



S.No.6

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
17.04.2026 AT 10:30 A.M.**

**IA (IBC)/1963/2025 IA (IBC)/1964/2025 IA (IBC)/1972/2025 in
CP (IB) No. 390/95/HDB/2020
U/s 95 of IBC**

IN THE MATTER OF:

State Bank of India

...Petitioner

AND

**Mulpuri Siva Ramakrishna &
Athena Chhattisgarh Power Ltd**

...Respondent

C O R A M:-

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC)/1963/2025

Orders pronounced, recorded vide separate sheets. In the result, the IA (IBC)/1963/2025 is disposed of with directions.

IA (IBC)1964/2025

Orders pronounced, recorded vide separate sheets. In the result, the IA (IBC)/1964/2025 is dismissed.

IA (IBC)1972/2025

Orders pronounced, recorded vide separate sheets. In the result, the IA (IBC)/1972/2025 is partly allowed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II**

IA (IBC) No.1963 of 2025 in
CP (IB) No. 390/95/HDB/2020

In the matter of

Mr. Mulpuri Siva Ramakrishna, Personal Guarantor

BETWEEN:

Sivaram Prasad Bhamidi,

Bankruptcy Trustee in the matter of

Mr. Mulpuri Siva Ramakrishna, Personal Guarantor

to the Corporate Debtor Athena Chhattisgarh Power Limited

...Applicant

And

Mr Mulpuri Siva Ramakrishna

Mrs Spandana Mulpuri

...Respondents

Date of Order: 17.04.2026

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. G. Srikanth, Ld. Counsel, along with Mr.
Sivarama Prasad, Bankruptcy Trustee

For Respondents : Mr. CH. Srinivasulu, Ld. Counsel

1. This Interlocutory Application has been filed by the Applicant, the Bankruptcy Trustee, seeking appropriate directions against Respondent No.2 for recovery of an amount of 45,00,000/- alleged to have been transferred by the Bankrupt, Respondent No.1, in favour of Respondent No.2, purportedly constituting a preferential transaction under Section 165 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”).
2. It is submitted that this Adjudicating Authority, vide order dated 24.01.2025 passed in IA (IBC) No. 2110/2024 in CP (IB) No. 390/95/HDB/2020, initiated the bankruptcy process against Respondent No.1, who is the personal guarantor to the corporate debtor, and appointed Mr. Dantu Indu Sekhar as the Bankruptcy Trustee under Section 125 of IBC, 2016.
3. It is submitted that upon resignation of the erstwhile Bankruptcy Trustee, this Adjudicating Authority, vide order dated 01.09.2025 in IA (IBC) No. 1423/2025, appointed the present Applicant as the Bankruptcy Trustee in terms of Section 146 of IBC, 2016.
4. The Applicant states that the previous Bankruptcy Trustee appointed a Transaction Auditor to examine the financial affairs of the Bankrupt for the relevant period, with a view to identifying transactions falling within the ambit of the avoidance provisions, including preferential transactions.
5. It is asserted that the Transaction Auditor, upon conducting the audit, submitted a report dated 03.11.2025 identifying certain transactions as suspicious in nature. As per the said report, a sum of Rs 45,00,000/- was transferred by the Bankrupt in favour of Respondent No.2, which, according to the Applicant, falls within the purview of preferential transactions.
6. The Applicant has averred that the said transaction was undertaken towards repayment of an antecedent debt allegedly owed by the

Bankrupt to Respondent No.2 and that such repayment resulted in giving preference to Respondent No.2 over other creditors of the Bankrupt.

7. It is further contended that Respondent No.2 is the daughter of the Bankrupt and therefore qualifies as an “associate” within the meaning of Section 79(2) of IBC, 2016, and consequently, the relevant look-back period of two years is applicable in the present case.
8. The Applicant asserts that the application for initiation of bankruptcy was filed on 18.10.2024 and that the impugned transaction falls within the period of two years preceding the said date, thereby satisfying the requirement of the relevant period under Section 165 of IBC, 2016.
9. It is the case of the Applicant that the repayment made to Respondent No.2, being an associate and in respect of an antecedent debt, has the effect of placing Respondent No.2 in a more beneficial position vis-à-vis other creditors and therefore constitutes a preferential transaction liable to be set aside.
10. On the basis of the above, the Applicant has prayed for directions to Respondent No. 2 to repay the sum of Rs 45,00,000/- to the bankruptcy estate of Respondent No.1, along with such further orders as this Adjudicating Authority may deem fit in the facts and circumstances of the case.

Counter

11. The Respondents deny all allegations and contentions raised in this IA filed by the Bankruptcy Trustee under Section 165 of the Code and submit that the IA is misconceived, devoid of merit, and based on an erroneous interpretation of facts and law, mechanically adopted by the Applicant without independent application of mind.

12. According to the Respondent, the transaction of Rs 45,00,000 dated 31.01.2023 does not constitute a "Preferential Transaction" as defined under the Code. This payment was a legitimate repayment of a temporary accommodation provided for a specific purpose, not intended to prefer one creditor over others. The transactions were temporary financial accommodations between family members and not otherwise. Even the Transaction Audit report referred to the information shared by Respondent 1. The BT misunderstood the same and filed the instant application mechanically based on the Transaction Audit.
13. The Respondent No 1 contends that Respondent 2 is an "associate" (daughter), the presumption of influence under Section 165(7) is rebutted by the fact that the transaction was a restricted, purpose-based receipt of funds. The Transaction Auditor himself noted in his report that since the funds were for a Bank Guarantee/passport purpose, the transaction "can be ignored as it is not a normal repayment".
14. It is stated by the Respondent No 1 that the Bankrupt has a constitutional right to travel, which was subject to court-mandated bank guarantees. The High Court, New Delhi, vide its Orders dated 4 April 2014 and 25 April 2014, allowed the temporary release of the passport on furnishing the Bank Guarantee in favour of the Regional Passport officers. Securing funds from family members (associates) to comply with judicial/CBI requirements is an act in the ordinary course of legal proceedings and does not qualify as a business debt repayment intended to defraud other creditors.
15. It is submitted by the Respondent No 1 that Section 165 deems preference only if the bankrupt "does anything which has the effect of putting that person in a beneficial position" over other creditors. In the instant case, Rs. 50 lakhs was not estate property but a ring-fenced advance for passport release; repayment restored status

quo without depleting estate. The presumption under Sec 165(7) for associates is rebutted by evidence of purpose.

16. It is argued by the Respondent that the bank guarantee was required to be obtained by the Respondent to get the release of his passport, which was detained by the passport authorities in connection with an investigation by the CBI. As a matter of the hour, Mrs Spandana Mulpuri, the second respondent, has arranged funds for her father to Respondent No.1 to meet the required funds for fixing in FD and to obtain a BG for travel amid passport hold.
17. It is submitted that the Audit flags Rs. 45 lakhs payment as "repayment of debt" (pre-existing Rs. 50 lakhs loan). The Bankrupt received Rs. 50 lakhs from his daughter Spandana Mulpuri on 19 Sep 2022 in the UCO Bank account no. 4867 specifically for fixed deposits backing a Rs. 50 lakh bank guarantee to release the passport held by the authorities amid CBI investigation. The repayment of Rs. 45,00,000/- was done by Respondent No.1 on 31.01.2023 to Respondent No.2, Mrs Spandana Mulpuri, which was prompt post-travel, using prior funds. There is no diversion from the estate.
18. It is stated by the Respondent No 1 that No creditor was deprived of his rights because of this need and hourly based transaction to the Respondent No.1. The bailout of the need of hour to his father was taken on the shoulders of the daughter. There are no violations attributable under preferential transactions as alleged by the Bankruptcy Trustee.
19. It is alleged that the act of BT is a gross abuse of law and his position. The transaction is not under Section 165(2)/(7)/(8)(a)-(b) as no "doing or suffering" to prefer associate over creditors. It was a closed-loop advance for personal exigency. The so-called opinion is mechanical and non-speaking. The Trustee has failed to independently examine whether the transaction was (a) a transfer of property for the benefit of

a creditor, (b) for an antecedent debt, (c) resulting in preference, and (d) covered by statutory exceptions.

20. The Respondent denied that the Respondent No.2 was a creditor. The amount of Rs. 50 lakhs was provided only to enable Respondent No.1 to create a fixed deposit as margin for a bank guarantee in favour of passport authorities for the release of the passport as per the directions of the High Court order. The money was never meant as a loan or financial debt and is only a temporary arrangement between father and daughter.
21. It is asserted that the Transaction Auditor in page no. 11 of his report was of the view that repayment of Ms Spandana Mulpuri can be ignored as it is not a normal repayment. The BT mechanically filed the instant IA, which is liable to be dismissed in limine. It is further submitted that repayments made under legal compulsion or for the release of essential legal documents such as a passport, do not constitute a preference as the Bankrupt has no choice but to satisfy that specific condition. It is also submitted that preference requires material prejudice to creditors, which is absent in the present case, as the funds were personal support and not creditor dues.

Rejoinder

22. It is submitted that the submissions made by Respondent No.1 to 2 are denied and further stated that the sub-section (7) of Section 165 of the IBC code states that “For the purpose of sub-section (6), if the person is an associate of the bankrupt, (otherwise than by reason only of being his employee), at the time when the preference was given, it shall be presumed that the bankrupt was influenced in his decision under that sub section.” It is submitted in para 4.4 that the Respondent No 1 admitted that the beneficiary, Respondent No.2 is an Associate of Respondent No. 1.

23. It is submitted that in the initial transaction 19.09.2022, the Respondent No.2 had provided the Respondent No.1/ bankrupt with Rs. 50,00,000/-, supposedly for a deposit with the Passport Authority. Subsequent to receipt of the fixed deposit amount return, on 26.12.2022, the Bankrupt, instead of returning the same to Respondent No.2, had given the said amount to his son Mr. Rushyant.
24. On 31.01.2023, an amount of Rs. 50,00,000/- was received from a person named Kutumba Rao, out of which only Rs. 45,00,000/- was paid to Respondent No.2. The mismatch Rs. 50,00,000/- vs. Rs. 45,00,000/- indicates it was not a simple one-to-one pass-through transaction as claimed by the Respondents. Had the respondent had paid the amount so received from the deposit so released for passport, the amount so received on 31.01.2023 would have been in the liquidation estate available to the BT.
25. It is contented that the Bankrupt had unjustly enriched his family by making a payment of 5,00,000/- to his son, which otherwise goes to Respondent No.2 and then paying 45,00,000/ - to Respondent No.2 from completely unrelated funds, clearly showing the intent of the Respondent No.1 to siphon the amounts that are otherwise available to the Creditors.
26. Further, the respondent in his counter at para 4.2 stated that “this payment was a legitimate repayment of temporary accommodation,” and thereby admitted that it was a repayment and thus admitted that Respondent No.2 was his creditor. Accordingly, the admission supports the view that the beneficiary of the transaction is either “Any person” (satisfying the sub-section (1)) or a creditor (as admitted by the bankrupt / respondent and thus satisfying clause (a) of sub-section (8)).
27. It is submitted that the Transaction auditor in his report [Pg, 60 of paper book & Pg 11 of his report] made the following observation:

“Further, as discussed over the phone Rs. 45,00,000/- payment to Spandana Mulpuri [associate] and Rs. 5,00,000/- to Rushyant Mulpuri on 31.01.2023 were paid. However, it is informed to us that Rs. 50 lacs received from Spandana D/o. MSRK on 19th September 2022 for arranging BG for visa purposes on account of MSRK's foreign visit as security in terms of restrictions and repayment on return to Spandana. Hence, the same can be ignored as it is not a normal repayment. However, taking a legal opinion on its admissibility, BT may take an appropriate decision in which case, if considered as such, the preferential transaction would be Rs. 1,97,15,822/-.”

28. It states that the Transaction auditor had not done any act to see the transactions in full scope and simply relied upon the oral discussion with the Bankrupt and left the issue open for BT opinion and further action. For the sake of brevity, the applicant has addressed only the material aspects in the rejoinder. The applicant respectfully craves the leave of this Court to advance submissions on other points at the time of oral arguments.

Findings and Decision

29. We have carefully considered the pleadings, documents on record, submissions of the parties, and the provisions of the Code. The transaction under perusal is a payment of Rs. 45,00,000/- made by the Bankrupt on 31.01.2023 in favour of Respondent No. 2. The issue is whether such transactions fall under the purview of Section 165 of the Code as a preferential transaction.
30. The application for the initiation of bankruptcy was filed on 18.10.2024. Under Section 165 of the Code, a transaction is considered within the relevant period if it is entered into within two years preceding the date of the bankruptcy application, where the beneficiary is an associate. It is not in dispute that Respondent No. 2 is the daughter of Respondent No. 1. Accordingly, she qualifies as an

associate under Section 79(2) of the Code, and the transaction falls squarely within the prescribed look-back period.

31. The Applicant contends that the payment was toward an antecedent debt, thereby preferring Respondent No. 2 over other creditors. The Respondents argue that the transaction was a "closed-loop" arrangement, a temporary financial accommodation provided by the daughter specifically to facilitate a court-mandated Bank Guarantee (BG) for the release of the Bankrupt's passport.
32. On perusal of the bank statements, the sequence of transactions is clear.

| Date | Amount Received | Transactions Details |
|------------|-----------------|---|
| 19.09.2022 | Rs 50,00,000 | Received from Spandana (R2) towards passport issue through UCO Bank |
| 19.09.2022 | Rs 50,00,000 | Fixed Deposit placed & BG Purchased for the release of the passport in UCO Bank |
| 26.12.2022 | Rs 50,35,643 | BG Cancelled and FD Liquidated + Interest Received in UCO Bank |
| 31.01.2023 | 45,00,000 | Amount paid to Spandana through HDFC Bank |

33. For a transaction to qualify as preferential under Section 165 of the Code, it must be shown that the act of the bankrupt had the effect of placing a creditor or associate in a better position than they would have been in the event of bankruptcy. The impact of the transaction on the bankruptcy estate is also significant. The amount of Rs. 45,00,000/- was paid out of funds that would otherwise have formed part of the estate available for distribution among all creditors. By directing this amount to Respondent No. 2, the bankrupt effectively reduced the pool of assets available to other creditors.

34. Such a payment results in unequal treatment among creditors, particularly when the beneficiary is a family member. The impugned transaction has clearly resulted in a better position for Respondent No. 2 compared to other similarly placed creditors.
35. In view of the above findings, the payment of Rs. 45,00,000/- dated 31.01.2023 in favour of Respondent No. 2 is declared to be a preferential transaction under Section 165 of the Insolvency and Bankruptcy Code, 2016. Accordingly, Respondent No. 2 is hereby directed to refund the sum of Rs. 45,00,000/- to the bankruptcy estate of Respondent No. 1 within a period of 30 days from the date of this order.

This application is allowed and disposed of accordingly

Sd/-

SANJAY PURI

MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ

MEMBER (JUDICIAL)

THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II

IA (IBC) No.1964 of 2025 in
CP (IB) No. 390/95/HDB/2020

In the matter of
Mr. Mulpuri Siva Ramakrishna, Personal Guarantor

Sivaram Prasad Bhamidi,

Bankruptcy Trustee in the matter of
Mr. Mulpuri Siva Ramakrishna, Personal Guarantor
to the Corporate Debtor Athena Chhattisgarh Power Limited

Flat No 106, Sri Krishna Ambhas Apartments,
Laxmi Nagar, Attapur, Hyderabad – 500048

...Applicant/ Bankruptcy Trustee

VERSUS

1. Mr Mulpuri Siva Ramakrishna

8-2-309/1-8, Flat.no.F3,
Trendset Vantage, Road No14,
Banjara Hills, Hyderabad- 500034

...Respondent No 1 /Bankrupt

2. Employees' Provident Fund Organisation [EPFO]

Regional Office
Bhavishyanidhi Bhawan,
No. 3-4-763, Barkatpura Chaman,
Hyderabad, ANDHRA PRADESH

Respondent No 2

Date of Order: 17.04.2026

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. G. Srikanth, Ld. Counsel along with Mr.
Sivarama Prasad, Bankruptcy Trustee
For Respondents : Mr. CH. Srinivasulu, Ld. Counsel

1. This Interlocutory Application has been filed by the Applicant, the Bankruptcy Trustee, seeking directions against Respondent No.2 to transfer an amount of Rs. 2,46,28,477/- plus accrued interest or such other amount lying to the credit of the bankrupt in the EPF account to the bankruptcy's Account maintained for this purpose.
2. It is submitted that this Adjudicating Authority, vide order dated 24.01.2025 passed in IA (IBC) No. 2110/2024 in CP (IB) No. 390/95/HDB/2020, initiated the bankruptcy process against Respondent No.1, who is the personal guarantor to the corporate debtor, and appointed Mr. Dantu Indu Sekhar as the Bankruptcy Trustee under Section 125 of the Insolvency and Bankruptcy Code, 2016 ("**Code**").
3. It is submitted that upon resignation of the erstwhile Bankruptcy Trustee, this Adjudicating Authority, vide order dated 01.09.2025 in IA (IBC) No. 1423/2025, appointed the present Applicant as the Bankruptcy Trustee in terms of Section 146 of the Code.
4. It is stated that on 01.04.2025, the erstwhile bankruptcy trustee had issued a letter to the Bankrupt to provide details of the Employee Provident Fund [**EPF**] account and the Bankrupt on 04.04.2025 replied stating that EPF constituted an excluded asset under Section 79(14) of the Code r/w. Section 155 of the Code further same is beyond attachment vide section 10 of the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 and sought that EPF be treated as an excluded Asset.
5. It is submitted that the erstwhile Bankruptcy trustee further sent an email dated 09/06/2025 to the bankrupt seeking EPF details till that date. The bankrupt provided details of the EPF on 17/06/2025 as a downloaded statement¹ for the financial year 2025-26. The statement shows a cumulative balance available under the account Number

¹ Annexure - 3

APHYD00299030000002048 / Siva Rama Krishna Mulpuri balances that were credited by his employer Karvy Stock Broking Ltd:

| Employee Balance (Rs.) | Employer Balance (Rs.) | Pension (Rs.) |
|------------------------|------------------------|---------------|
| 1,24,77,984 | 1,21,50,493 | 54,641 |

6. It is contented by the Applicant that, as per Section 79(14) of the Code the “excluded assets” for the present purpose include “(d) any unencumbered life insurance policy or pension plan taken in the name of debtor or his immediate family” and therefore the pension amount of Rs 54,641/- is an excluded asset.
7. It is argued that the other amounts, such as Employee Balance and Employer Balance aggregating to Rs. 2,46,28,477/- are beyond the scope of the “Excluded Assets”. Therefore, these amounts are liable to be formed as part and parcel of the bankruptcy estate for further distribution.
8. Hence, this application is made before this Tribunal for appropriate directions to Respondent No.2 to transfer the amount of Rs. 2,46,28,477/- plus accrued interest or such other amount lying to the credit of the bankrupt in the EPF account to the Bank Account of the Bankruptcy Trustee maintained for this purpose.

Counter

9. The Respondent denies each and every allegation and submission made in this Application. The Respondent states that the Applicant is not entitled to any of the reliefs prayed for in the Interlocutory Application.
10. The Respondents allege that the Applicant’s prayer is against the provisions of law laid down and against the Natural principles of Justice and Right to live and liberty guaranteed under the Indian Constitution.

11. It is submitted that Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act), which grants absolute immunity from attachment. It creates a complete statutory bar against Attachment, Assignment or transfer of provident amounts under any decree, order or process of any court or Tribunal. It also states "Neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (3 of 1909) nor any receiver appointed under the provincial Insolvency Act, 1920 (5 of 1920) shall be entitled to, or have any claim on, any such amount".
12. It is contented that the EPF standing in the name of the Bankrupt does not form part of the Bankruptcy Estate. The entire provident fund, including employee contribution, employer contribution and pension, is an excluded Asset considering the following provisions of the Code.
13. The Respondent argues that the definition in Section 79 (14) of Code is an "inclusive" definition and provisions of Sec.10 of EPF & MP Act may be relied upon.
14. According to the Respondents, the provisions of the Code override other laws by virtue of Section 238 only in cases of inconsistency, and no such inconsistency exists between Section 79(14) of the Code and Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
15. The Respondent refers to Section 155 (2) of the code, which states that assets that cannot be included under the Bankruptcy Estate. The respondent states that the Provident Fund of the Respondent 1, as an employee of Karvy Stock Broking Limited fall under Sec.155(2)(c) and hence cannot be included under Bankruptcy Estate. The Provident Fund is a social Security benefit, protected not only under Statutory law but also under Articles 21 and 300-A of the Constitution of India.

16. The Respondent argues that the intention of lawmakers to define "Excluded Assets" under Section 79(14) was to enable the debtor to start afresh after the bankruptcy process with access to assets to live a life with dignity and continue livelihood. The Respondent cites the point no. 11.2 of the Report on Bankruptcy Process by Working Group on Individual Insolvency in March 2019) Extract of the point no. 11.2 of the Report:

"Section 79(14) of the Code defines certain assets as excluded assets. These are assets which are deemed necessary for the survival of the debtor during and after insolvency or bankruptcy proceedings. An important goal of personal insolvency is rehabilitating honest debtors in society and avoiding repeat bankruptcies. In order for a debtor to start afresh after the bankruptcy process, she should have access to assets to live a life with dignity and continue her livelihood"

17. The Respondent prays that this Tribunal dismiss this Application by the Bankruptcy Trustee for attachment of the EPF amount.

Findings and Decision

18. We have heard the submissions of the learned counsel for the Applicant and the Respondent and perused the material available on record. The issue that arises for consideration is whether the amounts lying to the credit of the Bankrupt in the EPF account, aggregating to Rs. 2,46,28,477/- (excluding pension), form part of the Bankruptcy Estate and are liable to be transferred to the Bankruptcy Trustee.
19. The Applicant has placed reliance on Section 79(14) of the Code and contended that only a "pension plan" falls within the definition of excluded assets and therefore the employee and employer contributions do not qualify as excluded assets and must be included in the Bankruptcy Estate.

20. The Respondent, on the other hand, has relied upon Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Section 155(2)(c) of the Code to contend that the entire provident fund amount is protected and cannot be attached or included in the Bankruptcy Estate.
21. Here we refer to section 155 of the Code, it is extracted below:

Section 155: Estate of bankrupt.

155. (1) The estate of the bankrupt shall include,—

(a) all property belonging to or vested in the bankrupt at the bankruptcy commencement date;

(b) the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and

(c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate.

(2) The estate of the bankrupt shall not include—

(a) excluded assets;

(b) property held by the bankrupt on trust for any other person;

(c) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund; and

(d) such assets as may be notified by the Central Government in consultation with any financial sector regulator.

Section 155 of the Code stipulates that the estate of the bankrupt shall include all property belonging to or vested in the bankrupt at the bankruptcy commencement date. However, it expressly provides that the estate shall not include (a) excluded assets, (b) property held by the bankrupt on trust for any other person, and (c) all sums due to any workman or employee from the provident fund, the pension fund, and the gratuity fund.

22. Section 155(2)(c) creates a specific statutory exclusion in respect of provident fund, pension fund and gratuity fund dues. Therefore, once a sum falls within the ambit of a provident fund, it stands excluded from the bankruptcy estate by operation of law.
23. The dues payable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are statutory dues forming part of a social welfare scheme meant to secure the livelihood and dignity of employees. These amounts constitute a social security benefit and form an intrinsic part of the right to life.
24. In view of the above statutory scheme and legal position, we are of the considered view that the entire amount lying in the EPF account of the Bankrupt, including employee contribution, employer contribution, falls within the category of excluded assets and cannot be included in the bankruptcy estate. Accordingly, the relief sought by the Applicant seeking directions to transfer the EPF amount to the bankruptcy estate is not sustainable in law.

In light of the foregoing, this Application is dismissed.

Sd/-

SANJAY PURI

MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ

MEMBER (JUDICIAL)

THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II

IA (IBC) No.1972 of 2025 in
CP (IB) No. 390/95/HDB/2020

In the matter of
Mr. Mulpuri Siva Ramakrishna, Personal Guarantor

Sivaram Prasad Bhamidi,

Bankruptcy Trustee in the matter of
Mr. Mulpuri Siva Ramakrishna, Personal Guarantor
to the Corporate Debtor Athena Chhattisgarh Power Limited

Flat No 106, Sri Krishna Ambhas Apartments,
Laxmi Nagar, Attapur, Hyderabad – 500048

...Applicant/ Bankruptcy Trustee

VERSUS

1. Mr Mulpuri Siva Ramakrishna

8-2-309/1-8, Flat.no.F3,
Trendset Vantage, Road No14,
BanjaraHills,,Hyderabad- 500034

...Respondent/Bankrupt

2. Mr Rushyant Mulpuri

8-2-309/1-8, Flat.no..F3,
Trendset Vantage, Road No14,
BanjaraHills,,Hyderabad- 500034

...Respondent

Date of order: 17.04.2026

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. G. Srikanth, Ld. Counsel along with Mr.
Sivarama Prasad, Bankruptcy Trustee

For Respondents : Mr. CH. Srinivasulu, Ld. Counsel

1. This Interlocutory Application has been filed by the Applicant, the Bankruptcy Trustee, seeking directions against Respondent No.2 to repay to the Bankruptcy Estate of the Respondent No.1 an amount of Rs. 1,07,15,822 towards transactions falling under Section 164 and 165 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”).
2. It is submitted that this Adjudicating Authority, vide order dated 24.01.2025 passed in IA (IBC) No. 2110/2024 in CP (IB) No. 390/95/HDB/2020, initiated the bankruptcy process against Respondent No.1, who is the personal guarantor to the corporate debtor, and appointed Mr. Dantu Indu Sekhar as the Bankruptcy Trustee under Section 125 of the Code.
3. It is submitted that upon resignation of the erstwhile Bankruptcy Trustee, this Adjudicating Authority, vide order dated 01.09.2025 in IA (IBC) No. 1423/2025, appointed the present Applicant as the Bankruptcy Trustee in terms of Section 146 of the Code.
4. It is stated that the erstwhile Bankruptcy Trustee had appointed a transaction auditor, Mr Sridhar Nukala, to undertake an audit of the transactions undertaken by the Bankrupt during the relevant periods from the viewpoint of Sections 164, 165 and 167 of the Code of the Bankrupt during the relevant period.
5. It is submitted that the Transaction Auditor, during the course of the audit, identified certain suspicious transactions and submitted his report¹ on 03.11.2025, more specifically set out in the table below. The transactions listed at Serial Nos. 2 and 4 (Rs.45,00,000) being one and the same, only one has been included in the table below of transactions identified in favour of Respondent No.2.

¹ Annexure-5

| S.No | Transaction Details | | Amount (Rupees) | Name of the Bank | Reference |
|-------|---------------------|--------------------------|-----------------|------------------|-------------|
| | Date | Particulars | | | |
| 1 | 26.12.2022 | Payment to Rushyant , R2 | 50,00,000 | UCo Bank | Annex ure-3 |
| 2 | 31.01.2023 | Payment to Rushyant, R2 | 5,00,000 | HDFC Bank | Annex ure-4 |
| 3 | 01.10.2024 | Payment to Rushyant, R2 | 52,15,822 | HDFC Bank | Annex ure-4 |
| Total | | | 1,07,15,822 | | |

6. It is contended that the transaction auditor has reported that the above transactions amounting to Rs 1,07,15,822/- attract the provisions of preferential transactions. The details of transactions as reported by the Transaction Auditor as preferential transactions are as under:

| S.No | Transaction Details | | Amount (Rupees) | Observations of the Transaction Auditor |
|-------|---------------------|---|-----------------|---|
| | Date | Particulatrs | | |
| 1 | 26.12.2022 | Payment to Rushyant , R2 through UCO Bank | 50,00,000 | Repayment of Debt. Debt of 50 lacs exist prior to the relevant period |
| 2 | 31.01.2023 | Payment to Rushyant R2 | 5,00,000 | Payment to Associate |
| 3 | 01.10.2024 | Payment to Rushyant R2 | 52,15,822 | Payment to Associate |
| Total | | | 1,07,15,822 | |

7. It is submitted by the Applicant that upon perusal of the report of the Transaction Auditor, not all transactions listed by the Transaction Auditor fall under Preferential Transactions. The transactions fall under two categories, namely Preferential Transactions under Sec 165 and under valued transactions under Sec 164.

8. It is submitted that Serial No.1 falls under Sub Section (7) and Sub Clause (a) & (b) of Sub Section (8) of Section 165 - preferential transactions and Serial Nos 2 & 3 fall under Sub Clause (b) of Sub Section (6) of Section 164 – Undervalued transactions.
9. It is submitted that the payment listed at serial No.1 is towards the settlement of the preexisting debt in preference to the debts of other creditors. The payments at serial No.2 & 3 appear to have been made without any consideration and hence qualify as undervalued transactions.
10. It is alleged that the beneficiary in both categories of the transactions is the son of the Bankrupt and falls under the category of ‘associate’ of the Bankrupt under Section 79(2)(a).
11. According to the Applicant, the transaction at Sl No 1 attracts Section 165 of the Code. On enquiry from the Transaction Auditor, it was explained by the Bankrupt that an amount of Rs 51 lakhs was taken as a loan from his son's wife, Mrs Rukmini on 11.01.2022 and it was repaid to his son subsequently during the period of two years ending on the date of the application for bankruptcy. Thus, the repayment culminated into a preferential transaction because an existing debt of his associate has been settled in preference to the debts of other creditors during the relevant period. The application for bankruptcy has been filed by the applicant, SBI on 18.10.2024 and therefore, the selected transactions fall under the relevant period.

| S.No | Name of the Beneficiary/Respondent | Amount (Rupees) | Whether preexisting Debt | Whether the respondent is an Associate | Whether it occurred during the relevant period |
|------|--|-----------------|--------------------------|---|--|
| 1 | Payment to Rushyant, R2 through UCO Bank | 50,00,000 | Yes | Yes. The recipient is the son of the Bankrupt | Yes |
| | Total | 50,00,000 | | | |

12. The Applicant identified certain Transactions that fall under Sec 164.

| Sl No | Name of the Beneficiary / Respondent | Amount (Rupees) | Payment without adequate consideration | Whether the Beneficiary / respondent is an Associate | Whether occurred during the relevant period |
|-------|--------------------------------------|-----------------|--|--|---|
| 2 | Payment to Rushyant, R2 | 5,00,000 | Yes. Without any consideration. | Yes. The recipient is the son of the Bankrupt | Yes |
| 3 | Payment to Rushyant, R2 | 52,15,822 | Yes. Without any consideration. | Yes. The recipient is the son of the Bankrupt | Yes |
| | Total | 57,15,822 | | | |

13. The Applicant submits that the explanation of the Bankrupt fails to establish receipt of consideration, and therefore, the Bankruptcy Trustee concluded that the transactions attract Section 164 of the Code. The Applicant states that the amounts so paid by the Bankrupt to his son are attracting relevant provisions of Section 164 and Section 165 of the Code.

Counter

14. The Respondents deny all allegations and contentions raised in this Application filed by the Bankruptcy Trustee. It is submitted that the transaction referred to therein does not constitute a "Preferential Transaction" or "Undervalued Transaction" as defined under the Code.

15. It is submitted that the true nature and purpose of each transaction clearly establishes that the transactions were temporary financial accommodations between family members and not otherwise and the Applicant misunderstood the same and filed the instant application

based on Transaction Audit, which itself was carried out without application of mind.

16. According to the Respondents, the monies were used exclusively for arranging bank guarantees required for the passport release of Respondent No.1, whose passport was seized by the Passport authorities in connection with the CBI Investigation. It is stated that the Hon'ble High Court, New Delhi, vide orders dated 04.04.2014 and 25.04.2014, allowed temporary release of passport on furnishing a Bank Guarantee of Rs. 50,00,000/- in favour of Regional Passport Officers. It is further submitted that due to urgency, family members extended temporary financial support enabling placement of Fixed Deposits solely for backing the said Bank Guarantee and that there was no intention to prefer, no depletion of estate and no lack of consideration.
17. It is stated that Respondent's Son, Mr. Rushyant and his wife Mrs Rukmini Mulpuri provided support to the first respondent to make a fixed deposit and to back the necessary bank guarantee in order to release a passport. It is contended that a mere relationship as "son" does not automatically render a transaction preferential or undervalued unless the statutory ingredients of Sections 164 and 165 are satisfied.
18. It is further submitted that the transaction of Rs. 52,15,822/- was made to Mr. Rushi Mulpuri and not to Respondent No.2, and that Respondent No.2 is not involved. The Respondents submit that Respondent No.1 was nominee in NHAI Bonds standing in the name of his deceased brother and received the redemption amount only as a nominee, which does not confer ownership, and the amount was transferred to the beneficiary, being the nephew. It is submitted that nominee receipts are held in a fiduciary capacity and do not form part of the Bankruptcy Estate.

19. It is submitted that the NHA Bond redemption amount of Rs.52,15,822/- was received by Respondent No.1 only as a nominee and transferred to the nephew, being the rightful beneficiary, and therefore does not constitute a transaction of the Bankruptcy Estate. It is further submitted that Respondent No.2 is not involved in the said transaction and has been wrongly implicated.
20. It is further submitted that the transaction of Rs.52,15,822/- was made to Mr. Rushi Mulpuri and not to Respondent No.2, and that Respondent No.2 is not involved. The Respondents submit that Respondent No.1 was nominee in NHA Bonds standing in the name of his deceased brother and received the redemption amount only as a nominee, which does not confer ownership, and the amount was transferred to the beneficiary, being the nephew. It is submitted that nominee receipts are held in a fiduciary capacity and do not form part of the Bankruptcy Estate.
21. The Respondents submit that reliance on the Transaction Audit Report is misplaced as it is only a prima facie opinion and cannot substitute judicial determination, as held by the Hon'ble Supreme Court in **Anuj Jain IRP v. Axis Bank Ltd²**, and that the Applicant has failed to establish the existence of any pre-existing debt, absence of consideration, or any prejudice to creditors. It is contended that the transactions were part of family financial arrangements and do not qualify as preferential or undervalued transactions under the Code. It is further submitted that mere movement of funds without net loss cannot attract Sections 164 or 165.
22. The Respondent refers to the **Sarbati Devi v. Usha Devi³** where it was held that a nominee does not become the owner of the asset. Nominee receipts cannot be subjected to avoidance proceedings as ownership never vested with Respondent No.1, and therefore, the

² (2020) ibclaw.in 06 SC

³ (1984) 1 SCC 424

question of preferential or undervalued transfer does not arise. The Respondents contend that the Transaction Auditor has exceeded his mandate by recording legal conclusions and that filing of the Application solely based on the audit report amounts to a fishing and roving enquiry and abuse of the process of law.

Rejoinder

23. The Applicant denies the submission of the Respondent and states that the Respondent no 1 in his counter admitted that the money was originally received from the son's wife and that the amount was repaid to the son of the Bankrupt. However, the Respondent has attempted to justify the transaction by contending that a mere relationship does not render the transaction preferential or undervalued.
24. The Applicant submits that the contention of the Respondents that the transaction of Rs.50,00,000/- was a "family arrangement" and not a debtor-creditor relationship is untenable and that such transactions fall within the ambit of preferential transactions under Section 165 of the IBC, 2016.
25. It is further submitted that the Bankrupt admitted that the money received from his daughter-in-law, Mrs. Rukmani, on 11.01.2022 and the amount so received from the deposit was returned to his son, Mr. Rushyant Mulpuri; however, records show that Rs.51,00,000/- was returned to Mrs. Meena Mulpuri on 12.07.2022, instead of the daughter-in-law or son, contradicting the Bankrupt's claim. It is submitted that had the deposit amount been returned to the rightful owner, the subsequent payment of Rs.50,00,000/- would not have arisen.
26. It is submitted that the money received from Mr. V. Kutumbarao on 31.01.2023 was disbursed to family members, namely Rs.45,00,000/- to his daughter Mrs. Spandana and Rs. 5,00,000/- to his son Mr. Rushyant Mulpuri, demonstrating preferential treatment. The

Applicant contends that the Bankrupt has engaged in intra-family transactions which lack commercial substance and fall within Sections 164 to 167 of the IBC.

27. It is further submitted that with respect to the amount of Rs.52,15,822/-, claimed to have been paid to the legal heir of his brother, Respondent No.1 has failed to produce any proof establishing that he acted only as a nominee or that the recipient was the sole legal heir. In the absence of such proof, an adverse inference is liable to be drawn against the Respondents. It is submitted that the Bankruptcy Trustee may be permitted to proceed against the said recipient, as the IBC does not permit preferential or undervalued transactions with family members in preference to others.

Findings and Decision

28. We have carefully considered the pleadings, documents on record, submissions of the parties, and the provisions of the Code.
29. At the outset, Sections 164 and 165 of the Code require satisfaction of specific legal ingredients. Under Section 165, a transaction is preferential if it results in placing a creditor or associate in a better position than they would have been in the event of bankruptcy. Under Section 164, a transaction is undervalued if it is made without consideration or for consideration significantly less than the value given by the bankrupt.
30. The impugned transactions occurred within the "relevant period" as defined under Sections 164 and 165 of the Code. Given that the bankruptcy application was filed on 18.10.2024, the two-year look-back period for transactions with "associates" extends to 18.10.2022. Respondent No. 2, being the son of the Bankrupt, squarely falls under the definition of an "associate" pursuant to Section 79(2). Consequently, these transactions are subject to stricter

scrutiny, and the burden of proof shifts significantly to the Respondents to justify the commercial validity of these transfers.

31. The Hon'ble Supreme Court in **Anuj Jain (supra)** has held that the determination of avoidance transactions requires strict satisfaction of statutory ingredients and cannot be based merely on assumptions or audit reports.
32. Applying the above principles, we proceed to examine the impugned transactions. From the record, the following transactions are under consideration: (i) Rs.50,00,000/- dated 26.12.2022, (ii) Rs.5,00,000/- dated 31.01.2023, and (iii) Rs.52,15,822/- dated 01.10.2024 aggregating to Rs.1,07,15,822/-

Transaction of Rs. 52,15,822/- dated 01.10.2024

33. It is the case of the Respondents that the amount represents redemption proceeds of bonds held by the deceased brother of the Bankrupt, which were received by the Bankrupt only in the capacity of a nominee and thereafter transferred to the rightful beneficiary.
34. From the bank statement placed on record, it is observed that on 01.10.2024, an amount of Rs 52,15,822/- was debited in favour of "RUSHI MULPUR", following credits described as redemption proceeds of NHAI Bonds. The entries specifically reflect:
 - credit of Rs 5,00,000/- and Rs 2,15,822/- towards bond redemption; and
 - Subsequent debit of Rs 52,15,822/- to the said beneficiary.

| | | | | | |
|----------|--|------------------|----------|----------------|---------------|
| 27/09/24 | NEFT CR-IDFB0010204-NHAI 54EC BONDS REDEMPTION 202324-M S RAMAKRISHNA-IDFBH24271962714 | IDFBH24271962714 | 27/09/24 | ✓ 5,000,000.00 | 9,942,556.37 |
| 27/09/24 | NEFT CR-IDFB0010204-NHAI 54EC BONDS FINANCIAL INTEREST 2023-M S RAMAKRISHNA-IDFBH24271962717 | IDFBH24271962717 | 27/09/24 | ✓ 215,822.00 | 10,158,378.37 |
| 01/10/24 | INTEREST PAID TIL I. 30-SEP-2024 | 000000000000000 | 30/09/24 | 29,249.00 | 10,187,627.37 |
| 01/10/24 | FT DR. 50100334546540 - RUSHI MULPUR | 0000000000000780 | 01/10/24 | ✓ 5,215,822.00 | 4,971,805.37 |

35. The said entries establish that the transaction of Rs. 52,15,822/- is directly linked to the redemption of NHAI Bonds and is not an independent transfer from the general funds of the Bankrupt. In ***Shakti Yezdani & Anr. v. Jayanand Jayant Salgaonkar & Ors⁴***, the Hon'ble Supreme Court held that "the nominee holds the securities in a fiduciary capacity for the legal heirs, and a will executed in accordance with the Indian Succession Act, 1925, supersedes the nomination." Thus, a nominee does not acquire ownership or beneficial interest in the asset. Hence, it cannot be treated as forming part of the bankruptcy estate.

36. Accordingly, the transaction of Rs 52,15,822/- is held to be outside the bankruptcy estate and is not liable to be examined under Sections 164 or 165 of the Code.

Transactions of Rs. 50,00,000/- dated 26.12.2022

37. The case of the Respondents is that the amount of Rs 50,00,000/- represents a temporary financial accommodation extended by family members for the limited purpose of furnishing a bank guarantee pursuant to directions of the Hon'ble High Court of Delhi.

38. On perusal of the bank statements, the sequence of transactions is clear.

⁴ (2023) ibclaw.in 155 SC

| Date | Amount Received | Transaction |
|------------|-----------------|---|
| 11.01.2022 | Rs 51,00,000 | Amount Received by Bankrupt from Mrs Rukmini W/o. Rushyant, son of a Bankrupt in UCO Bank |
| 12.01.2022 | Rs 50,00,000 | Fixed Deposit placed and B.G. Purchased in UCO Bank |
| 12.07.2022 | Rs 51,03,764 | FD liquidated + Interest in UCO Bank |
| 26.12.2022 | Rs 50,00,000 | Paid to Rushyant (R2) through in UCO Bank |
| 31.01.2023 | Rs 5,00,000 | Paid to Rushyant (R2) through HDFC Bank |

39. The Applicant considered this transaction as a preferential transaction under section 165 of the Code. To qualify as a preferential transaction under Section 165, the bankrupt must do something which has the effect of putting a person in a position which, in the event of the bankruptcy, will be better than the position that person would have been in if that thing had not been done.
40. Here, it is clear that the money was originally a loan from a family member and was subsequently repaid. Repaying an associate in full while the Corporate Debtor's creditors remain unpaid constitutes a clear preference. Therefore, this transaction is deemed preferential and must be reversed.

Transactions of Rs. 5,00,000/- dated 31.01.2023

41. The Applicant categorised the transaction dated 31.01.2023 for Rs 5,00,000 as an undervalued transaction under Section 164 of the Code. Upon perusal of the HDFC Bank statements, the debit of the said amount to Respondent No. 2 is clearly established. Under Section 164, a transaction is considered undervalued if the bankrupt makes a

gift or enters into a transaction for a consideration, the value of which is significantly less than the value provided by the bankrupt.

42. Here, we refer to a connected IA 1963 of 2025 wherein the Respondent stated that the payment of Rs 5,00,000/- was part of financial dealings within the family. While the transaction raises suspicion due to a lack of clarity, there is insufficient evidence to conclusively establish that it was made without consideration or for inadequate value. However, the fact remains that the payment was made to an associate during the relevant period. Even if it does not strictly qualify as an undervalued transaction under Section 164, its effect is to benefit an associate over other creditors. Therefore, it is covered under Section 165.
43. In view of the aforesaid, transactions of Rs. 50,00,000/- and Rs. 5,00,000/- were made in favour of an associate during the relevant period and had the effect of preferring such associate over other creditors. The Respondent is directed to refund a total amount of Rs. 55,00,000/- to the bankruptcy estate of Respondent No.1 within a period of 30 days from the date of this order.

Accordingly, the Interlocutory Application is partially allowed.

Sd/-

SANJAY PURI

MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ

MEMBER (JUDICIAL)