NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1437 of 2023

[Arising out of the Order dated 10.08.2023, passed by the 'Adjudicating Authority' (National Company Law Tribunal, KOLKATA BENCH (Court-I) KOLKATA), I.A. No. 1253/KB/2020 in CP(IB) No. 1175/KB/2019]

IN THE MATTER OF:

1. **RAJESH TOSHNIWAL**
   a suspended director of the Corporate Debtor
   Swarna Mani, Flat 11EB,
   33A Canal Circular Road,
   near Bengal Chemical, Kankurgachi, Kolkata-700054;
   Email id: tecpll@gmail.com **...Appellant No. 1**
2. **KUSUM TOSHNIWAL**
   a suspended director of the Corporate Debtor
   Swarna Mani, Flat 11EB,
   33A Canal Circular Road,
   near Bengal Chemical, Kankurgachi, Kolkata-700054;
   Email id: kamal@toshniwalcontrols.com **...Appellant No. 2**

Versus

1. **KAMAL NAYAN JAIN**
   Erstwhile Liquidator of Toshniwal Enterprises Controls Limited
   2/7, Sarat Bose Road,
   Vasundhara Building, 2nd Floor,
   Kolkata – 700020
   Email id: knjain@knjainco.com **...Respondent No.1**
2. **UNION BANK OF INDIA**
   SAMV Branch
   8 Lenin Sarani, Kolkata- 700013
   Email id:
   samvkolkata@unionbankofindia.bank
   amvkolkata@unionbankofindia.bank **...Respondent No.2**
3. **PUNJAB NATIONAL BANK**
   Head Office: Plot No 4, Sector 10,
   Dwarka New Delhi-110075
   Acting Through one of its Sastra Divison,
   Zonal office, United Tower,
   3rd Floor, Hemanta Basu Sarani Kolkata-700001

Email id:zs8350@pnb.co.in **...Respondent No.3**

Present:

For Appellant : Mr. Ajit Kumar Sinha, Sr. Advocate with Mr. S.K. Sharma, Advocate.

For Respondent : Mr. Shaunak Mitra, Mr. Saikat Sarkar, Ms. Tanushree Paul, Mr. Ishan Choudhary Roy, Advocates for R-1.
Mr. Kamal Nayan Jain, for R-1/Liquidator.
Mr. Rajesh Kumar Gautam, Mr. Deepanjal Choudhary & Mr. Azal Ackram, Advocates for R-2 and 3.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the appellants against the impugned order dated 10.08.2023, passed in IA No. 1253/KB/2020 in CP No. (IB) 1175/KB/2019 by the National Company Law Tribunal, Kolkata Bench (Court-I) Kolkata (Tribunal) whereby the Ld. Adjudicating Authority allowed an application filed by the Resolution Professional of the Corporate Debtor (CD) under Section 43,44,66 and 60 (5) of the Insolvency and Bankruptcy Code, 2016 (Code) and allowed all the prayers of the application filed by the Resolution Professional except prayer 6 (f) and (g).

2. Brief facts necessary for disposal of this appeal are that on a petition filed by the outlook Tracom Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) the Insolvency Process was initiated against the Corporate Debtor (CD) vide order dated 22.11.2019 of the Ld. Adjudicating Authority passed in CP No. (IB) 1175/KB/2019 and Mr. Kamal Nayan Jain was appointed as Interim Resolution Professional (IRP), who was subsequently confirmed as the Resolution Professional (RP).

3. During the course of CIRP, the RP in the first meeting of the CoC held on 19.12.2019 informed the members of the CoC that he would be taking steps for filing of an application under Section 19 (2) of the Code against the Suspended Directors of the CD, including the appellants as they are not rendering any cooperation to him and thereafter an application bearing CA IB No. 07/KB/2020 was filed by the RP under section 19 (2) of the Code which was disposed of by the adjudicating authority on 16.01.2020 with a direction to the suspended directors of the CD to cooperate with the RP and to hand over all books of accounts, assets and other relevant documents of the CD within three days failing which the RP was granted liberty to approach the local police authorities for the purpose of taking assistance for retrieval of the books of accounts of other relevant documents of the CD from the suspended directors.

4. It is further reflected that in the 2nd meeting of the CoC held on 22.01.2020, the RP informed about the passing of the order and also about the steps which would be taken in compliance of the said order. In the meantime, appellant Rajesh Toshniwal has also requested the RP to grant some more time for retrieval of the documents of Muchipara Police Station.

5. It is also evident that on 05.03.2020, the Ld. Adjudicating Authority provided another opportunity to the suspended directors of the CD to provide all necessary documents and the RP was directed to conduct a joint visit on 05.03.2020, to the office of the CD along with the suspended directors and a direction was also made to the Muchipara Police Station to provide all necessary assistance to enable the RP to take soft copies of the documents ceased by the Muchipara Police Station, in the presence of the

suspended directors. Later on it is complained by the RP that appellant Rajesh Toshniwal declined to accompany him to the Muchipara Police Station and send his unauthorized representatives and thereafter none of the suspended directors desires to accompany the RP Muchipara Police Station for retrieval of the documents seized by the police and in this regard the RP apprised the CoC in its 3rd CoC meeting held on 11.06.2020.

6. It is further reflected that the RP appointed M/s S. Poddar and Company as transaction auditor and an interim transaction report was prepared by the transaction auditor wherein several questionable transactions surfaced. In the meantime, the RP also stated to have approached the magistrate on 10.11.2020, for issuance of appropriate directions to the Muchipara Police Station for the purpose of providing all necessary facilities and assistance to the RP.

7. It is also reflected that the discussion pertaining to the interim transaction audit report was held in the 4th meeting of the CoC held on 02.09.2020, and in pursuance of the decision taken therein the interim transaction audit report was shared with the suspended directors in order to solicit their response pertaining to some objectionable transactions. However, no explanation was submitted by the suspended directors and thereafter on 25.09.2020, the transaction auditor prepared the final transaction audit report on the basis of the information and documents retrieved from public domain or from the CD and also on the basis of information/documents collected from third party.

8. It is also evident that the RP considered the final transaction audit report and being satisfied that there are certain transactions which are

preferential and fraudulent in nature and in pursuance of the decision taken in the 5th CoC meeting held on 06.10.2020, filed the IA 1253/ KB/2020 which has been disposed of by Ld. adjudicating authority by passing the impugned order where by all the prayers of the application has been allowed except prayer (f) and (g).

9. It is also to be recalled that during the pendency of the aforesaid application moved by the Resolution Professional the CoC in its 17th meeting held on 18.01.2022 rejected the resolution plan submitted by one resolution applicant and approved the decision to liquidate the CD and accordingly, vide order dated 04.04.2022, an application bearing IA No. 142/KB/2022 filed under Section 33 of the Code was allowed by Ld. Adjudicating Authority and liquidation proceedings were initiated and thereafter on 02.08.2023, the liquidator convened the meeting of stakeholders committee and assign the outcome of the IA No. 1253/KB/2020 to Respondent No. 2 and 3 i.e. Union Bank of India and Punjab National Bank and ultimately on 24.01.2023, the CD was sold as a going concern to M/s Candid Resources Ltd.

10. It is also pertinent to mention here that before the Ld. Adjudicating Authority the Respondents in the application including the appellants were served however, the reply was filed only by Respondents Rajesh Toshniwal and Ms. Kusum Toshniwal- (Appellants) and the proceedings were initiated ex-parte against rest of the Respondents and even thereafter, when the matter was listed for final consideration/ hearing by Ld. Adjudicating Authority on 31.08.2022 the contesting Respondents sought some more time to advance their arguments and their prayer was allowed at the cost of Rs. 20,000/- and when the matter was again taken up on 23.09.2022 there

was no representation on behalf of Respondents however, the matter was again adjourned by the Ld Adjudicating Authority to 26.10.2022 whereon the Ld. Adjudicating Authority recorded that if its earlier directions were not complied, necessary orders would be passed and the matter was again posted for 23.11.2022. It is also recorded by Ld. Adjudicating Authority in the impugned order that on 23.11.2022, there was again no representation on behalf of the Respondent Nos. 1 and 2 (Appellants) and the matter was argued by Ld. Counsel for the RP and the same was reserved for judgment.

11. Ld. Counsel for the appellant submits that entire controversy arises from a Defective and Assumption based Transaction Audit Report filed by the S. Poddar & Co., Chartered Accountants, which is totally based on Presumptions and assumptions and not on the basis of documents and the Transaction Audit Report itself acknowledges its speculative basis stating that all audited financial statements of the Corporate Debtor submitted to the Transaction Auditor obtained by it from the sources mentioned in the report are taken as true and correct reflection of facts. Thus the report has been submitted only on the basis of presumptions. That all documents collected by transaction auditor are truthful. Therefore, the basis on which satisfaction of the RP has arrived is itself doubtful.

12. It is further submitted that the Transaction Auditor was not provided with the requisite documents by the Resolution Professional (RP) and thus he failed to discharge his duty as specified under Section 25 (l)& (2) of the Code and Rules specified thereunder and he has also not taken any steps for obtaining the documents which were seized by the Police, even after specific directions from the Ld. NCLT, Kolkata vide Order dated 05.03.2020

whereby the SHO, Muchipara P.S. was also directed to provide all necessary facilities/assistances so that the Resolution Professional in the presence of the suspended Director can extract soft copy from the laptop kept in the custody of police. The RP also failed to file any application before the concerned Magistrate to obtain permission to access the seized documents, thereby depriving the Transaction Auditor of necessary record for a fair, unbiased, and reliable Transaction audit.

13. It is further submitted that Transaction Auditors in their report have indicated that they have not been provided with the necessary documents which can enable them to look into the financial transactions of the corporate debtor or the alleged related parties and thus the Transaction Audit Report was prepared without necessary documents, which ought to have been provided by the RP to get the accurate Transaction Audit Report.

14. It is further submitted that the Prayer clause in Para 6 of IA No. 1253 of 2020 filed before the Ld. NCLT, Kolkata is patently defective whereby the prayer has been made to pass an order directing Respondent No. 1, Mr. Rajesh Toshniwal (Appellant) to pay Rs. 9,27,028.00 (Rupees Nine Lakh Twenty-Seven Thousand and Twenty-Eight only) in the account of the Corporate Debtor, while the alleged preferential transactions pertaining to Appellant No. 1 amounting to Rs. 9,27,028/- which comes from two Bank accounts of the Corporate Debtor i.e. OBC (Rs. 1,10,000) and Corporation Bank (Rs. 8,17,028), wherein an amount of Rs. 1,57,028 of some other person in the name of Mr. Rajesh Kumar has also been included. Moreover Mr. Rajesh Toshniwal was the director of the Corporate Debtor before

initiation of the CIRP and transactions related to him cannot be treated as a preferential transaction as these were legitimate payments made to him in his capacity as a Director of the Corporate Debtor, towards salary and routine business expenses.

15. It is further submitted that the Resolution Professional in Prayer 6 (b) of the application it was requested to pass an order directing Respondent N0. 6, Toshniwal Enterprises represented by Mr. Rajesh Toshniwal in his capacity as the son and heir apparent of the erstwhile proprietor, Late Kamal Kishore Toshniwal to pay Rs. 71,82, 600/- (Rupees Seventy-One Lakhs Eighty-Two Thousand and Six Hundred only) in the account of the Corporate Debtor and thus the Resolution Professional has committed an illegality in considering the appellant as the only legal representative of M/s Toshniwal Enterprises on the sole ground that he is the son and heir of Late Kamal Kishore Toshniwal. It is submitted that Appellant No. 1 has neither inherited any part of the estate of Late Kamal Kishore Toshniwal nor has he assumed or accepted any responsibility or liability in respect of the said sole proprietorship concern. It is also highlighted that the said Late Kamal Kishore Toshniwal is survived by one son i.e. Appellant No. 1 and two daughters, all of whom are independent individuals and have no connection with the affairs of the said concern. Hence, the unilateral attribution of responsibility upon Appellant No. 1 is wholly misconceived and baseless.

16. It is also submitted that the Resolution Professional in Prayer 6 (c) of the application prayed for passing an order directing Respondent No. 7, M/s Holdwell TradecomPvt. Ltd. to pay Rs. 1,12,000/- (Rupees One Lakh Twelve Thousand only) in the account of the Corporate Debtor. However the

Resolution Professional, while computing the amount referred to in Prayer 6(c), has selectively relied upon the figure reflected under the column titled "Amount Debited", while deliberately and/or negligently omitting to account for the corresponding entry under the column "Amount Credited", thus conduct of the Resolution Professional, in suppressing material credits while projecting a distorted debit balance, is in clear violation of the standards of integrity, objectivity, and care mandated under Section 208 of the Insolvency and Bankruptcy Code, 2016.

17. It is also highlighted that the Resolution Professional in Prayer 6 (d) requested to pass an order directing Respondent No. 8, M/s Nandlal Kamal Kishore Vyapaar Pvt. Ltd. to pay Rs. 3,70,59,000/- (Rupees Three Crores Seventy Lakhs Fifty-Nine Thousand only) and while computing the amount "referred to in Prayer 6(c), taken from OBC Bank for Rs. 28,20,000/- and Corporation Bank for Rs. 88,59,000, RP has selectively relied upon the figure reflected under the column titled "Amount Debited", while deliberately and/or negligently omitting to account for the corresponding entry under the column "Amount Credited". Had the Resolution Professional exercised due diligence and deducted the credited sum of Rs. 85,00,000/-, as mandatorily required, the resultant Net Debit Balance would have been only Rs. 3,59,000/-. The aforesaid acts and omissions unmistakably demonstrate misconduct and raise serious doubts about the ability, impartiality, and professional fitness of the Respondent Resolution Professional to handle the present insolvency process, thereby warranting strict scrutiny and appropriate directions by this Appellate Tribunal. Similarly, in Prayer 6 (e) request was made with regard to Respondent No. 1

to 4 to pay jointly or severally a sum of Rs. 7,19,07,638. 00 (Rupees Seven Crore Forty-Nine Lakh Seven Thousand Six Hundred and Thirty-Eight only) or any other amount as this Appellate Tribunal may deem fit on account of payments made to related parties from the accounts of the Corporate Debtor. The Resolution Professional by sheer negligence appears to have calculated the amount as mentioned in the Prayer 6 (e) separately as well as collectively in the present prayer which can be seen by adding the amounts mentioned in Prayer clause 6(a) i.e. Rs. 9,27,028/- + (b) i.e. Rs. 71,82,600/- + (c) i.e. Rs. 1,12,000/- + (d) i.e. Rs. 1,16,79,000/- + (f) i.e. Rs. 7,30,000/- and (g) i.e. Rs. 5,42,77,010/- = (e) Rs. 7,49,07,638/-. This calculation made by the Resolution Professional shows his incapability, unprofessionalism and incompetency in dealing the present matter.

18. It is further submitted that the Resolution Professional has committed similar mistakes so far as the prayers with regard to Mr. Raghav Toshniwal Limited for an amount of Rs. 7,30,000/- and Digital Live Ads Limited for an amount of Rs. 5,42,77,010/- is concerned, which have not been allowed by the Adjudicating Authority. The RP has not challenged the rejection of Prayer 6 (f) and (g) refused vide impugned order. It is therefore evident that the Resolution Professional has failed to clearly segregate and articulate the reliefs sought, thereby inflating the total claim multiple times. This reflects a serious failure of due diligence on the part of the Resolution Professional, as well as an oversight by Ld. Adjudicating Authority in not identifying such duplication and inflation.

19. It is further submitted that the Resolution Professional has ignored the Disclaimers/ and Limitation Clause of the Transaction Audit Report and

without application of mind filed the application alleging preferential and fraudulent transactions against the appellant and suspended board of directors. The Resolution Professional instead of providing the necessary documents to the Auditor, had filed the Application on basis of the incomplete and unreliable Transaction Auditor Report given by the Auditor and the impugned order based on such report is liable to be set aside.

20. Ld. Counsel for the Respondent No. 1 on the other hand submits that an application was filed under Section 7 IBC by M/s. Outlook Tradecom Pvt. Ltd., which was admitted on 29.11.2019, thereby initiating corporate insolvency resolution process (CIRP) against the CD and Respondent No.1 was appointed as the Interim Resolution Professional and subsequently as the Resolution Professional of the CD. During the CIRP, the suspended Directors including the Appellants did not render any co-operation to the RP and their non-cooperation was intimated to the Committee of Creditors (CoC) in the 1st CoC Meeting held on 19.12.20195. Thereafter an application i.e., CA (IB) No. 07/KB/2020 was filed under Section 19(2) of the Code, which was allowed on 16.01.20207 with the direction to the suspended Directors of the CD, including the Appellants, to co-operate and hand over all books of accounts, assets and other relevant documents of the CD to the R1 within 3 days, failing which the R1 was granted liberty to approach the local police authority to take assistance for retrieval of the books of accounts, assets and other relevant documents of the CD from the suspended Directors, including the Appellant.

21. It is further submitted that on 23.01.2020 Appellant No. 1 i.e., Mr. Rajesh Toshniwal requested RP to grant further time to provide the

remaining documents since the same was required to be retrieved from Muchipara PS as their mail system had been suspended due to non-payment, however the suspended Directors, including the Appellants did not provide the remaining documents as was requested by RP and it was on 05.03.2020 Ld. Tribunal granted another opportunity to the suspended Directors of the CD, including the Appellants, to co-operate with RP by providing all necessary documents and for that purpose, RP was directed to conduct a joint visit, on 05.03.2020 itself, with the suspended Directors of the CD to the office of the CD and take inventory of available documents jointly in presence of the suspended Directors of the CD. The Tribunal also directed the Muchipara PS to provide all necessary facilities / assistance in order to enable the RP to take soft copies of the documents seized by the Muchipara PS, in the presence of the suspended Directors, with the permission from the concerned Magistrate.

22. It is further submitted that on 05.03.2020, RP requested Appellant No. 1 ,Mr. Rajesh Toshniwal to accompany to the Muchipara PS, however, he refused to accompany to the Muchipara PS stating that the copy of the order dated 05.03.2020 was not available and inspite of the order dated 05.03.2020 being made available to Appellant in the evening of 05.03.2020, he refused to accompany RP to Muchipara PS and send his unauthorized representative to the Muchipara PS despite the categorical direction in the order dated 05.03.2020 for Appellant to accompany RP to the Muchipara PS and thereafter, despite repeated requests form RP, none of the suspended Directors, including the Appellants, expressed any desire to accompany the RP to the Muchipara PS for retrieval of the seized CD records.

23. It is also submitted that in the 3rd CoC Meeting held on 11.06.2020, RP appraised the CoC about the continued non-cooperation by the suspended Directors of the CD and appointment of M/s. S. Poddar & Co., to conduct a forensic / transaction audit of the CD. On 19.05.2020, the M/s. S. Poddar & Co., (Transaction Auditor / TA) issued an Interim Transaction Report (TAR) wherein the it was opined that there were several questionable transactions carried out by the CD with its related parties.

24. It is further submitted that in the meantime, due to the continued non-cooperation by the suspended Directors of the CD, including the Appellants, RP approached the concerned Magistrate, independently, on 10.11.2020, inter alia seeking for issuance of a direction to the Muchipara PS to provide all necessary facilities/assistance to the RP to extract soft copies of the seized CD documents. In the 4th CoC Meeting held on 02.09.202020, RP appraised the CoC about the continued non-cooperation by the suspended Directors and the information retrieved from the Officer-in-Charge of Muchipara PS and the advocate of A1. As per the decision taken in the 4th CoC Meeting held on 02.09.2020 the RP shared the interim TAR with the suspended Directors, including the Appellants, in order to solicit their response to the questionable transactions identified by the TA, however no information/documents/explanation was put forth by the suspended Directors of the CD and thereafter on 25.09.202025, the Final transaction Audit Report was prepared on the basis of the information/ documents available in public domain or with the CD and upon perusal and assessment of the Audit report RP formed an independent opinion that certain impugned transactions identified in the Final TAR were preferential

and fraudulent in nature and in pursuance of the decision taken in the meeting of the COC on 06.10.2020 the application was filed.

25. It is further submitted that there is an independent application of mind by RP in filing the application and the alleged preferential transactions took place within the relevant time prescribed by the Code, however, no evidence has been produced to establish that these transactions took place in the ordinary course of business and all transactions which have been labelled as preferential were made to the related entities in order to deprive the other creditors of the CD and therefore the beneficiaries of these transactions have been rightly asked to contribute the benefit derived to the CD. Appellants have miserably failed to discharge the burden / onus under Section 43(3) of the Code to show that the impugned transactions were in the ordinary course of business. Mere bald assertion of "ordinary course" without documents cannot rebut statutory presumption.

26. It is also submitted that the plea advanced by the Appellants that the records were seized by the Muchipara PS is a self-serving excuse. The Appellants deliberately avoided participation in the process of retrieval of information / documents seized by the Muchipara PS, thereby disentitling the Appellants from claiming prejudice in any manner whatsoever.

27. It is further submitted that Appellants attempting to espouse the case of non-contesting parties without any documentary support and they cannot be permitted to do so and the typo error in the figure mentioned in prayer (d) sought in IA 1253 was categorically pointed out by RP and the same is also recorded in Para 6.5 of the Impugned Order and categorically noted in Para 21 of the Impugned Order. The typo error in the figure mentioned in prayer

(d) sought in IA 1253 pertains to a party who is not in appeal and RP at the time of filing IA 1253 had not contemplated that prayer (f) and (g) sought in IA 1253 would not be granted by the Adjudicating Authority. Since the reliefs sought in IA 1253 was partly allowed, thereby there is automatic adjustment of the figures wrongly mentioned in the prayers of IA 1253 and Notwithstanding the above, this Appellate Tribunal is fully empowered to correct such inadvertent error and the Appellants cannot be allowed to take advantage of any error in the Impugned Order, which has occurred inadvertently. It is also submitted that the relief sought by RP in paragraph 6(d) of IA 1253 is only granted to the extent of Rs. 1,16,79,000/-.

28. Having heard Ld. Counsel for the parties and having perused the record including the written submissions filed by the parties, it is reflected that application bearing IA no. 1253/KB/2020 was filed by the Respondent/Resolution Professional for grant of following prayers:

> *"(a)That this Adjudicating Authority be pleased to pass an order directing Respondent No. 1 Mr. Rajesh Toshniwal to pay Rs. 9,27,028/- in the account of the account of the Corporate Debtor;*
> *(b) That this Adjudicating Authority be pleased to pass an order directing Respondent No. 6. Toshniwal Enterprises, represented by Mr. Rajesh Toshniwal in his capacity as the son and heir apparent of the erstwhile proprietor, Late Kamal Kishore Toshniwal to pay Rs. 71,82,600/- in the account of the account of the Corporate Debtor;*
> *(c) That this Adjudicating Authority be pleased to pass an order directing Respondent No. 7. M/s Holdwell Tradecom Pvt. Ltd. to pay Rs. 1,12,000/- in the account of the account of the Corporate Debtor;*
> *(d) That this Adjudicating Authority be pleased to pass an order directing Respondent no. 8 M/s Nandlal Kamal Kishore Vyapaar Pvt. Ltd. to pay Rs. 1,16,79,000/- in the account of the account of the Corporate Debtor;*
> *(e) That this Adjudicating Authority be pleased to pass an order directing the suspended board of directors being*

Respondent No. 1 to 4 to pay jointly or severally a sum of Rs. 7,49,07,638/- of any other amount as this Adjudicating Authority may deem fit on account of payments made to related parties from the accounts of the Corporate Debtor.
(f) That this Adjudicating Authority be pleased to pass an order directing Respondent No. 5 to contribute a sum of Rs. 7,30,000/- or such other sum as this Adjudicating Authority may deem fit;
(g) That this Adjudicating Authority be pleased to pass an order directing Respondent No. 9 to contribute a sum of Rs. 5,42,77,010/- or such other sum as this Adjudicating Authority may deem fit;
(h) That this Adjudicating Authority be pleased to pass an order directing the suspended board of directors being Respondents No. 1 to 5 to make such contributions to the assets of the corporate debtor as this Adjudicating Authority may deem fit;
(i) That this Adjudicating Authority may be pleased to pass an order or orders as may be deemed necessary for investigation into the affairs of the corporate debtor;
(j) For such further and other reliefs as this Adjudicating Authority may deem fit and proper in the facts and circumstances of this case".

29. It is also evident that by passing the impugned order Ld. Adjudicating Authority did not find sufficient evidence to grant prayers 6 (f) and (g) of the application and as such the reliefs sought in paragraph 6 (f) and (g) were not granted while the other prayers of the application were granted with a clarification that the relief sought by the applicant in paragraph 6(d) of the application was granted to the extent of Rs. 1,16,79,000/-.

30. We also notice that the Resolution Professional on the basis of transaction audit report has made up his mind and being satisfied by the conclusions drawn therein, has filed the application before Ld. Adjudicating Authority. The said Transaction Audit Report has been placed on record. Ld. Counsel for the appellant has criticized this Transaction Audit Report on the basis that the same has been prepared without any genuine documentary evidence and the required documentary evidence was not produced by the

Resolution Professional before the Transaction Auditor and therefore, this report could not be made the basis of holding any transaction as either related or preferential.

31. We have perused the Transaction Audit Report prepared by the Transaction Auditors i.e. S. Poddar and company/ Chartered Accountants and while preparing the Report the Transaction Auditors appears to have performed diligent exercise in ascertaining the necessary information about the CD and have taken the period of the audit as two years prior to the CIRP date i.e. 22.11.2019 and categorically recorded the names of the Directors of the CD as on 04.03.2020 as well as the shareholders of the Company as on 31.03.2018 and also collected information with regard to the subsidiary as well as foreign subsidiary and associate company of the CD.

32. The perusal of this transaction audit report would further reveal that the auditor has earmarked various entities and persons as related parties in view of Section 5(24) and 24 (A) of the Code. It is also mentioned in the report that the corporate debtor has not provided the books of accounts and in this regard an application was filed by the RP under Section 19 (2) of the Code which was disposed of by the Ld. Adjudicating Authority by passing certain directions and thus in absence of these documentary evidence it is recorded in the report that the Transaction Audit Report is based on the restricted information which was made available by the RP and collected from third party sources.

33. It is further reflected from the Transaction Audit Report that for preparation of the report the bank statement of the CD of the relevant period, list of debtors, claims submitted by the creditors list of assets seized

of by the police, and audited balance sheet for March 2016 of Toshniwal Enterprises Controls PTE Ltd. (Company based in Singapore) and unaudited balance sheet provided by the corporate assurance PAC and TECPL, multiple ledgers retrieved vide email correspondence with corporate assurance PAC and Public Accountants and Chartered Accountant (Singapore Auditor) dated 28.02.2020 were taken into cognizance and thereafter certain transactions were highlighted by the transaction auditor as preferential transactions.

34. Having perused the report prepared by the Transaction Auditors we are satisfied that cautious and diligent exercise has been done by the Transaction Auditors. So far as the objections raised by the appellants with regard to the insufficiency of the material available with the Transaction Auditors and various disclaimers given by the Transaction Auditors in their report, is concerned the same in our considered opinion are not sufficient to discard the otherwise diligent report prepared by the transaction auditor.

35. It is also to be recalled that since beginning of the CIRP, the suspended directors of the CD were non-cooperative with the IRP/RP and it is also evident from the record that they did not provide relevant documentary evidence to the IRP/RP and even did not make any effort to retrieve the data contained in the laptops seized by the police and therefore, in this background the RP was constrained to provide the documents which he could collect from the banks and other third parties. Since, the Suspended Directors of the CD including the appellants were at fault, in not providing the documents/financial statement of the CD to the IRP/RP, they cannot take this defense that the material available with the Transaction

Auditors was not sufficient. Before the Ld. Tribunal as well as in the memo of appeal preferred before us we have not found any fact by which the appellants have justified the transactions highlighted by the Transaction Auditor.

36. So far as the submission of Ld. Counsel for the appellant with regard to the defective prayers of the application moved by the RP is concerned, it is reflected that in the prayer clause 6 (a) reliefs have been claimed and granted by Ld. Adjudicating Authority pertaining to the amount of Rs. 9,27,028/- to be paid by Appellant No. 1. The Transaction Auditors in their report has stated that appellant no. 1 has taken Rs. 110,000/- from the bank account of the CD lying in OBC Bank and Rs. 817,028/- were paid to him from the corporation bank account of the CD. These entries noted by the transaction auditor are based on the bank account statements of the CD lying in aforesaid two banks and no acceptable explanation has been given by the appellant either before this appellate tribunal or before ld. Adjudicating authority pertaining to the justification of the payment of this amount. Therefore, the conclusions drawn by the adjudicating authority with regard to this amount requires no intervention by us.

37. Prayer 6(b) of the application moved by the RP is with regard to the payment of Rs. 71,82,600/- by Toshniwal Enterprises and this prayer has also been granted by the Adjudicating Authority by passing the impugned order. Ld. Counsel for the appellants has contended that the liability of this amount could not be fastened only on appellant no. 1 as, there are other legal heirs of late Kamal Kishore Toshniwal i.e. two daughters and none of

them was having any connection with the sole proprietorship owned by late Kamal Kishore Toshniwal.

38. We find that the figure of Rs. 71,82,600/- has been ascertained by the transaction auditor on the basis of bank statements of the CD and it has also been highlighted by the auditor that huge amount has been paid to related parties from the bank account of the CD lying in OBC Bank as well as Corporation Bank, within few days of the receipt of the same. Thus, in our considered opinion the entries in the transaction audit report is based on the bank account statement of the CD and moreover this amount and entries have not been disputed by the appellant and the sole objection which has been raised, is that the appellant no. 1 alone is not liable, nor any other legal heir of late Kamal Kishore Toshniwal is responsible, as they were not having any connection with the sole proprietorship owned by the deceased.

39. It appears to be an admitted fact that M/s Toshniwal Enterprises was a party before Ld. Adjudicating Authority and it chooses not to contest the application before it and proceedings were drawn ex-parte against it and no appeal has either been filed by the aforesaid entity.

40. It is also to be recalled that in the application moved by the RP before the Ld. Adjudicating Authority it has been stated that payment of Rs. 7182600/- was made to the proprietorship firm of Mr Kamal Kishore Toshniwal who was arrayed as Respondent No.6 to the application and also that when RP was made aware of the death of him on 19.10.2020 by the Appellant No.1, who is the son of the deceased.

41. It is further stated in that application that vide email dated 28.10.2020 Appellant No.1 stated that they have not received the requisite

certificate from the Court and on this the applicant arrayed the appellant No.1 as the representative of the said proprietorship concern in his capacity as the son and heir apparent of the deceased proprietor Late Kamal Kishore Toshniwal.

42. Perusal of the application would further reveal that in paragraph No. 6 of the application the RP has detailed the preferential transactions and in sub paragraph (ii) of the same, the above transaction has been labeled as preferential. It is also reflected that in sub paragraph (p) of the paragraph No. 6, the RP has detailed the fraudulent transactions. The transaction auditor in his report also placed this transaction under the heading of Preferential Transaction under Section 43 of the Code.

43. Ld. Adjudicating Authority in the impugned judgment has also placed aforesaid transaction under the heading "Preferential Transaction" and while citing **GVR Consulting Services Pvt. Ltd. and Ors. vs Pooja Bahry and Ors., MANU/NL/0371/2023 (NCLAT)** opined that the intent of the Corporate Debtor is not relevant under Section 43 of the Code, since Section 43 envisages statutory fiction. Thus it is crystal clear that the above mentioned transaction was clearly stated to be a preferential transaction by the RP in his application and adjudicated as such by the Adjudicating Authority by passing the impugned Judgment.

44. It is in the background of the aforesaid facts, this argument of the appellants is to be appreciated that the appellant being the Director of the CD may not be directed to pay the amount of preferential transactions allegedly made to the proprietorship firm of deceased Kamal Kishore Toshniwal as they were not having any connection with the Toshniwal

Enterprises, the sole proprietorship owned by the deceased Kamal Kishore Toshniwal (Deceased Father of the Appellants).

45. Section 43 and 44 of the Code are relevant for the controversy at hand and are reproduced as under; -

> *"Section 43. (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.

"Section 44. Orders in case of preferential transactions. – The Adjudicating Authority, may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:
(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;
(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;
(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;
(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;
(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and
(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts

or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:
Provided that an order under this section shall not—
(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;
(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation I.—For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, —
(i) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;
(ii) is a related party,
it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II. —A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13."

46. Hon'ble Supreme Court in **Anuj Jain v. Axis Bank Limited (2020) 8 SCC 401** has laid down the guiding principles to identify preferential transactions and the relevant part of the same is reproduced as under:

"Analysing Section 43 of the Code

18. In the backdrop of the foregoing, we may now scrutinize Sections 43 and 44 of the Code. Section 44 provides for the consequences of an 64 offending35 preferential transaction i.e., when the preference is given at a relevant time. Under Section 44, the Adjudicating Authority may pass such orders as to reverse the effect of an offending preferential transaction. Amongst others, the Adjudicating Authority may require any property transferred in connection with giving of preference to be

vested in the corporate debtor; it may also release or discharge (wholly or in part) any security interest created by the corporate debtor. The consequences of offending preferential transaction are, obviously, drastic and practically operate towards annulling the effect of such transaction. Looking to the contents, context and consequences, we are at one with the contentions urged on behalf of the respondents with reference to the decisions in Devinder Singh (supra) and other cited cases, that these provisions need to be strictly construed. However, even if we proceed on strict construction of Section 43 of the Code, the underlying principles and the object cannot be lost sight of. In other words, the construction has to be such that leads towards achieving the object of these provisions. 18.1. Looking at the broad features of Section 43 of the Code, it is noticed that as per sub-section (1) thereof, when 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 specified in sub-section (2), to any person/persons as referred to in 35 Note: Here the expression 'offending' is only to denote the unacceptability of such transaction and not any criminality. 65 sub-section (4), he is required to apply to the Adjudicating Authority for avoidance of preferential transactions and for one or more of the orders referred to in Section 44. If twin conditions specified in sub-section (2) of Section 43 are satisfied, the transaction would be deemed to be of preference. As per clause (a) of sub-section (2) of Section 43, the transaction, of transfer of property or an interest thereof of the corporate debtor, ought to be for the benefit36 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 as per clause (b) thereof, such transfer ought to be of the effect of putting such creditor or surety or guarantor in beneficial position than it would have been in the event of distribution of assets under Section 53.

18.2. However, merely giving of the preference and putting the beneficiary in a better position is not enough. For a preference to become an offending one for the purpose of Section 43 of the Code, another essential and rather prime requirement is to be satisfied that such event, of giving preference, ought to have happened within and during the specified time, referred to as "relevant time". The relevant time is reckoned, as per sub-section (4) of Section 43 of the Code, in two ways: (a) if the preference is given to a related party (other than an employee), the relevant time is a period of two years preceding the insolvency

commencement date; and (b) if the preference is given to a person other than a related party, the relevant time is a period of one year preceding such commencement date. In other words, for a transaction to fall within the mischief sought to be remedied by Sections 43 and 44 of the Code, it ought to be a preferential one answering to the requirements of sub-section (2) of Section 43; and the preference ought to have been given at a relevant time, as specified in sub-section (4) of Section 43.
Indicting parts – deemed preference at a relevant time

19. In order to understand and imbibe the provisions concerning preference at a relevant time, it is necessary to notice that as per the charging parts of Section 43 of the Code i.e., sub-sections (4) and (2) thereof, a corporate debtor shall be deemed to have given preference at a relevant time if the twin requirements of clauses (a) and (b) of sub-section (2) coupled with the applicable requirements of either clause (a) or clause (b) of sub-section (4), as the case may be, are satisfied.
19.1. To put it more explicit, the sum total of sub-sections (2) and (4) is that a corporate debtor shall be deemed to have given a preference at a relevant time if: (i) the transaction is of transfer of property or the interest thereof of the corporate debtor, for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability; (ii) such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with Section 53; and (iii) preference is given, either during the period of two years preceding the insolvency commencement date when the beneficiary is a related party (other than an employee), or during the period of one year preceding the insolvency commencement date when the beneficiary is an unrelated party.
19.2. By way of these statutory provisions, legal fictions are created whereby preference is deemed to have been given; and is deemed to have been given at a relevant time, if the stated requirements are satisfied.
19.3. On a conspectus of the principles so enunciated, it is clear that although the word 'deemed' is employed for different purposes in different contexts but one of its principal purpose, in essence, is to deem what may or may not be in reality, thereby requiring the subject-matter to be treated as if real. Applying the principles to the provision at hand i.e., Section 43 of the Code, it could reasonably be concluded that any transaction that answers to the descriptions contained in sub-sections (4) and (2) is presumed to be a preferential transaction at a relevant

time, even though it may not be so in reality. In other words, since sub-sections (4) and (2) are deeming provisions, upon existence of the ingredients stated therein, the legal fiction would come into play; and such transaction entered into by a corporate debtor would be regarded as preferential transaction with the attendant consequences as per Section 44 of the Code, irrespective whether the transaction was in fact intended or even anticipated to be so."

47. We have already noticed that findings recorded by the Adjudicating Authority with regard to the aforesaid transaction are in terms that erstwhile management has executed this preferential transaction in favour of a related party i.e. "Toshniwal Enterprises" owned by the father of the appellants (deceased Kamal Kishore Toshniwal), which comes within the preview of Section 43 of the Code. The said transaction is also executed within the stipulated look back period. Thus having regard to the deeming fiction provided in Section 43 of the Code this transaction would be deemed to be a preferential transaction and the onus shifts to the appellants to show as to how this transaction and others were done in ordinary course of business. The appellants have failed to explain these transactions and have raised technical issues. Thus, the only question is now required to be answered is that when the aforesaid transaction having been held to be a preferential one in view of Section 43 of the Code, whether any direction as contained in the Impugned Order, could be issued under Section 44 of the Code to the Appellant No.1 to pay the amount?

48. Thus Section 44(1)(d) of the Code contemplates a direction requiring any person to pay such sums in respect of benefits received by him from the Corporate Debtor as Adjudicating Authority may direct. Thus as observed above, the provision of Section 44 is aimed at reversing the effects of

preferential transactions and when the effects of preferential transaction are reversed, the person who has received benefits from the transactions, can be required to pay the sum which he has received under the preferential transaction.

49. At this juncture it is also required to be recalled that it is an admitted situation that Appellant No.1, to whom the direction has been given to pay the aforesaid amount, was admittedly the Director of the CD at relevant time and is also the son of the deceased Late Kamal Kishore Toshniwal and also his legal representative and heir apparent. The term legal representative has not been defined in the Code, therefore reference of it may safely be borrowed from the definition provided to it under Section 2(11) of the Code of Civil Procedure, which provides as under: -

> *"2(11) legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;"*

According to the aforesaid provision, a person who in law represents the estate of a deceased person and the person who inter meddles with the estate of the deceased are his LRs. The RP after the death of late Kamal Kishore Toshniwal get the heirs of the deceased impleaded as legal representative, including the appellant No.1 and since he is to inherit the property and asset from the deceased father he could be held liable to part that much of the amount by which the deceased/ Proprietor Kamal Kishore Toshniwal was benefited by the impugned preferential transaction.

50. It has been stated by the Appellant No.1 in the Email dated 28.10.2020 written to the RP that they have not received the requisite

certificate from the Court, but they have not produced either any order of the Court or any certificate which may reflect on the defense taken by them that they were not having any connection with the Toshniwal enterprises, the proprietor Firm owned by their father. But they could not deny the fact that they are class I heirs of the deceased Kamal Kishore Toshniwal and in normal course they might have succeeded to the estate of their deceased father and are liable to return the benefit taken by their father under impugned transaction. So it is not a case where the liability of the Appellant No.1 has been held only on account of him being the Director of the CD, rather the liability of the Appellant has been fixed also, on account of him being the son of the deceased Kamal Kishore Toshniwal, proprietor of the firm Toshniwal Enterprises, to whom the preferential transaction was made and significantly the deceased Kamal Kishore Toshniwal was also a Director in the CD at relevant point of time. Therefore, the Late Kamal Kishore Toshniwal and the Appellant No.1, both were the beneficiary of the preferential transaction made to Toshniwal Enterprises. We have already held that the aforesaid transaction pertaining to Toshniwal Enterprises, owned by the deceased was preferential one and made to a related entity within the look back period.

51. In view of above discussion, we don't find any infirmity with regard to the conclusions drawn by the Ld. Tribunal pertaining to this transaction also and the findings returned by the Ld. tribunal are liable to be affirmed.

52. Ld. Counsel for the appellant has also highlighted the prayer 6 (c) and (d) of the application in order to show that the RP as well as the Ld. Adjudicating Authority has not taken into account the credit entries

appearing in the bank accounts of the CD and have only chosen debit entries and had the credit entries emerging in the account were taken into consideration the net figure of Rs. 112,000-57,000= Rs. 55000/- and Rs. 8,859,000-8,500,000= Rs. 359,000/-, would have arrived.

53. Strong objection has been taken by Ld. Counsel for the Respondents to this submission and it is submitted that prayer 6 (c) and (d) of the application are with regard to Holdwell Tradecom Pvt. Ltd. and M/s Nand Lal Kamal Kishore Vyapaar Pvt. Ltd. to pay Rs. 112,000/- and Rs. 37,059,000/- respectively and these two entities did not contest the application before the Ld. Adjudicating Authority and have not filed any appeal before this appellate tribunal also, therefore, these findings have become final so far as these entities are concerned and the appellant cannot argue on their behalf, in the appeal preferred by appellants with regard to their own grievances. It is also submitted that on the day of hearing it was indicated and brought in the notice of the Ld. Tribunal by Ld. Counsel for the RP that figure of Rs. 37,059,000/- has inadvertently been wrongly mentioned due to typographical mistake and the same be read as Rs. 1,16,79,000/- and this submission of the counsel was duly recorded in the judgment.

54. Having considered the rival submissions made by Ld. Counsel for the parties we find force in the submissions made by Ld. Counsel for the Respondents as the appellants may not be aggrieved by the grant of prayer 6 (c) and (d) of the application which were pertaining to the other entities and those entities neither contested the application before the Ld. Adjudicating Authority nor has filed any appeal against the impugned order and these

findings which have been recorded against these entities could only be challenged by them, alone. Moreover, we also notice that the Ld. Tribunal has granted the prayer 6 (d) to the extent of Rs. 1,16,79,000/- and it was indicated at the time of hearing of the application before the Ld. Tribunal by Ld. Counsel for the RP that figure of Rs. 37,059,000/- has been wrongly mentioned and therefore the same be read as Rs. 1,16,79,000/-. Thus in our understanding no illegallity has been committed by the Tribunal in this regard also.

55. The other submissions of Ld. Counsel for the appellants is pertaining to prayer 6(e) of the application wherein the consolidated amount of all the prayers have been mentioned and it is submitted that the RP had calculated the amount mentioned in the prayer 6 (e) separately as well as collectively and even the amount of those prayers [6 (f) and (g)], which have not been granted has been included therein.

56. On the other hand, Ld. Counsel for the Respondents submits that the consolidated amount of all the prayers was mentioned in this prayer as at that time it could not be contemplated that Ld. Tribunal will not grant some of the prayers and as Ld. Tribunal has not granted prayers 6 (f) and (g) of the application, the amount which was mentioned in the prayer 6 (e) has now been reduced to Rs.1,16,79,000/-.

57. We notice that the Ld. Adjudicating Authority by passing the impugned order while declaring the impugned transactions as preferential and fraudulent in terms of Section 43, 45, and 66 granted all the reliefs sought by the applicant/RP except the relief contained in paragraph 6 (f) and (g). Certainly, the amount which has been mentioned in 6 (e) is Rs.

74907638/- and this is the cumulative figure of all the prayers originally claimed by the applicant in his application and having regard to the fact that prayer 6 (f) and (g) has not been granted by the Ld. Tribunal the net figure in this relief i.e. 6 (e) should have been Rs. 19,900,628 /- (Rs. 927,028/- + Rs.7,182,600/-+ Rs. 112,000+ Rs.1,16,79,000/-).

58. We are also of the considered view that appeal is the continuation of the proceedings of the subordinate court and if any infirmity with regard to the calculation of the amount has been committed by Ld. Adjudicating Authority the same may be corrected by the Tribunal as well as by this Appellate Tribunal in appeal. Thus, in our considered view the figure of Rs. 74,907,638/- shall be read only to the extent the reliefs have been granted by the Ld. Adjudicating Authority, as affirmed by this Appellate Tribunal.

59. Ld. Counsel for the appellant has also touched upon the infirmities in prayer 6 (f) and (g) but we are not inclined to enter into the discussion for the same on the ground that these prayers have not been granted by Ld. Tribunal and therefore there is no reason that the appellants may be aggrieved by the same, more so when no appeal has been preferred by the Resolution Professional against the impugned order.

60. Ld. Counsel for the appellant in the last has placed much emphasis on the insufficiency of material available with the transaction auditor as well as before the ld. Tribunal and submits that keeping in view the insufficiency of material/evidence no conclusions could have been drawn with regard to the preferential transactions with related party. At the cost of repetition we reiterates that the transaction auditor in its report has classified the entities as related parties which has not been disputed by the appellants and the

transactions which have been highlighted by the transaction auditor are based on the bank account statements of the CD and even these transactions have not been disputed by the appellants and the only objections which are being raised are of hyper technical nature and are centered around the mentioning of wrong figure in the prayer clause of the application moved by the RP before the Ld. Adjudicating Authority, however, no justification or explanation has been provided as to how these transactions could be deemed to have been performed in regular course of business. Once, it was established that money has been transferred to related entities a reciprocal onus had tilted towards the appellants who were the Directors of the CD at that point of time to explain as to why these transactions may not be treated as preferential transactions. We do not have any hesitation in stating that no explanation at all has been given by the appellants pertaining to these transactions being done in the ordinary course of business and thus no illegality appears to have been committed by Ld. Tribunal in labelling these transactions as preferential and in issuing consequential directions for deposition of these amounts in the account of the CD.

61. Having considered all the facts and circumstances of the case and for the reasons mentioned herein before, we do not find any good ground to interfere in the findings recorded by the Tribunal in the impugned judgment and therefore the Appeal appears to be devoid of merits and **dismissed** as such.

62. There is however no order as to costs. Pending IA's if any shall also stand closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
21.01.2026.

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