

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER**

**MS. KAVITA BHATNAGAR,
HON'BLE TECHNICAL MEMBER**

IA (IBC)No. 244/JPR/2026
In CP No. (IB)- 19/121/JPR/2024

IN THE MATTER OF:

STATE BANK OF INDIA

...Financial Creditor

Versus

MRS. KANAK BIYANI

...Personal Guarantor

IA (IBC)No. 244/JPR/2026:

MEMO OF PARTIES

SANDEEP MAHAJAN

Bankruptcy Trustee,
ARCK Resolution Professionals LLP,
409, Ansal Bhawan, 16 K.G. Marg
Cannaught Place, New Delhi.

...Applicant/ Bankruptcy Trustee

Versus

MRS. KANAK BIYANI

803, Block B Guman Eternity, Subhash
Nagar, Jaipur-302032.

...Respondent/ Personal Guarantor

**For the Bankruptcy Trustee :
For the Bankrupt / Respondent :**

**Himanshu Lilani, Adv.
Prateek Kushwaha, Adv.**

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Order Pronounced On: 12.10.2026

ORDER

Per: Ms. Kavita Bhatnagar, Technical Member

1. The instant Application bearing *IA(IBC)-244/JPR/2026* has been filed by *Mr. Sandeep Mahajan* ('Applicant'/ 'Bankruptcy Trustee') being the Bankruptcy Trustee of *Mrs. Kanak Biyani* ('Respondent'/ 'Personal Guarantor') of the Corporate Debtor namely, *Saga Automotive India Private Limited*, under Section 165 of the Insolvency and Bankruptcy Code, 2016 ('IBC') seeking the following reliefs: -

- a) *Pass an order declaring the transaction of handing over certain jewelry (192.49 gm) belonging to the Respondent/ Personal Guarantor to her son namely Shri Mridul Maheshwari as void;*
- b) *Pass an order requiring the said Jewelry to be vested with the Bankruptcy Trustee as a part of the estate of the Bankrupt; and*
- c) *Pass any such other orders as may be deemed fit and proper in the facts and circumstances of the instant case.*

2. The instant Application has been filed by the Applicant on the following set of facts: -

- 2.1. It is stated that this Adjudicating Authority, vide order dated 20.09.2023 passed in *IA(IBC) No. 77/JPR/2023* in *CP(IB)-50/95/JPR/2021*, accepted the report of the Resolution Professional filed under Section 112 of the Code recording that the Financial Creditor, *State Bank of India*, had rejected the repayment plan submitted by the

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Respondent/Personal Guarantor. Consequently, in terms of Section 114(1) of the Code, the repayment plan was rejected and liberty was granted to the creditors/debtors to file a Bankruptcy Petition against the Respondent/Personal Guarantor.

- 2.2. Subsequently, *State Bank of India* filed a Petition bearing *CP No. (IB)-19/121/JPR/2024* under Section 121(1)(b) of the Code for initiation of the Bankruptcy process against the Respondent/Personal Guarantor. This Adjudicating Authority vide order dated 26.05.2025 initiated Bankruptcy Proceedings, declared *Mrs. Kanak Biyani* as Bankrupt, and appointed *Mr. Sandeep Mahajan* as the Bankruptcy Trustee under Section 125 of the Code.
- 2.3. The Applicant states that vide email dated 12.03.2026, he intimated the Respondent that it had come to his knowledge that certain jewellery (192.49 gm) belonging to her was handed over to her son, *Shri Mridul Maheshwari*, who subsequently availed a gold loan of approximately Rs. 11,32,574/- from IIFL Finance Limited vide *Loan No. GL41454977* dated 25.08.2025 by pledging the said jewellery. The Applicant sought a written explanation, full details of the pledged jewellery, and immediate steps for its release and restoration to the Bankruptcy Estate.
- 2.4. The Respondent submitted her response vide email dated 25.03.2026, denying the contentions and justifying the transaction. It was submitted

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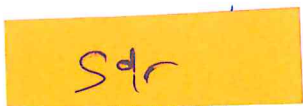
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that the jewellery did not form part of the Bankruptcy Estate as it was lawfully gifted to her son in the year 2023 to support his professional career, prior to the initiation of bankruptcy proceedings. It was contended that no legal embargo, moratorium, or restriction existed at the time of the transfer, and that the transaction was voluntary, bona fide, and completed in 2023. It was further asserted that since bankruptcy proceedings were initiated in 2024, the provisions of Sections 126, 128, and 184 of the Code were inapplicable to a transaction predating the commencement of bankruptcy.

2.5. The Applicant also issued an email dated 23.03.2026 to the Respondent's son, *Shri Mridul Maheshwari*, seeking clarification and a proposal for the immediate return of the jewellery. *Shri Mridul Maheshwari* replied vide email dated 25.03.2026 reiterating that the jewellery was lawfully gifted to him in 2023, constituted his self-owned asset acquired prior to the initiation of insolvency proceedings, and fell outside the scope of the Bankruptcy Estate. The Applicant has also issued a request to IIFL Finance Limited to hand over the pledged jewellery.

2.6. The Applicant contends that the application for Bankruptcy under Section 121(1)(b) of the Code was filed on 20.12.2023, following which notice was issued vide order dated 12.03.2024. Under Section

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165(2) of the Code, any transaction giving preference to an associate of the bankrupt entered into during the period of two years ending on the date of the application for bankruptcy falls within the ambit of preferential transactions.

- 2.7. The Applicant submits that since the gift/transfer of jewellery to her son (an associate) took place in the year 2023, falling squarely within the two-year look-back period preceding the filing date of 20.12.2023, the transaction is preferential in nature and executed to defeat the objectives of the Bankruptcy process. It is further submitted that under Sections 128 and 154 of the Code, the estate of the bankrupt vests in the Bankruptcy Trustee, and any unauthorized disposition or encumbrance of assets belonging to the Personal Guarantor is impermissible.
3. The Respondent filed a Reply to the instant Application and raised the following contentions:
- 3.1. The Respondent submits that the Application is patently non-maintainable as it has been filed in a mechanical manner without conducting a proper investigation into the affairs of the Bankrupt in terms of Section 149(a) of the Code. It is submitted that had the Bankruptcy Trustee performed his statutory duties and investigated the affairs, he would have ascertained that the subject jewellery (192.49

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gm) does not belong to the Bankrupt and is explicitly excluded from the Bankruptcy Estate under Section 155(2) of the Code as asset held in trust for third parties.

- 3.2. The Respondent contends that Section 165 of the Code cannot be invoked in the present case. Under the explicit statutory mandate of Section 165, a transaction can only be declared preferential if the preference is given to a creditor, surety, or guarantor for or on account of any debt owed by the bankrupt. The Respondent's son, *Shri Mridul Maheshwari*, is neither a creditor nor a surety or guarantor for any debt of the Bankrupt. Therefore, the essential legal ingredients of Section 165 are completely absent.
- 3.3. It is stated that during the Insolvency Resolution Process, Respondent filed her Statement of Affairs as on 30.05.2022 pursuant to Section 107(3)(b) read with Regulation 10 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, wherein she disclosed personal jewellery worth Rs. 1,50,000/- representing a *mangalsutra* used for religious marriage rituals. It is pointed out that Regulation 10 strictly mandates disclosure of assets owned solely by the Guarantor.
- 3.4. Subsequently, upon initiation of the Bankruptcy Process, the Respondent submitted her Statement of Financial Position in Form E

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under Section 129(2) read with Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantor to Corporate Debtors) Rules, 2019. Unlike Regulation 10, Rule 11 mandates disclosure of assets belonging to both the Bankrupt and immediate family members. Accordingly, in Form E, the Respondent disclosed assets valued at Rs. 15,00,000/- pertaining to her immediate family members.

- 3.5. Further, the Respondent states that she denies having ever acquired absolute ownership over the subject 192.49 grams of jewellery. It is explained that following the demise of her mother-in-law, *Late Smt. Chanda Biyani*, on 07.08.2017 after a battle with cancer, certain ancestral jewellery and items purchased for the future spouses of her four grandchildren were handed over to the Respondent as the sole surviving senior female member, to be held in trust in accordance with religious practices and family customs.
- 3.6. Additionally, a portion of the jewellery belongs to *Mrs. Sudha Maheshwari* and *Shri Naveen Maheshwari*, who are settled abroad and could not take all their personal ornaments due to customs restrictions, handing them over to the Respondent strictly for safe custody, preservation, and protection.



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- 3.7. The Respondent states that following the NPA classification, the family faced severe financial hardship, exacerbated by the COVID-19 pandemic, rendering them unable to afford basic living expenses or educational fees. To ensure the survival and education of her sons (*Mridul* and *Dhruv* Maheshwari), the Respondent, with the express consent of the rightful owners (*Mrs. Sudha Maheshwari* and other family members), pledged the gold to obtain loans. Initial gold loans were obtained from *IIFL Finance Limited* on 03.09.2020 (*Loan A/c No. GL15401335*) and renewed on 23.01.2021 (*Loan A/c No. GL1675241*).
- 3.8. The Respondent states that in October–November 2023, funds were again required for her son *Mridul Maheshwari*'s higher education. The Respondent handed over the jewellery to *Shri Mridul Maheshwari* solely to enable him to secure a student/education loan (*Loan A/c No. GL30266170*, later renewed vide *Loan A/c No. GL41454977* on 25.08.2025 for Rs. 11,32,574/-) with an explicit understanding that the gold would be returned upon repayment of the loan.
- 3.9. The Respondent relies on Section 79(14)(c) of the Code, which provides that unencumbered personal ornaments held in accordance with religious usage up to the prescribed value (Rs. 1,00,000/-) as well as non-partable assets of immediate family members are statutory excluded assets. Further, reliance is placed on Section 79(15)(d) of the

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Code, under which any debt incurred as a student loan constitutes an excluded debt, as the loan application with IIFL explicitly records the purpose as educational.

3.10. It is further submitted that after receiving the Statement of Financial Position on 17.06.2025, the Applicant/Bankruptcy Trustee himself reviewed Form E and categorically informed the creditors during the First and Second Meetings of Creditors that there were NIL assets available with the Bankrupt.

3.11. The Respondent submits that the Applicant has arbitrarily issued emails dated 12.03.2026 and proceeded with the present Application without verifying facts, seeking to wrongfully pull third-party and trust properties into the Bankruptcy Estate to satisfy creditor claims, which amounts to an abuse of the judicial process, and prays for the dismissal of the Application.

Analysis and Findings

4. We have heard the learned counsel for the parties and considered the pleadings, documents placed on record and the applicable provisions of the Insolvency and Bankruptcy Code, 2016. The controversy concerns jewellery weighing approximately 192.49 grams which, according to the Applicant/Bankruptcy Trustee, belonged to the Respondent/Bankrupt and



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was handed over by her to her son, Shri Mridul Maheshwari, during the period relevant under Section 165 of the Code. The Respondent disputes both her beneficial ownership over the jewellery and the characterisation of the transaction as preferential.

5. The questions which arise for consideration are: (i) whether the handing over of the subject jewellery to Shri Mridul Maheshwari satisfies the statutory requirements of a preference transaction under Section 165 of the Code; and (ii) what consequence, if any, follows from the rival claims concerning ownership of the jewellery and its alleged exclusion from the bankruptcy estate.
6. Section 165 has to be considered as a whole. Sub-section (2) provides a two-year relevant period where the transaction giving preference is entered into with an associate, whereas sub-section (3) prescribes a six-month period in other cases. However, the fact that a transaction falls within the relevant period does not by itself render it a preference. Under Section 165(8), a bankrupt is deemed to have entered into a transaction giving preference only where the beneficiary is a creditor, surety or guarantor for a debt of the bankrupt and the bankrupt does or suffers something to be done which has the effect of putting such person, in the event of bankruptcy, in a better position than he would otherwise have occupied.



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7. Further, Section 165(4) stipulates that the transaction giving preference under sub-section (2) or (3) should have caused the bankruptcy process to be triggered. Sub-section (6) requires that the bankrupt was influenced in giving the preference by a desire to produce the effect contemplated by Section 165(8)(b). Where the beneficiary is an associate, sub-section (7) raises a presumption in relation to such influence. The presumption under sub-section (7), however, operates only for the purpose of sub-section (6) and cannot dispense with the substantive requirements contained in sub-section (8).
8. In the present case, Shri Mridul Maheshwari, being the son of the Respondent, is undoubtedly an associate within the meaning of Section 79(2). Consequently, if a preference within the meaning of Section 165(8) were otherwise established, the applicable relevant period would be two years and the presumption contemplated by Section 165(7) would also become relevant. The anterior question, however, is whether the transaction itself answers the statutory description of a preference.
9. We find no material on record establishing that Shri Mridul Maheshwari was a creditor, surety or guarantor in respect of any debt owed by the Respondent/Bankrupt. Nor is it the Applicant's case that the jewellery was handed over to him towards satisfaction, repayment or security of any antecedent liability owed by the Respondent to him. On the Respondent's

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version, the jewellery was handed over to enable Shri Mridul Maheshwari to raise finance for his higher education, with an understanding that the jewellery would ultimately be returned. Even if the Applicant's contention that the jewellery beneficially belonged to the Respondent were assumed to be correct for the purposes of examining Section 165, the essential requirement of Section 165(8)(a) remains unfulfilled.

10. The mere fact that the beneficiary is an associate and that the transaction occurred within two years preceding the bankruptcy application cannot cure this fundamental deficiency. The relevant period under Section 165(2) identifies the time period of the avoidance provision; it does not enlarge the category of transactions which constitute a preference under Section 165(8).
11. We further find that the Applicant has not demonstrated the requirement contained in Section 165(4), namely that the impugned transaction caused the bankruptcy process to be triggered. The bankruptcy application was filed by State Bank of India following rejection of the repayment plan. No material has been shown to us establishing the requisite causal connection between the handing over of the jewellery to Shri Mridul Maheshwari and the triggering of the bankruptcy process.
12. In this context, reference may also be made to the decision of the NCLT, Hyderabad Bench-II in IA (IBC) No. 1963/2025 in CP (IB) No. 390/95/HDB/2020, decided on 17.04.2026. There, the impugned payment

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was made by the bankrupt to his daughter towards repayment of an antecedent financial accommodation and the beneficiary therefore stood in the position of a creditor. The Tribunal found that repayment to such associate placed her in a better position than other creditors and attracted Section 165. The factual foundation which existed in that case—namely the creditor-debtor relationship between the bankrupt and the beneficiary—is absent in the present case.

13. The principle that the relevant period cannot substitute the substantive ingredients of a preference also finds support, though in the context of Section 43 of the Code, from the judgment of the Hon'ble Supreme Court in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited*. The Hon'ble Supreme Court emphasised that the statutory ingredients constituting the preference and the requirement of the relevant time are cumulative. Section 43 operates in relation to corporate insolvency and is not identical to Section 165; nevertheless, the principle that the look-back period does not by itself create a preferential transaction is apposite while construing the corresponding structure of Section 165.
14. We now deal with the Respondent's contention that the jewellery did not beneficially belong to her. According to the Respondent, certain jewellery came into her custody following the demise of her mother-in-law and was held in accordance with family custom, while another portion belonged to

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other family members and was kept with her only for safe custody. Section 155(2)(b) expressly excludes from the bankruptcy estate property held by the bankrupt on trust for another person. However, the applicability of this exclusion necessarily depends upon proof that the property was in fact held in such capacity. A bare assertion of third-party ownership or entrustment cannot, by itself, conclusively determine beneficial title.

15. We also notice that the descriptions of the transaction are not entirely consistent. The earlier correspondence referred to in the pleadings described the jewellery as having been gifted to Shri Mridul Maheshwari in 2023, whereas the present reply proceeds substantially on the footing that the Respondent never possessed absolute beneficial ownership and that the jewellery was merely handed over for the limited purpose of enabling her son to obtain finance, subject to its return. An absolute gift and an entrustment for a limited purpose are legally distinct. This inconsistency prevents us from accepting, merely on the basis of the Respondent's assertion, that the entire jewellery necessarily constituted third-party property held by her in trust.
16. At the same time, this evidentiary weakness in the Respondent's explanation cannot supply an ingredient which Section 165 itself requires the Applicant to establish. Even if the jewellery were assumed to be the Respondent's property, its transfer to her son would not constitute a preference under

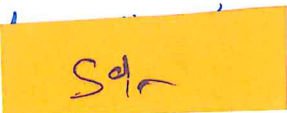
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Section 165 unless the requirements of that provision, particularly sub-sections (4) and (8), are satisfied.

17. The Respondent's reliance upon Section 79(14)(c) also requires qualification. The provision relates only to unencumbered personal ornaments of the debtor or immediate family which cannot be parted with according to religious usage and only up to the prescribed value, which under the applicable Rules is ₹1,00,000/-. Therefore, the entire jewellery weighing 192.49 grams cannot be excluded merely on the assertion of religious or family usage. Further, to the extent that the subject jewellery stands pledged with IIFL Finance Limited, the requirement that the ornaments be "unencumbered" assumes significance. The further contention that the jewellery would stand excluded merely because it was allegedly pledged for raising an education loan also does not arise for determination in the present application, which is being decided on the requirements of Section 165 of the Code.
18. We also find that the disclosure of assets pertaining to immediate family members in Form E cannot by itself amount to an admission that those assets beneficially belonged to the Respondent. Form E itself requires disclosure of assets of the bankrupt and the immediate family, including jewellery, irrespective of whether such assets are claimed to be excluded assets. The disclosure is therefore relevant for investigation but is not conclusive of title.

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19. Equally, the fact that the Bankruptcy Trustee had earlier informed the creditors, on the basis of the information then available, that there were NIL assets cannot preclude the Trustee from investigating property subsequently coming to his knowledge. The bankruptcy estate includes property belonging to or vested in the bankrupt at the bankruptcy commencement date, subject to the exclusions contained in Section 155(2).
20. We are therefore satisfied that the Applicant has failed to establish that the handing over of the subject jewellery to Shri Mridul Maheshwari constitutes a preference transaction within the meaning of Section 165. In particular, it has not been shown that Shri Mridul Maheshwari was a creditor, surety or guarantor for any debt of the Respondent/Bankrupt as required by Section 165(8)(a), nor has the requirement contained in Section 165(4) been established. The fact that he is an associate and that the transaction occurred within the two-year period cannot, by themselves, cure these deficiencies.

Conclusion

21. We clarify, however, that the rejection of the Applicant's case under Section 165 does not amount to a declaration that the subject jewellery necessarily belongs to Shri Mridul Maheshwari or to the other family members referred to by the Respondent. Nor do we finally adjudicate in these proceedings whether any particular portion thereof constitutes property held on trust within Section 155(2)(b), or an excluded asset within Section 79(14). Those


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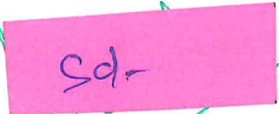
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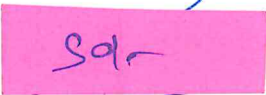




questions depend upon proof of title, beneficial ownership and satisfaction of the statutory requirements applicable thereto.

22. Accordingly, **IA (IBC) No. 244/JPR/2026 is dismissed** insofar as it seeks a declaration that the handing over of jewellery weighing 192.49 grams to Shri Mridul Maheshwari constitutes a preferential transaction under Section 165 and seeks consequential vesting of the said jewellery on that basis.


REETA KOHLI
JUDICIAL MEMBER


KAVITA BHATNAGAR
TECHNICAL MEMBER

RR/LRA