

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



ITEM No.301

IA/439(AHM)2021 in CP(IB) 321 of 2020

Under Section 43 r.w 44 IBC

IN THE MATTER OF:

Bank of Baroda on Behalf of Lenders Financial Creditors of
Sintex Prefab & Infra Ltd
V/s
sintex industries Ltd & Ors

.....Applicant

.....Respondent

Order delivered on: 12/06/2026

C O R A M:

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

ORDER
(Hybrid Mode)

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

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



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

**IA No. 439 of 2021
in
CP(IB) No. 321 of 2020**

(An Application filed under Section 43 and 44 of the Insolvency and Bankruptcy Code, 2016.)

In the matter of: Sintex Prefab and Infra Limited

BANK OF BARODA

On behalf of Lenders/Financial Creditors
of Sintex Prefab and Infra Limited

1st Floor, Kamdhenu Complex,
Panjrapol Char Rasta,
Ambawadi, Ahmedabad – 380015

.... Applicant

Versus

1. SINTEX INDUSTRIES LIMITED

Through its Interim Resolution Professional
Mr. Pinakin Shah,
A-201, Siddhi Vinayak Towers, Behind DCP Office,
Next to Kataria House, Off. S.G. Highway,
Makarba, Ahmedabad – 380051

2. IDBI BANK LIMITED

IDBI Complex Off., Near Lal Bungalow,
C.G. Road, Ahmedabad – 380006

**3. MR. AMIT DINESHCHANDRA PATEL
Suspended Management**

Having their address at:
Mandal Workshop, D.R.V.S Road,
Vastrapur, Ahmedabad – 380015

**4. MR. RAHUL ARUNPRASAD PATEL
Suspended Management**

Having their address at:
112, Sunrise Park, Opp. Drive-in Cinema,
Thaltej Road, Ahmedabad – 380054



5. MR. KRISHAN SINGH PRATAP
Suspended Management

Having their address at:
B-503, Sainik Colony, Sector 49,
Faridabad, Haryana – 121001

6. MS. SONIKA SHARMA
Suspended Management

Having their address at:
House No. N-504, Jalvayu Vihar,
Sector 25, Near Sunrise Ville School,
Noida, Uttar Pradesh – 201301

7. MR. BIJAYA KUSHASAN BEHERA
Suspended Management

Having their address at:
Plot No. 213/3, Arihant Palace,
Sector- 20, Gandhinagar – 382021

.... Respondents

Order Pronounced on: 12.06.2026

CORAM:

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

APPEARANCE:

For the Applicant : Mr. Monaal Davawala, Advocate
For the Respondents : Mr. Arjun Sheth, Advocate a.w.
: Ms. Soumya Jain, Advocate
(For R1, R3 to R7)
: Mr. Ravi Pahwa, Advocate for R-2

ORDER
(Per: Bench)

1. The present Interlocutory Application bearing No. IA No. 439/AHM/2021 was filed by Chandra Prakash Jain, the



Resolution Professional of Sintex Prefab and Infra Limited on 16.06.2021 under Section 43 and 44 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as, “the **Code**”) against the Respondent Sintex Industries Limited and others seeking following reliefs: -

- a) *Order and direct the Respondent No. 2 to transfer the amount of Rs. 26,79,32,886.79/- back to the Bank Account of the Corporate Debtor being the preferential amount given to a related party during the period of two years preceding the insolvency commencement date in accordance with Section 43 and 44 of the Code;*
- b) *Order and direct the Respondent No. 1 to pay Rs. 26,79,32,886.79/- being the preferential amount given to a related party during the period of two years preceding the insolvency commencement date in accordance with Section 43 and 44 of the Code; and/or*
- c) *Order and direct the Respondent Nos. 3 to 7 to make good the shortfall (if any) after the Respondent No. 1 and 2 make the payment as above; and/or*
- d) *Any such order and or other further relief as the Tribunal deems fit and proper in the interest of justice.*

2. This Tribunal in its order of 28.10.2025 noted that an amendment has been carried out qua the applicant on 27.10.2025, whereby the name of the Financial Creditor, namely Bank of Baroda, was substituted in place of the erstwhile Resolution Professional as the Applicant. The same has been served upon the opposite side.



3. The **facts**, as pleaded and placed on record by the Applicant in the present Application, are reproduced hereunder: -

- 2.1. The applicant submits that the present application is filed under Sections 43 and 44 of the Code for seeking necessary directions against the Respondents for avoidance of preferential transactions in the case of Sintex Prefab and Infra Limited (hereinafter as, “the **Corporate Debtor**”).
- 2.2. That a petition under Section 7 of the Code being CP(IB) No. 321 of 2020 was filed by Bank of Baroda against the Corporate Debtor. The Tribunal had admitted the said petition vide order dated 24.2.2021 thereby declaring moratorium and initiating Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor. Mr. Chandra Prakash Jain was appointed as Interim Resolution Professional. A copy of the order dated 24.2.2021 passed by this Tribunal is annexed as ANNEXURE - A to this application.
- 2.3. It is stated that in compliance with Sections 13, 15 and other relevant provisions of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, a public announcement dated 3.3.2021 was made by the applicant inviting claims from various class of creditors of the Corporate Debtor. A copy of the public announcement dated



3.3.2021 is annexed as ANNEXURE - B to this application.

- 2.4. The applicant constituted the Committee of Creditors (“CoC”) comprising of five Financial Creditors i.e. LIC of India, Bank of Baroda, Aditya Birla Finance Ltd., Union Bank of India and Canara Bank on 25.3.2021 and the 1st meeting of the CoC was duly held on 31.3.2021. That, e-voting was conducted and the result of the same was generated on 9.4.2021. The CoC voted for the present applicant to continue as the Resolution Professional of the Corporate Debtor. Copy of the minutes of the 1st CoC meeting dated 31.3.2021 and the result of the e-voting is annexed as ANNEXURE - C to this application.
- 2.5. The applicant submits that while communicating with the suspended management about the documents to be provided by them and the details about the ongoing projects of the Corporate Debtor, the representative of the suspended management stated that Respondent IDBI Bank has blocked the funds of the Corporate Debtor lying in their account being Account Number 375103000001137 and 375103000001205. It was further informed by the said representative of the suspended management in one of the CoC meetings that an amount of approximately Rs. 18 to 19 Crores was lying in the said bank accounts of the Corporate Debtor.



- 2.6. The applicant issued various letters and emails dated 15.3.2021, 22.3.2021 and 2.4.2021 to Respondent Bank. In spite of repeated communication, the Respondent Bank chose not to reply to the same thereby creating hindrance to the CIRP of the Corporate Debtor. The applicant was thus constrained to file an Interlocutory Application bearing IA No. 302 of 2021 against IDBI Bank Ltd. before this Hon'ble Tribunal with a prayer to direct the IDBI Bank to de-freeze the account of the Corporate Debtor and to provide cogent reasons for blocking the funds.
- 2.7. On 1.6.2021, IDBI Bank provided a copy of the reply filed by them in the above-mentioned matter i.e. IA No. 302 of 2021. IDBI Bank has duly stated on affidavit that on the basis of the report of the Forensic Auditor of Respondent No. 1 Sintex Industries Limited ("SIL"), it has been reported that a sum of Rs. 717 Crores has been diverted from SIL's bank account to the Corporate Debtor's bank account and in view of the same, the available credit balance of Rs. 19,35,12,886.79/- in Corporate Debtor's Bank Account No. 375103000001205 was transferred by IDBI Bank to SIL's Bank Account No. 0375673200000666 and the same was informed to both SIL and the Corporate Debtor at the relevant point of time vide IDBI Bank's letter dated 2.11.2020. Copy of the reply affidavit filed by IDBI Bank in IA No. 302 of 2021 admitting



diversion of funds from the Corporate Debtor's account is annexed as ANNEXURE - D to this application.

- 2.8. Further, on perusal of the status of the Savings Account No. 375103000001205 of the Corporate Debtor, a further amount of Rs.7,44,20,000/- has been diverted by IDBI Bank. Therefore, in total, an amount of Rs. 26,79,32,886.79/- (Rs. 19,35,12,886.79/- + Rs. 7,44,20,000/-) has been unlawfully diverted by the Respondent IDBI Bank. Copy of the status of the Savings Account No. 375103000001205 of the Corporate Debtor is annexed as ANNEXURE - E to this application.
- 2.9. It is pertinent to note that IDBI Bank has unilaterally taken the aforesaid action of diversion of funds from one account to another within the group companies without obtaining even so much as a court order. The only basis for doing the same is the forensic audit report; a report which has been duly stayed from operation by an order dated 23.12.2020 of the Hon'ble Delhi High Court in WP (C) No. 7825 of 2020. Thus, there is absolutely no basis much less any cogent reason in law for IDBI Bank to divert the funds from the Corporate Debtor's bank account to that of the Respondent No. 1 SIL. Copy of the order dated 23.12.2020 passed by the Hon'ble Delhi High Court staying the operation of the forensic audit report is annexed as ANNEXURE - F to this application.



2.10. The applicant states on the basis of above facts that the aforesaid act/s of the Respondent IDBI Bank are in collusion with the Respondent No. 1 SIL and the suspended management of the Corporate Debtor from the below mentioned chronology of events:

DATE	EVENT
18.09.2020	Forensic audit report submitted by M/s GD Apte & Co classifying the account as fraud account.
23.09.2020	CP No. 321 of 2020 i.e. Section 7 petition filed by Bank of Baroda is listed for hearing for the first time before NCLT Ahmedabad.
02.11.2020	IDBI Bank writes to both SIL and the Corporate Debtor that the available credit balance of Rs. 19,35,12,886.79/- in Corporate Debtor's Bank Account No. 375103000001205 is transferred to SIL's Bank Account No. 0375673200000666.
23.12.2020	Order passed by the Hon'ble Delhi High Court staying the operation of the forensic audit report.
No objection is raised by any of the parties including the suspended management of the Corporate Debtor at the obvious illegality of actions of IDBI Bank.	
22.02.2021	After sufficient passage of time and doing all adjustments to render the Corporate Debtor as a paper entity thereby making CIRP ineffective, the counsel for the Corporate Debtor appears before NCLT Ahmedabad and admits the debt in CP No. 321 of 2020.
24.02.2021	NCLT Ahmedabad admits CP No. 321 of 2020 and initiates CIRP in the case of the Corporate Debtor.



31.03.2021	Inspite of full knowledge, the representative of the suspended management feigns ignorance to pointed queries as regards the diversion of funds by IDBI Bank from the bank account of the Corporate Debtor.
01.06.2021	IDBI Bank admits on affidavit that funds have been diverted from the bank account of the Corporate Debtor on the basis of forensic audit report stayed by the Hon'ble Delhi High Court.

- 2.11. It is submitted that the applicant in the 4th meeting of the CoC informed about the aforesaid reply filed by the Respondent IDBI Bank along with his own observations. The CoC strongly condemned the act of the Respondent Bank with regard to the diversion of funds made by them and resolved that appropriate action against the Respondent Bank be taken. Copy of the minutes of the 4th CoC meeting dated 02.06.2021 is annexed as ANNEXURE - G to this application.
- 2.12. The applicant has submitted that the collusive acts of the Respondents in diverting the amount of Rs. 26,79,32,886.79/- from the account of the Corporate Debtor is patently malafide, unreasonable and arbitrary in nature. Hence, the instant application.
3. In response to the above averments, Respondent No. 1 (Sintex Industries Limited) has filed an **affidavit-in-reply** on



09.09.2021 through e-mode making following submissions:

3.1. It is submitted that the Resolution Professional of Sintex Prefab and Infra Limited (SPIL) has filed the present Application before this Adjudicating Authority alleging that IDBI Bank Limited (Respondent No. 2) transferred an amount of Rs. 19,35,12,886.79/- from SPIL Bank Account No. 375103000001205 to SIL Bank Account No. 0375673200000666 and further adjusted an amount of Rs. 7,44,20,000/- towards creation of Fixed Deposit against Bank Guarantee.

3.2. It is stated that upon examination of the records of SIL in relation to the aforesaid Application, it was observed that the said transaction was carried out by IDBI Bank Limited without obtaining any consent from SIL.

3.3. It is further submitted that SIL had not issued any instructions to IDBI Bank Limited for transfer of funds from the bank account of SPIL to the bank account of SIL. It is stated that IDBI Bank Limited had also blocked the internet banking facility of SIL Bank Account No. 0375673200000666. It is further stated that the transaction was effected by IDBI Bank Limited at its sole discretion and was not recorded in the books of account of SIL.

3.4. It is contended that the aforesaid transaction ought not to be treated as a preferential related party



transaction under Sections 43 and 44 of the Code, including diversion of funds by SIL, as the transfer was effected by IDBI Bank Limited without any instructions or consent from SIL.

3.5. It is further submitted that SIL has outstanding receivables of Rs. 531.91 Crores from SPIL and has submitted its claim before Shri Chandra Prakash Jain, Resolution Professional of SPIL.

4. Respondent No. 2, IDBI Bank have filed their response through an **affidavit-in-reply** on 09.09.2021 through e-mode, wherein following submissions were made by the Respondent: -

4.1. The Respondent No. 2 has submitted that the present Application is not maintainable under Sections 43 and 44 of the Code and is liable to be rejected. It is contended that an application under Section 43 can be maintained only where the Resolution Professional forms an opinion that the Corporate Debtor has, during the relevant period contemplated under Section 43(4), given a preference in a transaction falling within Section 43(2) to a person covered under Section 43(4). It is further contended that, for attracting Section 43, it must be demonstrated that: (i) the preference was given by the Corporate Debtor; (ii) such preference arose out of a transaction contemplated under Section



43(2); (iii) the transaction occurred during the relevant period prescribed under Section 43(4); and (iv) the preference was given to a person referred to under Section 43(4).

- 4.2. It is submitted that the Applicant has relied upon the Reply Affidavit filed by Respondent No. 2 in IA No. 302 of 2021 to attribute knowledge of the Forensic Audit Report which recorded diversion of funds amounting to Rs. 717 Crores from Respondent No. 1 Company to the Corporate Debtor and the consequent action taken by Respondent No. 2 in transferring the credit balance lying in the account of the Corporate Debtor. It is contended that none of the essential ingredients of Section 43 are attracted in the facts of the present case.
- 4.3. Without prejudice to the aforesaid contentions, it is submitted that Respondent No. 2 (IDBI Bank) had advanced loans to Respondent No. 1 Company and that the lead bank of the consortium of lenders of Respondent No. 1 got a forensic audit conducted through M/s. G.D. Apte & Co., Chartered Accountants, for the period from 01.04.2014 to 31.03.2019. It is stated that the Forensic Auditor submitted its report in August, 2020 recording diversion of funds amounting to Rs. 717 Crores from Respondent No. 1 to the Corporate Debtor. Reliance is placed upon Annexure-R1.

4.4. It is submitted that the Forensic Audit Report annexed as Annexure-R1 recorded the following irregularity:

Sr. No.	Title / Particulars	Irregularities	Reference
1	Payment of advances to SPIL beyond EPC contract terms resulting in debit balance of Rs. 717.04 Crores as on 31.03.2019.	Payments continued after April 2018 in excess of bills submitted. Advances allegedly not utilised for project purposes. Debit balance increased by Rs. 57.75 Crores during April 2019 to November 2019 and stood at Rs. 774.79 Crores as on 30.11.2019. Audit observations communicated on 15.06.2020 and reply received on 07.07.2020.	Siphoning of Funds under paragraph 2.1.3(c) of RBI Master Circular on Wilful Defaulters dated 01.07.2015.

4.5. It is further submitted that the aforesaid findings establish diversion of funds amounting to Rs. 717 Crores from Respondent No. 1 to the Corporate Debtor. Reliance is placed upon Annexure-R1.

4.6. It is submitted that, on the basis of the Forensic Audit Report, Respondent No. 2 appropriated the amount lying in the current account of the Corporate Debtor towards the dues of Respondent No. 1 on 02.11.2020



and communicated the same to Respondent No. 1 and the Corporate Debtor vide communication dated 02.11.2020 annexed as Annexure-R2. It is further submitted that on 02.11.2020 neither the Corporate Debtor nor Respondent No. 1 was undergoing CIRP.

4.7. It is further submitted that issues arising out of the Forensic Audit Report are sub judice before the Hon'ble High Court of Delhi, where an order of status quo was passed on 23.12.2020. It is further submitted that Respondent No. 1 has filed CA No. 19791/2021 and WP (C) No. 3800/2021 seeking impleadment of Respondent No. 2. Accordingly, dismissal of the Application with costs has been prayed for.

5. Respondent No. 3, Suspended Director has filed his response through an **affidavit-in-reply** on 29.03.2022 through e-mode, wherein following submissions were made by the Respondent: -

5.1. It is submitted that the Applicant himself has stated that Respondent No. 2, IDBI Bank Ltd., unilaterally transferred funds amounting to Rs. 26,79,32,886.79/- from the bank account of Sintex Prefab and Infra Limited to Sintex Industries Limited without obtaining consent of the Corporate Debtor or its suspended management and that the basis for such action was the Forensic Audit Report of Sintex Industries Limited,



the operation of which had been stayed by the Hon'ble High Court of Delhi.

- 5.2. It is further submitted that the Applicant addressed a letter dated 16.09.2021 seeking clarification regarding the adjustment made by Respondent No. 2. Reliance is placed upon the said letter annexed as Annexure-A.
- 5.3. It is submitted that, in response thereto, an email dated 16.09.2021 was sent on behalf of Respondent No. 3 clarifying that Sintex Industries Limited had obtained a stay order from the Hon'ble High Court of Delhi restraining all banks, including Respondent No. 2, from taking any action on the basis of the Forensic Audit Report and that Respondent No. 2 had unilaterally transferred funds from the bank account of Sintex Prefab and Infra Limited to Sintex Industries Limited. It was further stated that the suspended management of Sintex Industries Limited had also instituted proceedings before the Hon'ble High Court of Delhi seeking quashing of the Forensic Audit Report prepared by M/s. G.D. Apte & Co., wherein Respondent No. 2 had also been arrayed as a party. Reliance is placed upon the email dated 16.09.2021 annexed as Annexure-B.
- 5.4. It is further submitted that the letter dated 16.09.2021 issued by the Applicant itself demonstrates that it was Respondent No. 3 who informed the Applicant about the adjustment effected by Respondent No. 2. It is,



therefore, contended that the suspended management of the Corporate Debtor had not acted in collusion with Respondent No. 2 and had, at all times, cooperated with the Applicant.

5.5. It is further submitted that the diversion/adjustment of funds was undertaken unilaterally by Respondent No. 2 and that Respondent Nos. 3 to 7 had no role in the said transaction. It is contended that the representatives of Respondent Nos. 3 to 7 merely informed the Applicant about the adjustment effected by Respondent No. 2 and, therefore, Respondent Nos. 3 to 7 cannot be held liable for repayment of the said amount.

5.6. It is further submitted that the Hon'ble High Court of Delhi, in WP(C) No. 361/2022 and CM APPL. No. 1035/2022 (Stay), vide order dated 10.01.2022, as an ad interim measure, stayed the effect, operation, implementation and execution of the Forensic Audit Report dated 11.08.2020 and Supplementary Audit Report dated 18.09.2020 prepared by G.D. Apte & Associates. Reliance is placed upon the order dated 10.01.2022 annexed as Annexure-C.

5.7. In light of the aforesaid, it is contended that Respondent Nos. 3 to 7 have not acted in collusion with the other Respondents and, therefore, the reliefs sought against them in the present Application are liable to be rejected.



6. In response to the above averments, an **affidavit-in-rejoinder** has been filed on behalf of the Applicant on 25.11.2021 through e-mode wherein all the averments of the above respondents were denied and further following submissions were made: -

Rejoinder to Respondent No. 1

- 6.1. It is submitted that the Resolution Professional has fairly stated that no instructions were issued by him to IDBI Bank Ltd. (Respondent No. 2) for transfer of funds from the account of the Corporate Debtor to Sintex Industries Limited and that such transfer was effected by Respondent No. 2 at its own discretion without the consent or approval of Sintex Industries Limited.
- 6.2. It is further submitted that the remaining averments contained in the Affidavit in Reply of Respondent No. 1 are reiterations of the facts already pleaded in the Application and, therefore, require no further comments.

Rejoinder to Respondent No. 2

- 6.3. It is submitted that, in paragraphs 4 to 11 of its Affidavit in Reply, Respondent No. 2 has admitted the facts pleaded in the Application. It is contended that Respondent No. 2 has admitted that: (i) there was a transfer of property or interest of the Corporate Debtor



for the benefit of a creditor, namely Respondent No. 2, on account of an antecedent financial debt owed by the Corporate Debtor within the meaning of Section 43(2) (a) of the Code; (ii) such transfer placed the creditor in a more beneficial position than it would have occupied in the event of distribution of assets under Section 53 of the Code within the meaning of Section 43(2)(b) and (iii) a preference was given to a person other than a related party during the period of one year preceding the insolvency commencement date within the meaning of Section 43(4)(b) of the Code. It is contended that, in attempting to justify its actions, Respondent No. 2 has itself demonstrated that the present case attracts Section 43 of the Code.

6.4. It is further submitted that, in paragraphs 12 to 18 of its Affidavit in Reply, Respondent No. 2 has sought to justify its actions by relying upon the Forensic Audit Report of August 2020 and by contending that the appropriation of funds on 02.11.2020 preceded the order of status quo dated 23.12.2020 passed by the Hon'ble High Court of Delhi. It is contended that the said stand is erroneous inasmuch as the Hon'ble High Court of Delhi had granted status quo with respect to the Forensic Audit Report and the consequential action for classification of the account as a fraud account vide order dated 18.09.2020 itself. It is further submitted that the Hon'ble High Court had specifically directed all banks, including Respondent No. 2, not to take any



action on the basis of the Forensic Audit Report. It is contended that Respondent No. 2 has not placed the correct factual position before this Adjudicating Authority. Reliance is placed upon the orders passed by the Hon'ble High Court of Delhi annexed as Annexure-R1.

6.5. It is, therefore, submitted that, in view of the averments made in the Application and the admissions allegedly made by the Respondents in their respective affidavits, this Adjudicating Authority may direct the Respondents, particularly Respondent No. 2, to transfer an amount of Rs. 26,79,32,886.79/- back to the bank account of the Corporate Debtor.

6.6. The Applicant has further reserved its right to add, alter, amend or modify the statements made in the rejoinder affidavit and to file such further affidavits as may be required.

7. Written Submissions came to be filed on behalf of Respondent No. 2 on 28.01.2026 through e-mode which has been taken on record.

8. We have heard the Learned Counsel appearing for the parties, and have perused the material available on record.

9. Observation and Findings of this tribunal: -



9.1. The present Application has been filed by the Resolution Professional under Sections 43 and 44 of the Code seeking avoidance of an alleged preferential transaction and restoration of an amount of Rs. 26,79,32,886.79/- to the account of the Corporate Debtor. The case of the Applicant is that an amount of Rs. 19,35,12,886.79/- standing to the credit of Bank Account No. 375103000001205 of the Corporate Debtor was transferred by Respondent No. 2, IDBI Bank Limited, to Bank Account No. 0375673200000666 maintained by Respondent No. 1, Sintex Industries Limited, and a further amount of Rs. 7,44,20,000/- was adjusted by Respondent No. 2 towards creation of Fixed Deposit against a Bank Guarantee. According to the Applicant, the aforesaid transaction, aggregating to Rs. 26,79,32,886.79/-, constitutes a preferential transaction liable to be reversed under Sections 43 and 44 of the Code.

9.2. The Applicant has contended that the aforesaid transfer and adjustment were undertaken by Respondent No. 2 without any authority of law and solely on the basis of the Forensic Audit Report prepared in relation to Respondent No. 1. It is the case of the Applicant that the Forensic Audit Report had been challenged before the Hon'ble High Court of Delhi and that Respondent No. 2 could not have acted upon the same for appropriating funds lying in the account of the Corporate Debtor. The Applicant has further



alleged that the conduct of the Respondents, viewed in light of the chronology of events pleaded in the Application, establishes collusion amongst the Respondents resulting in depletion of the assets of the Corporate Debtor immediately prior to commencement of CIRP.

9.3. Per contra, Respondent No. 1 has categorically stated that it neither instructed nor authorised Respondent No. 2 to transfer funds from the account of the Corporate Debtor to its account. It is further submitted that the transaction was effected by Respondent No. 2 at its own discretion, without consent of Respondent No. 1, and that the same was not recorded in the books of account of Respondent No. 1. Respondent No. 1 has therefore denied any role in the impugned transaction.

9.4. Respondent No. 2 has primarily challenged the maintainability of the present Application under Sections 43 and 44 of the Code. It is contended that the essential requirement of Section 43, namely a transfer by the Corporate Debtor giving preference to a creditor or other person, is absent in the facts of the present case. According to Respondent No. 2, the impugned transaction was an independent action undertaken by the Bank on 02.11.2020 on the basis of findings recorded in the Forensic Audit Report concerning diversion of funds from Respondent No. 1



to the Corporate Debtor. Respondent No. 2 has further contended that the appropriation was effected prior to commencement of CIRP and therefore the provisions of Sections 43 and 44 of the Code are not attracted.

9.5. Respondent Nos. 3 to 7 have also denied any involvement in the impugned transaction. Their case is that the transfer/adjustment of funds was admittedly undertaken by Respondent No. 2 and that neither any instructions were issued by them nor any benefit was derived by them from the alleged transaction. It is further contended that there is no material on record to establish collusion, participation or any wrongful conduct on their part and therefore no relief can be granted against them.

9.6. In view of the rival pleadings and submissions advanced by the parties, the following **issues** arise for consideration: -

- (i) Whether the transfer of Rs. 19,35,12,886.79/- from Bank Account No. 375103000001205 of the Corporate Debtor to Bank Account No. 0375673200000666 of Respondent No. 1 and the adjustment of Rs. 7,44,20,000/- towards creation of Fixed Deposit against Bank Guarantee, aggregating to Rs. 26,79,32,886.79/-, constitute a transaction amenable to scrutiny under Section 43 of the Code?
- (ii) Whether the impugned transaction satisfies the ingredients of a preferential transaction as contemplated under Section 43 of the Code?



(iii) Whether Respondent Nos. 1 and 3 to 7 had any role, participation, collusion or liability in relation to the impugned transaction?

10. Findings on Issue No.(i): Whether the transfer of Rs. 19,35,12,886.79/- from Bank Account No. 375103000001205 of the Corporate Debtor to Bank Account No. 0375673200000666 of Respondent No. 1 and the adjustment of Rs. 7,44,20,000/- towards creation of Fixed Deposit against Bank Guarantee, aggregating to Rs. 26,79,32,886.79/-, constitute a transaction amenable to scrutiny under Section 43 of the Code?

10.1. The Applicant has alleged that Respondent No. 2 transferred an amount of Rs. 19,35,12,886.79/- from Bank Account No. 375103000001205 maintained in the name of the Corporate Debtor to Bank Account No. 0375673200000666 maintained by Respondent No. 1. It is further alleged that a sum of Rs. 7,44,20,000/- was adjusted by Respondent No. 2 towards creation of Fixed Deposit against a Bank Guarantee. Thus, according to the Applicant, an aggregate amount of Rs. 26,79,32,886.79/- belonging to the Corporate Debtor stood diverted immediately prior to commencement of CIRP.

10.2. The aforesaid factual position is not seriously disputed by the Respondents. Respondent No. 1 has categorically stated that the transfer was effected by Respondent No. 2 without any instructions or consent from Respondent No. 1. Respondent No. 2 has also



admitted that, acting upon the findings recorded in the Forensic Audit Report, it appropriated the amount lying in the account of the Corporate Debtor on 02.11.2020 and transferred the available credit balance of Rs. 19,35,12,886.79/- to the account of Respondent No. 1. Respondent Nos. 3 to 7 have likewise asserted that the impugned transaction was undertaken unilaterally by Respondent No. 2 and that they had no role in the same.

10.3. From the pleadings and documents placed on record, it therefore emerges that the factum of transfer of Rs. 19,35,12,886.79/- from the account of the Corporate Debtor and the adjustment of a further sum of Rs. 7,44,20,000/- by Respondent No. 2 is not in dispute. The principal dispute between the parties is not with regard to the occurrence of the transaction but with regard to its legal character and consequences.

10.4. The contention of Respondent No. 2 is that the impugned transaction cannot be subjected to scrutiny under Section 43 of the Code since the same was not a transfer made by the Corporate Debtor but was an independent act undertaken by the Bank in exercise of its rights arising from the findings recorded in the Forensic Audit Report. According to Respondent No. 2, absence of any instruction or authorisation from the Corporate Debtor itself excludes the applicability of Section 43.



10.5. We are unable to accept, at this stage, the preliminary contention that the transaction falls outside the scope of examination under Section 43 merely because the transfer is stated to have been effected by Respondent No. 2. The amounts in question admittedly formed part of the assets lying in the bank account of the Corporate Debtor and stood transferred/adjusted prior to commencement of CIRP. The impugned transfer resulted in reduction of funds available in the account of the Corporate Debtor. Whether such transfer ultimately satisfies the statutory ingredients of a preferential transaction under Section 43 is a matter requiring further examination. However, the mere assertion that the transfer was effected by Respondent No. 2 does not, by itself, oust the jurisdiction of this Adjudicating Authority from examining the transaction under the avoidance provisions of the Code.

10.6. Accordingly, the transaction is liable to be examined on merits to determine whether the ingredients of Section 43 are satisfied.

11. Findings on Issue No. (ii): Whether the impugned transaction satisfies the ingredients of a preferential transaction as contemplated under Section 43 of the Code?

11.1. To determine whether the impugned transaction constitutes a preferential transaction, it is necessary to examine the requirements of Section 43 of the Code.

Section 43 of the Code is reproduced hereinbelow: -



“43. Preferential transactions and relevant time. -

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

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

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

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

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

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

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

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

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



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

Explanation. For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

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

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

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

11.2. On a plain reading of the provision, a transaction can be avoided under Section 43 only when the Corporate Debtor is deemed to have given a preference in terms of Section 43(2) to a person contemplated under Section 43(4) during the relevant period.

11.3. Section 43(2) of the Code provides that a Corporate Debtor shall be deemed to have given a preference if: (i) there is a transfer of property or an interest thereof of the Corporate Debtor for the benefit of a creditor, surety or guarantor on account of an antecedent financial debt, operational debt or other liability owed



by the Corporate Debtor; and (ii) such transfer has the effect of putting such creditor, surety or guarantor in a beneficial position than it would have occupied in the event of distribution of assets in accordance with Section 53 of the Code.

11.4. The transaction dated 02.11.2020 falls within the period contemplated under Section 43(4) of the Code. However, satisfaction of the relevant time requirement alone is insufficient unless other ingredients of Section 43 are also established.

11.5. In the present case, the Applicant has alleged that Respondent No. 2 transferred an amount of Rs. 19,35,12,886.79/- from the account of the Corporate Debtor to the account of Respondent No. 1 and further adjusted an amount of Rs. 7,44,20,000/-, aggregating to Rs. 26,79,32,886.79/-. The factum of such transfer and adjustment is not seriously disputed by the Respondents.

11.6. However, the material question is whether the impugned transaction can be said to be a preference given by the Corporate Debtor. From the pleadings of the parties, it emerges that the Applicant itself has consistently alleged that the transfer was effected by Respondent No. 2. Respondent No. 1 has categorically stated that it had neither instructed nor authorised Respondent No. 2 to undertake the transfer. Respondent Nos. 3 to 7 have also denied any role in



the transaction. Respondent No. 2, on the other hand, has admitted that the appropriation was undertaken by it on 02.11.2020 on the basis of the findings recorded in the Forensic Audit Report.

11.7. Thus, the common thread running through the pleadings of all parties is that the impugned transfer was not initiated by the Corporate Debtor. There is no material on record to demonstrate that the Corporate Debtor resolved, directed, authorised or otherwise effected the transfer of the aforesaid amounts in favour of Respondent No. 1 or Respondent No. 2. On the contrary, the Applicant's own case is that the transfer was a unilateral act of Respondent No. 2.

11.8. The avoidance jurisdiction under Section 43 is attracted when the Corporate Debtor has given a preference. The provision is intended to undo transactions whereby the Corporate Debtor, during the relevant period, prefers one creditor over others. In the facts of the present case, the transaction complained of is not shown to be an act attributable to the Corporate Debtor. Rather, it is alleged to be an independent action undertaken by Respondent No. 2 in exercise of what it perceived to be its rights arising from the Forensic Audit Report.

11.9. The Hon'ble Supreme Court in **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited** has held that the



existence of all statutory ingredients under Section 43 must be established before a transaction can be avoided as preferential. The Court emphasized that there must be a transfer of property or interest of the Corporate Debtor for the benefit of a creditor, surety or guarantor on account of an antecedent debt and such transfer should place such person in a beneficial position in comparison with distribution under Section 53 of the Code.

11.10. Even assuming that the action of Respondent No. 2 was legally unsustainable or otherwise liable to challenge before an appropriate forum, such circumstance by itself would not satisfy the statutory ingredients of Section 43 of the Code. The scope of the present proceedings is confined to examining whether a preferential transaction as contemplated under Section 43 has been established. In the absence of material demonstrating that the Corporate Debtor itself gave the alleged preference, the foundational requirement of Section 43 remains unfulfilled. Further, no sufficient material has been placed before this Adjudicating Authority to establish that Respondent No.1 was the beneficiary creditor in respect of an antecedent debt owed by the Corporate Debtor. It was a unilateral action of the IDBI Bank to transfer the funds from the bank account of the Corporate Debtor maintained with it to the bank account of Sintex Industries Limited. The Applicant has not placed



sufficient material on record to establish that transfer was on account of an antecedent financial debt as nothing in support of the claim is brought on the record. There is nothing on record to demonstrate that the funds were transferred to a creditor (Sintex Industries Limited). The Forensic Audit Report only stated that the funds of Respondent No.1 were diverted to the Corporate Debtor but nothing from the recorded transaction is submitted to prove the debtor-creditor relationship.

- 11.11. Though Respondent No.1 has asserted existence of receivables from the Corporate Debtor and has submitted a claim in CIRP, no material has been placed before this Adjudicating Authority demonstrating that the transfer dated 02.11.2020 was made in discharge of such receivables or pursuant to any acknowledged liability of the Corporate Debtor.
- 11.12. Since the present proceedings are confined to determination of an avoidance application under Sections 43 and 44 of the Code, this Adjudicating Authority refrains from adjudicating upon the legality or effect of the orders passed by the Hon'ble High Court of Delhi concerning the Forensic Audit Report.
- 11.13. In view of the aforesaid, this Adjudicating Authority is of the considered view that the Applicant has failed to establish that the impugned transaction satisfies the



essential ingredients of Section 43 of the Code. Accordingly, Issue No. (ii) is answered in the negative.

12. Findings on Issue No.(iii): Whether Respondent Nos. 1 and 3 to 7 had any role, participation, collusion or liability in relation to the impugned transaction?

12.1. The Applicant has alleged collusion amongst Respondent No. 1, Respondent No. 2 and Respondent Nos. 3 to 7 primarily on the basis of the chronology of events set out in the Application. However, apart from such allegation, no material has been placed on record demonstrating that Respondent No. 1 or Respondent Nos. 3 to 7 instructed, authorised or participated in the transfer of funds from the account of the Corporate Debtor.

12.2. Respondent No. 1 has consistently maintained that the transfer was effected by Respondent No. 2 without its instructions or consent. It has further stated that the transaction was not recorded in its books of account. Similarly, Respondent Nos. 3 to 7 have asserted that the transaction was undertaken unilaterally by Respondent No. 2 and that they merely informed the Applicant regarding the adjustment carried out by the Bank.

12.3. Significantly, Respondent No. 2 itself has pleaded that the appropriation was undertaken by it on the basis of the Forensic Audit Report and that the same was



communicated to the Corporate Debtor and Respondent No. 1 vide letter dated 02.11.2020. Thus, even according to Respondent No. 2, the impugned transaction was its own action and not one undertaken pursuant to any instruction issued by Respondent No. 1 or Respondent Nos. 3 to 7.

12.4. No correspondence, instruction, authorization, banking mandate, board resolution or other documentary evidence has been produced to establish that Respondent No.1 or Respondent Nos.3 to 7 directed or authorised Respondent No.2 to effect the transfer.

12.5. In the absence of any documentary material establishing participation, authorization, collusion or receipt of benefit by Respondent Nos. 3 to 7, this Adjudicating Authority is unable to sustain the allegations made against them. Mere suspicion, however strong, cannot substitute proof. Accordingly, Issue No. (iii) is answered in the negative. Consequently, no liability can be fastened upon Respondent Nos.3 to 7.

13. In view of the foregoing discussion and findings, this Adjudicating Authority is of the considered view that the Applicant has failed to establish that the transfer of Rs. 19,35,12,886.79/- from the account of the Corporate Debtor



to the account of Respondent No. 1 and the adjustment of Rs. 7,44,20,000/- by Respondent No. 2 constitute a preferential transaction within the meaning of Section 43 of the Insolvency and Bankruptcy Code, 2016.

- 14.** It is clarified that the findings recorded herein are confined to adjudication of the present avoidance application under Sections 43 and 44 of the Code and shall not be construed as adjudication upon the legality, validity or enforceability of any action taken by any party outside the scope of the present proceedings.
- 15.** Since the foundational requirements of Section 43 have not been established, the consequential reliefs contemplated under Section 44 cannot be granted.
- 16.** Consequently, **IA No. 439 of 2021** in CP(IB) No. 321 of 2020 stands ***dismissed*** and hereby disposed of.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

HG

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)