IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 4998 OF 2022
IN
C.P. (IB) I.B.C. No. 76(PB) OF 2018

(Under Section 43(1) of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016)

IN THE MATTER OF:

ORIENTAL BANK OF COMMERCE **...FINANCIAL CREDITORS**

VERSUS

M/S. PELLET ENERGY SYSTEMS PVT. LTD.
...CORPORATE DEBTOR

AND IN THE MATTER OF:

MS. RESHMA MITTAL
LIQUIDATOR OF PELLET ENERGY SYSTEMS PVT. LTD.
(CORPORATE DEBTOR) **...APPLICANT**

VERSUS

MR. BHARAT SHARMA
DIRECTOR, SUSPENDED BOARD OF CORPORATE DEBTOR
...RESPONDENT N0. 1

MR. PRITHVI RAJ LUTHRA
DRECTOR, SUSPENDED BOARD OF DIRECTORS
...RESPONDENT NO. 2

MR. MANISH KUMAR TRIPATHI
...RESPONDENT NO. 3

ADARSH ENTERPRISES
...RESPONDENT NO. 4

Order Pronounced On: 03.09.2026

CORAM:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	:	Mr. Milan Singh Negi, Advocate along with Mr. Nikhil Kumar Jha, Ms. Katyayani and Ms. Utkarsh, Advocates
For the Respondents	:	Mr. Abhishek Anand, Advocate along with Mr. Karan Kohli and Ms. Shristy Singh, Advocates

ORDER

1. This application under Section 43(1) read with Section 44 of the Insolvency and Bankruptcy Code, 2016 ("Code"/"IBC") was filed by The original Applicant, Ms. Reshma Mittal, erstwhile liquidator, who was substituted with the present Applicant, C.A. Manjit Anjna (the Successful Purchaser of the Not Readily Realizable Assets ("NRRA") of the Corporate Debtor) vide order dated 10.09.2024 passed by this Adjudicating Authority in IA No. 3678/2024.

2. The Applicant seeks the following reliefs:

a) That Hon'ble Tribunal may allow this application under Section 43(1) of the Insolvency and Bankruptcy Code, 2016 read-with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

b) That Hon'ble Tribunal may be pleased to pass such order under section 43(1) declaring the transactions as preferential transactions and reverse it and consequently directing the respondents to pay Rs. 13.50 lakh to the corporate debtor.

c) That Hon'ble Tribunal may be pleased to pass such order as it deems appropriate as per the provisions of Section 43 read with Section 44 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

d) That Hon'ble Tribunal may be pleased to Pass Such other relief as the Hon'ble Tribunal may deems fit and proper in this case.

3. The Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor, namely, M/s Pellet Energy Systems Private Limited, commenced vide order dated 20.07.2018 passed by this Adjudicating Authority in a petition filed under Section 7 of the Code by Oriental Bank of Commerce (now merged with Punjab National Bank).

4. Ms. Reshma Mittal was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor and was subsequently confirmed as the Resolution Professional ("RP") in the first meeting of the Committee of Creditors held on 17.08.2018.

5. During the CIRP, the erstwhile Applicant caused a review of the transactions of the Corporate Debtor to be undertaken for identifying transactions falling within the provisions relating to preferential, undervalued, extortionate and fraudulent transactions under the Code. AMK & Co. was appointed as the Transaction Auditor on 01.10.2018 for conducting the said transaction audit. The Transaction Auditor, upon examination of the books and records of the Corporate Debtor, identified certain transactions which, according to the report, fell within the ambit of Section 43 of the Code.

6. Thus, the present application concerns the transactions identified by the Applicant as preferential transactions falling within the relevant period prescribed under Section 43(4) of the Code.

7. The erstwhile Applicant had earlier filed a composite application, being CA No. 1017/2020 (also referred to as CA No. 297(PB)/2020), under Sections 43, 45, 50 and 66 of the Code on 09.04.2019 in respect of the transactions identified during the transaction audit. In view of the judgment of the Supreme Court in ***Anuj Jain v. Axis Bank Ltd., Civil Appeal Nos. 8512–8527 of 2019***, holding that Sections 43 and 66 of the Code operate on distinct legal ingredients and require independent adjudication, the said composite application was bifurcated and the present application, being

IA No. 4998/2022, was filed in respect of the transactions alleged to be preferential under Section 43 of the Code, while the allegations under Section 66 were pursued separately in IA No. 4997/2022.

8. The CIRP of the Corporate Debtor culminated in approval of the resolution plan submitted by M/s Abellon Clean Energy Systems Ltd. jointly with Mr. Bharat Sharma vide order dated 27.08.2020. However, upon failure of the resolution applicants to implement the approved resolution plan, this Adjudicating Authority allowed the Application for liquidation, being IA/2479/2022 filed under Section 33 of the Code, and the Corporate Debtor was accordingly ordered to be liquidated. The liquidation process was thereafter completed, and the Corporate Debtor was dissolved vide order dated 03.07.2024 passed in IA(IB)(Dis.)/3/PB/2024.

9. Under Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016, the liquidator assigned the NRRA, i.e., the present avoidance application, in favour of the Applicant by executing an assignment deed dated 14.02.2024. The Applicant was accordingly substituted in place of the liquidator vide order dated 10.09.2024 passed in IA No. 3678/2024.

10. The present application seeks, inter alia, a declaration of the transactions identified therein as preferential transactions under Section 43 of the Code and consequential reliefs under Section 44 of the Code, including directions for reversal/restoration of the amounts involved in the alleged preferential transactions.

Submissions of the Applicant:

11. The Applicant has submitted that during the CIRP of the Corporate Debtor, M/s AMK & Company was appointed as the Transaction Auditor on 01.10.2018 to conduct the transaction audit and assist the Resolution Professional in identifying transactions covered under Sections 43, 45, 50 and 66 of the Code. The Transaction Auditor was accordingly required to

examine, inter alia, preferential transactions, undervalued transactions, transactions to defraud creditors and extortionate credit transactions.

12. The Applicant has further submitted that the first draft of the Transaction Audit Report was issued on 29.12.2018. The observations of the Transaction Auditor were shared with the ex-management on 25.01.2019, and the ex-management submitted its response on 05.03.2019. Thereafter, the final Transaction Audit Report was issued on 28.03.2019 after considering the responses submitted by the ex-management.

13. The Applicant has submitted that the Transaction Auditor identified certain transactions as preferential transactions under Section 43 of the Code. The transactions forming the subject matter of the present Application are set out in the Application as under:

PREFERENTIAL REPAYMENTS TO UNSECURED CREDITORS

5.12.3 That it has been brought out in the said Transaction Audit Report, that there were certain unsecured loans which were repaid to below mentioned parties (non-related) in the financial year 2018-19:

Name of Party	**Amount of Unsecured Loan Repaid**	**Year of Payment**
Manish Kumar Tripathi ***(Respondent No. 4)***	2,00,000	2018-19

PREFERENTIAL PAYMENTS TO VENDORS

5.12.6 That it has been brought out in the said Transaction Audit Report, the Corporate Debtor has given preference in making payments to Vendors (non-related) whose old balances were lying in the books of Corporate Debtor. Details of such vendors and amount paid to them after 20.07.2017 is given below:

Name of Vendor	Amount paid after 20.07.2017 (In Rs.)	Payment Year
Ambey Wood Products- Yamunanagar	2,00,000	2017-18
Nawab Khan	65,755	2017-18
Sobia Wood Industries	1,30,000	2017-18
Rao Ashif	2,04,364	2017-18
ABC Fuels Private Limited	8,08,300	2017-18
Adarsh Enterprises	11,50,000	2017-18
Allaha Rakha	5,00,000	2017-18
Manish Kumar Tripathi	2,00,000	2018-19
Bhagirath Resurgence Private Ltd	90,000	2018-19
Bhartiya Kisan Udyog (Sitapur)	1,00,000	2018-19
Indian Traders	1,00,000	2018-19
Mittal Production, Yamuna Nagar	5,91,973	2017-18
R. K. Traders	5,00,000	2017-18
Timberland Wood Based Products	5,49,502	2017-18

RESHMA MITTAL IBBI/IPA-001 IP00297/ 2017-18/10541 Insolvency Professional

5.12.8 That aforesaid repayment to old vendors as named above is in the nature of transfer of property (i.e. money) and it has the effect of putting such vendors/respondents in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53 of the IBC. However,all these (aforementioned) transfer of property (money) were made in the ordinary course of the business of the corporate debtor; except following transaction: -

Name of Vendor	**Amount paid after 20.07.2017 (In Rs.)**	**Payment Year**
Adarsh Enterprises ***(Respondent No. 4)***	11,50,000	2017-18

14. The Applicant has submitted that the Transaction Auditor identified the aforesaid transactions as preferential involving non-related parties amounting to ₹13.50 lakh, comprising the following components:

(i) repayment of an unsecured loan of ₹2.00 lakh to Mr. Manish Kumar Tripathi (Respondent No. 3) during FY 2018-19, and

(ii) payment of ₹11.50 lakh to Adarsh Enterprises (Respondent No. 4), a non-related vendor, during FY 2017-18.

15. In respect of the repayment of the unsecured loan, the Applicant has submitted that the payment of ₹2.00 lakh made to Mr. Manish Kumar Tripathi constitutes a transfer of property, being money of the Corporate Debtor, for the benefit of the said creditor and had the effect of placing him in a more beneficial position than he would have been in the event of distribution of the assets of the Corporate Debtor in accordance with Section 53 of the Code.

16. In respect of the payments made to vendors, the Applicant has submitted that the Corporate Debtor had made payments towards old outstanding balances of various non-related vendors after 20.07.2017. It has, however, been specifically pleaded that the said payments were made in the ordinary course of business of the Corporate Debtor, except the payment of ₹11.50 lakh made to Adarsh Enterprises during FY 2017-18, which stood apart on account of being made against old outstanding balances in a manner that preferred that vendor over similarly placed creditors.

17. The Applicant has accordingly submitted that the payment of ₹11.50 lakh to Adarsh Enterprises constitutes a transfer of property, being money of the Corporate Debtor, during the relevant period and had the effect of placing the said vendor in a more beneficial position than it would have been in the event of distribution of the assets of the Corporate Debtor in accordance with Section 53 of the Code.

18. On the aforesaid basis, the Applicant has sought declaration of the aforesaid transactions, aggregating to ₹13.50 lakh, as preferential transactions under Section 43 of the Code and consequential directions under Section 44 of the Code for reversal of the said transactions and restoration of the amount to the Corporate Debtor.

19. Notice in the present Application was issued to all the Respondents. Respondent No. 1, Mr. Bharat Sharma, filed his reply opposing the Application and disputing the allegations made therein. Respondent Nos.

2 to 4, namely, Mr. Prithvi Raj Luthra, Mr. Manish Kumar Tripathi and Adarsh Enterprises, failed to file their respective replies and were proceeded against *ex parte* vide order dated 05.11.2024.

20. It is also pertinent to note that the Corporate Debtor has since been dissolved. Pursuant to the order dated 13.06.2024 passed by this Adjudicating Authority, the Applicant filed a clarification regarding the manner of pursuing the avoidance transactions post-closure of the liquidation proceedings. The said clarification records that the avoidance transactions were assigned to C.A. Manjit Anjna pursuant to the Assignment Deed dated 14.02.2024, with 50% of the proceeds of realisation to be remitted to Punjab National Bank, the Secured Financial Creditor.

21. The said assignment was approved by the Stakeholders' Consultation Committee, pursuant to which C.A. Manjit Anjna was authorised to pursue the avoidance transactions. The Applicant was thereafter substituted in the present proceedings. Accordingly, the amounts recovered pursuant to the present order shall be dealt with in terms of the Assignment Deed and the applicable provisions of the Code and Regulations

Submissions of the Respondent:

22. It is submitted on behalf of Respondent No. 1 that the present Application is liable to be dismissed on the grounds of delay in filing the avoidance application, non-joinder of necessary parties and failure of the Applicant to establish the essential ingredients of Section 43 of the Code.

23. It is contended that the timelines contemplated under Regulation 35A of the CIRP Regulations were not adhered to and that the Applicant cannot seek to overcome such delay without sufficient justification. Reliance is

placed upon *Aditya Kumar Tibrewal v. Om Prakash Pandey*, Company Appeal (AT) (Ins.) No. 583 of 2021.

24. It is further submitted that the persons who allegedly received the benefit of the impugned transactions are necessary parties, particularly in view of the reliefs contemplated under Section 44 of the Code. The Respondent also alleges selective impleadment and submits that other persons involved in the management and financial affairs of the Corporate Debtor were not impleaded.
25. Respondent No. 1 submits that the Applicant has failed to establish the statutory ingredients of Section 43. It is contended that the impugned payments were made in the ordinary course of business and financial affairs of the Corporate Debtor and, therefore, fall within the exclusion under Section 43(3) of the Code. Reliance is also placed upon the order dated 24.07.2020 passed by this Adjudicating Authority in *Punjab National Bank v. Carantion Auto Pvt. Ltd.*, IB No. 302(ND)/2017, to contend that an application founded upon an inconclusive audit report cannot sustain an order of avoidance.

26. Respondent No. 1 has further submitted that he was not involved in the day-to-day management of the Corporate Debtor and was not a signatory to its bank accounts. It is accordingly contended that the payments to the vendors were made in the ordinary course of business for legitimate operational purposes, including avoidance of disputes and disruption of the Corporate Debtor's business, and that no preferential benefit was intended or conferred.

27. In the aforesaid basis, Respondent No. 1 has prayed for dismissal of the present Application.

28. During the course of the proceedings, vide order dated 26.11.2025, this Adjudicating Authority issued the following directions to the Applicant:

IA-4998/2022

Ld. Counsel for Applicant Mr. Milan Singh Negi is directed to file short written submissions on the relevant statutory provisions and judicial precedence relied upon and list of dates & event along with the following details:

(a) What is the nature of the transaction (e.g., repayment, security, etc.)? (what is the type of "transfer" of property or an interest thereof of the corporate debtor)
(b) Is the transaction Beneficial to creditor, surety, or guarantor for antecedent debt owed by corporate debtor?
(c) Does the transaction put transferee in a better / beneficial position than it would have been in distribution of assets in liquidation under Section 53?
(d) Is the Transferee a Related Party?
  i. If Related Party – Is the transaction within 2 years prior to ICD?
  ii. If Unrelated Party – Is the transaction within 1 year prior to ICD
(e) Was the transaction made in the ordinary course of business or ordinary course of financial affairs of the Corporate Debtor?
(f) Is the transaction covered under the exception of securing & "new value" as per Explanation in Section 43(3)?

At his request, list the matter before the Regular (Principal) Bench on **17.02.2026**.

29. Pursuant to the aforesaid directions, the Applicant filed its written submissions dated 19.07.2026, answering each of the queries with reference to the material on record, including the relevant extracts of the Transaction Audit Report and the pleadings in the Application, as summarised in the ensuing discussion.

a. **Impugned Transaction under section 43 of the IBC:**

Sr. No.	Parties	Nature of Transaction	Period	Amount
1.	Manish Kumar Tripathi/R3 *(@ pg. 111)*	Repayment of unsecured loan to unrelated party – not in ordinary course of business	FY 2018-2019	Rs. 2,00,000/-
2.	Adarsh Enterprises /R4 *(@ 113)*	Payment to vendor preferentially– not in ordinary course of business	FY 2017-2018	Rs. 11,50,000/-

i. **Preferential repayment to R-3 unsecured loan by CD:**

- During the FY 2018-2019 (as on 20.07.2018), the CD has made the repayment of Rs. 2,00,000/- to the Manish Kumar Tripathi/ R-3, out of the total outstanding dues of Rs. 3,25,000/-, in preference to other creditors, which was within the look back period. The said payment was not made in the ordinary course of business, as the CD was itself declared as NPA in FY 2015-2016.

ii. **Preferential payment to third party towards outstanding amount:**

- During the FY 2017-2018, the CD has given preference in making payment of Rs. 11.50 Lakh to the vendor (non-related) i.e. Adarsh Enterprises, which has the effect of putting such vendor in beneficial position. The payments were made against old balances towards past supplies, appearing in the books of accounts.

b. **Answer to queries in terms of order dated 26.11.2025:**

I. **What is the nature of the transaction (e.g., repayment, security, etc.)? (what is the type of "transfer" of property or an interest thereof of the corporate debtor)**

Nature of the Transaction: Repayment of unsecured debt in case of R-3 and payment of outstanding operational dues to R-4. In this case, the property involved is money (as defined u/s 3(27) of IBC).

II. **Does the transaction put transferee in a better / beneficial position than it would have been in distribution of assets in liquidation under Section 53?**

The impugned transactions have taken place with the respondent no. 3 and respondent no. 4, who are both unsecured creditors, who comes down in the priority of distribution as provided u/s 53 of IBC (Waterfall mechanism), as such, the repayment of their debt/ dues put them in a more beneficial position than they would have otherwise occupied in the distribution of assets of the corporate debtor during liquidation under Section 53 of the IBC.

III. **Is the Transferee a Related Party or not?**

The respondent no. 3 and respondent no. 4 are not related parties of the corporate debtor, as such, the applicable look-back period is one year preceding the insolvency commencement date i.e., 20.07.2018. The impugned transactions, having occurred during 20.07.2017-20.07.2018, falls within the one year of statutory look-back period for the un related parties as prescribed under the IBC.

IV. **Was the transaction made in the ordinary course of business or ordinary course of financial affairs of the Corporate Debtor?**

With respect to respondent no. 3 & 4:

The corporate debtor was classified as NPA in FY 2015-16. Despite financial distress, the CD was made to make payment of the unsecured financial debt of particular creditor in defiance of the water fall mechanism as provided under section 53 of the IBC *(pg. 113 of the appln).*

The suspended directors of the corporate debtor have given preference in repayment to specific vendors (respondent no. 4) whose old balances were outstanding in the books, instead of making payments in the regular and ordinary course. (*Pg. 113 of the application @Pg. 61 of the audit report, Table 8.1(3*). The payment was therefore selective in nature and intended to favour particular creditors.

Judgement/ Citations:

- The Hon'ble NCLAT in the matter of ***GVR Consulting Services Pvt. Ltd. v. Pooja Bahry, Company Appeal (AT) (Insolvency) No. 405 of 2022***, upheld the order of the Adjudicating Authority passed under section 43 of IBC with regard to repayment of an unsecured debt by the CD and further, held that company's intent is irrelevant, when determining a transaction under section 43 of IBC. Directors as well as the beneficiaries of such transaction were directed to contribute the preferential payments to the corporate debtor, by the Hon'ble Appellate Tribunal.

Findings & Analysis:

30. Heard Ld. counsel for the parties and perused the documents on record.

31. At this stage, it is relevant to note Section 43 of the IBC, which reads as follows:

Section 43: Preferential transactions and relevant time.

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

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

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

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

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

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

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that— (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and (ii) such

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

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

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

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

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

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

32. Before adverting to the individual transactions under dispute in the present Application, it is pertinent to note that under Section 43(2) of the Code, a corporate debtor shall be deemed to have given a preference where there is a transfer of property or an interest thereof for the benefit of a creditor, surety or guarantor in respect of an antecedent financial debt, operational debt or other liability, and such transfer has the effect of placing such creditor, surety or guarantor in a more beneficial position than it would have occupied in the event of distribution of assets in accordance with Section 53 of the Code. It is pertinent to note that under Section 43(2), there is no need to prove any fraudulent intent for a transaction to be held preferential. Section 43 operates by virtue of a deeming fiction: once the ingredients set out in clauses (a) and (b) of sub-

section (2) are established, the transaction is liable to be treated as a preferential transaction with attendant consequences, irrespective of whether it was in fact intended or even anticipated to be so.

33. It is significant to note that although Respondent No. 1 has, in his reply, taken a general plea that the payments to vendors were made in the ordinary course of business, no material or documentary evidence has been placed on record by any of the Respondents to demonstrate that the specific payments of ₹2,00,000/- to Respondent No. 3 or ₹11,50,000/- to Respondent No. 4 were made in the ordinary course of business or financial affairs of the Corporate Debtor so as to attract the exclusion under Section 43(3)(a) of the Code. In this regard, it is relevant to note that in *Rajesh Toshniwal & Anr. vs. Kamal Nayan Jain, Company Appeal (AT) (INS.) No. 1437 of 2023*, NCLAT, Principal Bench, New Delhi, a plea of "ordinary course of business," unsupported by any document, was rejected, and the NCLAT recorded a specific finding that no explanation had been furnished to show that the transactions in question were carried out in the ordinary course of business. In the absence of any material having been placed by the Respondents in the present case to discharge this onus, the exclusion under Section 43(3)(a) is not attracted, and both the impugned transactions are liable to be held preferential within the meaning of Section 43 of the Code.

34. In the present case, the CIRP of the Corporate Debtor commenced on 20.07.2018. The look-back period for a non-related party is one year, i.e., from 20.07.2017 until the commencement date, and for a related party would be two years, i.e., from 20.07.2016 until the commencement date. Respondent Nos. 3 and 4 have not been shown, and are not claimed by any party, to be related parties of the Corporate Debtor; the applicable look-back period qua both the impugned transactions is accordingly one year, i.e., 20.07.2017 to 20.07.2018.

35. The transactions under consideration in the present Application, in light of the aforesaid statutory framework, are accordingly examined hereinbelow:

a. **Manish Kumar Tripathi (Respondent No. 3):**

The record shows that out of total outstanding dues of Rs. 3,25,000/- owed by the Corporate Debtor to Respondent No. 3, a sum of Rs. 2,00,000/- was repaid during FY 2018-19, as on 20.07.2018, i.e., contemporaneous with the insolvency commencement date and squarely within the one-year look-back period applicable to Respondent No. 3 as an unrelated party. The payment constitutes a transfer of property, as defined under Section 3(27) of the Code for the benefit of Respondent No. 3 on account of an antecedent financial debt, thereby satisfying Section 43(2)(a). The repayment of ₹2,00,000/- to Respondent No. 3, therefore, placed him in a more beneficial position than he would have occupied in the distribution of the assets of the Corporate Debtor under Section 53, thereby satisfying Section 43(2)(b) of the Code. Accordingly, the said payment constitutes a preferential transaction within the meaning of Section 43 of the Code.

b. **Adarsh Enterprises (Respondent No. 4):**

Insofar as the transaction relating to Adarsh Enterprises is concerned, the record establishes that during FY 2017-18, the Corporate Debtor made payment of ₹11,50,000/- to Respondent No. 4 towards its pre-existing outstanding dues. The said payment constitutes a transfer of property of the Corporate Debtor, being money, for the benefit of Respondent No. 4 on account of an antecedent operational debt and, therefore, satisfies the requirement contemplated under Section 43(2)(a) of the Code.

Respondent No. 4 is not stated to be a related party of the Corporate Debtor. Accordingly, the period prescribed under Section 43(4)(b) is one year preceding the insolvency commencement date. The impugned payment, having been made during FY 2017-18 and within the period commencing from 20.07.2017 to 20.07.2018, falls within the prescribed look-back period.

The further requirement under Section 43(2)(b) is also satisfied. The payment of ₹11,50,000/- towards the outstanding dues of Respondent No. 4 resulted in the said unsecured creditor receiving payment towards its dues, thereby placing it in a more beneficial position than it would have occupied in the distribution of the assets of the Corporate Debtor in accordance with Section 53 of the Code.

36. It is significant to note that although Respondent No. 1 has, in his reply, taken a general plea that the payments to vendors were made in the ordinary course of business, no material or documentary evidence has been placed on record by any of the Respondents to demonstrate that the specific payments of ₹2,00,000/- to Respondent No. 3 or ₹11,50,000/- to Respondent No. 4 were made in the ordinary course of business or financial affairs of the Corporate Debtor so as to attract the exclusion under Section 43(3)(a) of the Code. In this regard, it is relevant to note that in *Rajesh Toshniwal & Anr. v. Kamal Nayan Jain* (supra), a plea of "ordinary course of business," unsupported by any document, was rejected, and the NCLAT recorded a specific finding that no explanation had been furnished to show that the transactions in question were carried out in the ordinary course of business. In the absence of any material having been placed by the Respondents in the present case to discharge this onus, the exclusion under Section 43(3)(a) is not attracted, and both the impugned transactions are liable to be held preferential within the meaning of Section 43 of the Code.

Section 44: Orders of Adjudicating Authority in case of preferential transactions.

44. The Adjudicating Authority may, on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:

(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Adjudicating Authority deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value, to pay a sum to the liquidator or the resolution professional.

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

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

37. Section 44 of the Code empowers the Adjudicating Authority to pass appropriate orders for restoration of the benefit received pursuant to a preferential transaction. In terms of Section 44(d), the person who has received such benefit may be directed to pay the corresponding sum to the liquidator or resolution professional, as may be directed by the Adjudicating Authority.

38. Respondent No. 3, Mr. Manish Kumar Tripathi, and Respondent No. 4, M/s Adarsh Enterprises, are the respective beneficiaries of the preferential transactions of ₹2,00,000/- and ₹11,50,000/-. Neither of the said Respondents has filed any reply or placed any material on record to rebut the Applicant's case or to establish any circumstance disentitling the Applicant from the consequential relief under Section 44 of the Code. Accordingly, Respondent Nos. 3 and 4 are liable to pay the amounts received by them pursuant to the preferential transactions, as directed hereinafter.

Order:

39. In view of the foregoing discussion and analysis, this Adjudicating Authority holds and directs as follows:

    a) The payment of ₹2,00,000/- (Rupees Two Lakh only) made to Respondent No. 3, Mr. Manish Kumar Tripathi, is declared to be a preferential transaction within the meaning of Section 43 of the Code. The Respondent No. 3 along with Respondent No. 1 & Respondent No. 2, jointly and severally, are directed to pay the said amount to the Applicant, **C.A. Manjit Anjna, Assignee of the Not Readily Realizable Assets of the Corporate Debtor**.

    b) The payment of ₹11,50,000/- (Rupees Eleven Lakh Fifty Thousand only) made to Respondent No. 4, M/s Adarsh Enterprises, is declared to be a preferential transaction within the meaning of Section 43 of the Code. The Respondent No. 4 along with Respondent No. 1 & Respondent No. 2, are jointly and severally, directed to pay the said amount to the Applicant, **C.A. Manjit Anjna, Assignee of the Not Readily Realizable Assets of the Corporate Debtor**.

    c) The amounts so realised by the Applicant shall be dealt with in accordance with the terms of the Assignment Deed and the arrangement approved under Regulation 44A of the IBBI (Liquidation Process) Regulations, 2016, including remittance of 50% of the proceeds of realisation to Punjab National Bank, the Secured Financial Creditor, in the manner stipulated therein.

40. In view of the above, the Application bearing IA No. 4998/2022 is Allowed in the above terms.

41. A Copy of this order be sent to the parties in this Application and the concerned bank branch of PNB.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)