors, so that they can use their business acumen till they find new person to join the Board. Accordingly, the shares were transferred to them.*" Therefore, there can be no doubt that the Respondents qualify as related parties within the definition provided in Sections 5(24) and (24A) of the Code. In the circumstances, the relevant period is two years preceding the insolvency commencement date, i.e., 05.12.2019.

9.11 Based on the above discussions, we have no hesitation in holding that the transaction in question occurred during the relevant period as per Section 46 of the Code.

9.12 We may now take up the question as to whether the transaction was undervalued. The Applicant has made elaborate submissions to emphasize that the Corporate Debtor continued to represent itself in the Annual General Meeting even after the alleged transfer of shares. Additionally, there are inconsistencies in the number and description of shareholders in the Form MGT-7 filed by Respondent No. 1 Company for the financial year 2019-2020. On the other hand, the Respondents have attempted to provide explanations for their attendance at the Annual General Meeting even after the transfer of shares and to address the discrepancies pointed out by the Applicant. However, instead of solely focusing on the authenticity of the transaction and the supporting documents for the transfer, the primary concern for this Application is whether the transaction was undervalued.

9.13 The Applicant submits that the price or value of any company has to be certified by the directors and auditors before any sale or transfer takes place. However, in this case, the shares were transferred at a nominal value of Rs. 10/- each without any such valuation. In contrast, the Respondents contend that Respondent No. 1 Company has incurred losses for the last few years and does not own any fixed assets, resulting in the book value of its shares being below their face value. Therefore, the shares were sold at face value.

9.14 In order to support the case, the Respondents obtained a valuation of the shares as on 31.08.2019 through a registered valuer (CA Pitam Goel). The valuation report dated 20.10.2021 indicated that the value of the shares was Rs. 0/- per share. Respondent No.1 Company further stated that the shares were sold due to an agreement with Respondent No.4, who brought in the technical know-how for the production and development of Respondent No.1's products. Without the expertise of Respondent No.4, Respondent No.1 Company would not have been in a position to manufacture or sell its products in the market.

9.15 While the Respondents assert that the value of shares at the time of transfer is *nil*, the Applicant contends that he appointed an IBBI registered valuer, Shri. Ramesh Shetty *vide* letter dated 29.07.2023, to assess the value of Respondent No.1 Company. As per his report, the Enterprise Value of Respondent No.1 ranges from 2.5 crore to 3 crores with per equity share value estimated between Rs. 25000 to 30,000/- per share, based on publicly available data. It is noticed that both parties dispute the valuation methodology adopted by the valuer appointed by the other side.

9.16 Although there are disagreements regarding the valuation methodology adopted by the valuers, it is important to notice that the resolution professional is duty bound under Section 25(2)(d) of the Code read with Regulation 27 of the CIRP Regulations to appoint professionals, including registered valuers, to assist him in the discharge of his duties during the conduct of CIRP. The Applicant appointed an IBBI-registered valuer, who is legally authorised to conduct valuation under Section 247 of the Companies Act, 2013 read with the Companies (Registered Valuers and Valuation) Rules, 2017. Therefore, the Applicant is justified in relying on the valuation report duly prepared by the valuer appointed by him during the CIRP of the Corporate Debtor.

9.17 Admittedly, no valuation was done by the erstwhile management of the Corporate Debtor at the time of the transaction. There can be no dispute that whenever there is a transaction involving a company's assets, whether it is the sale of assets, shares, the sale of the enterprise itself, or the sale of goods or services between entities, valuation is needed to satisfy the proper discharge of fiduciary responsibility. This necessity becomes even more critical when the management is making decisions during the pendency of the Company Petition to initiate CIRP. The conduct, nature, and timing of the transaction also warrant close scrutiny. However, there has been no explanation provided by the Respondents to justify the completion of the transaction at that time without a proper valuation.

9.18 The only plausible explanation for entering into such a transaction at that stage would have been that it was undertaken in the ordinary course of business. However, the records indicate that the Corporate Debtor was non-operational after 31.03.2017. Furthermore, no evidence has been presented to demonstrate that the transaction was conducted in the ordinary course of business. The primary aim of Section 45 of the Code is to disregard transactions that seem to be undervalued, in order to minimise potential loss to other stakeholders, particularly the creditors of the Corporate Debtor.

9.19 After considering the purpose and purport of Section 45 of the Code, as well as the method of transferring the asset (shares) of the Corporate Debtor without any valuation, we are of the considered opinion that this transaction should be categorised as an undervalued transaction. It is also significant to note that the purchasers of shares (Respondent Nos. 3 & 4), who are the affected parties, chose to remain *ex parte* in spite of receiving Court Notice.

9.20 In the circumstances, we hold that the transaction in question is undervalued and falls under Section 45(2) of the Code. We are also satisfied that such a transaction was deliberately entered into by the Corporate Debtor to keep these assets beyond the reach of creditors of the Corporate Debtor. Accordingly, we direct the Respondents to restore the position as it existed before the transfer of shareholding on 31.08.2019, as if the transfer had not been entered into, and direct the Respondent No.1 Company to reinstate the name of the Corporate Debtor as its shareholder within 30 days from the date of this order. Accordingly, **IA No. 1154/2021 is allowed** with no order as to costs.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

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