

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

12. IA/2595/2022 C.P. (IB)/4309(MB)2018

IN THE MATTER OF

Grv Steels Private Limited
Vs
Nirmangold Alloy Private Limited

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 16.10.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent: Adv. Manoj Mishra I/b Mishra Legals for Respondents 1 2,
3, 4, 5 6, 8 to 10)(VC)

ORDER

IA/2595/2022: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

//Rahul//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V**

IA (IBC) No. 2595 of 2022

IN

CP (IB) No. 4309 of 2018

IN THE MATTER OF

Harish Kant Kaushik

*Resolution Professional of Nirmangold
Alloys Pvt. Ltd.*

Having office at: F-1904, Sapphire
Regency Tower, Kavesar, Ghodbunder
Road, Thane (West) MH-400615

... Applicant

Versus

Mr. Bhushan Pundlikrao Patil

Director of Nirmangold Alloys Pvt. Ltd.

26 Jay Nagar, New Osman Pura, Near
Dashmesh Nagar, Opp Vishwaroop Hall
Osmanpura, Aurangabad-Maharashtra -
431005,

... Respondent No. 1

Mr. Nandkishor Nanasaheb Shind

Director of Nirmangold Alloys Pvt. Ltd.

7, Jabinda Estate, Omkar Builders,
Devanagri, Aurangabad, Maharashtra,
India 431001

... Respondents No. 2

Mrs. Anita Bhushan Patil

26 Jay Nagar, New Osman Pura, Near
Dashmesh Nagar, Opp Vishwaroop Hall
Osmanpura, Aurangabad-Maharashtra -
431005

... Respondent No. 3

M/s Shekhar Enterprise

26 Jay Nagar, New Osman Pura, Near
Dashmesh Nagar, Opp Vishwaroop Hall
Osmanpura, Aurangabad-Maharashtra –
431005

... Respondent No. 4

Mr. Shekhar Bhushan Patil

Plot No- 26, Jaynagar, New Osmanpura,
Aurangabad, Maharashtra, India 431001

... Respondent No. 5

Ms Shravani Bhushan Patil

26 Jay Nagar, New Osman Pura, Near
Dashmesh Nagar, Opp Vishwaroop Hall
Osmanpura, Aurangabad-Maharashtra –
431005

... Respondent No. 6

Nirmangold Plasttech Private Limite

Gut No. 17, Sultanpur Shivar, Near
Jikthan Phata, Aurangabad-Nagar Road
Aurangabad - 431133, Maharashtra

... Respondent No. 7

Solitaire Industries LLP

PL N 26, First Floor, Jay Ngr Nr
Dashmeshnagar, Osmanpura Aurangabad,
431005

... Respondent No. 8

**Tuljai Industries Products Private
Limited**

Flat No 402 - F, Marvel Ritz, Tupe Patil
Road, Opp. DSK Toyota, Hadapsar Pune
411028

... Respondent No. 9

Aurangabad Foods Industries

K-32, MIDC Waluj, Waluj, Aurangabad,
Maharashtra

... Respondent No. 10

IN THE ORIGINAL MATTER OF

GRV Steels Pvt. Ltd

...Financial Creditor

Versus

NirmanGold Alloys Private Limited

... Corporate Debtor

Order Delivered on: 16.10.2026

Coram:

Sh. Vinay Goel

Member (Judicial)

Sh. Charanjeet Singh Gulati

Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Aniruth Purushothaman a/w. Adv. Anand Shaw
(PH)

For the Respondent: Adv. Manoj Mishra (PH) (R1, 2, 3, 4, 5 6, 8 to 10)

ORDER

IA (IBC) No. 2595 of 2022

1. The present Interlocutory Application dated 04.09.2022 (refiled on 06.09.2022) has been filed by Harish Kant Kaushik, Resolution Professional of Nirmangold Alloys Pvt. Ltd. (**‘Corporate Debtor’**), under Section 43 and 44 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**‘IBC/the Code’**) with the following prayers:

A. *Declare the transaction(s) mentioned at Point V (A TO D) of this Application as Preferential Transactions as described and laid down in Section 43 of the Insolvency and Bankruptcy Code, 2016, and order that such transaction be reversed,*

and (i) an amount of Rs.3,55,63,353/- (Rupees Three Crore Fifty-Five Lakhs Sixty-Three Thousand Three Hundred and Fifty-Three) be paid by the Respondent No.7 the account of the Corporate Debtor

and (ii) an amount of Rs. 87,25,174/- (Eighty-Seven Lakhs Twenty-Five Thousand One Hundred and Seventy-Four) be paid by the Respondent No.3 the account of the Corporate Debtor,

and (iii) an amount of Rs.1,98,18,635/- (Rupees One Crore Ninety-Eight Lakhs Eighteen Thousand Six Hundred and

Thirty-Five Only) be paid by the Respondent No.1 the account of the Corporate Debtor,

and (iv) an amount of Rs.77,11,806/- (Rupees Seventy Seven Lakhs Eleven Thousand Eight Hundred and Six) be paid by the Respondent No.9 the account of the Corporate Debtor,

- B. Pass necessary directions that such transaction as mentioned in point (V) (A-D) of the present Application be reversed and the cumulative amount of Rs. 7,18,18,968/- (Rupees Seven Crore Eighteen Lakhs Eighteen Thousand Nine Hundred and Sixty-Eight Only) be paid by the Respondent Nos.1, 3, 9 and 7 as tabulated and categorized by the transaction Auditor, the in to the account of Corporate Debtor as per Section 49 of the IBC 2016;*
- C. Pass ad-interim and interim reliefs in terms of Prayer Clause A and B;*
- D. Pass any other order/directions which this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*

2. Particulars of Respondents is as given below:

- I. Respondent No. 1 is the Promoter, majority equity holder and Director (Power suspended) member of the Board of directors of the Corporate Debtor.
- II. Respondent No. 2 is the additional Director (Power suspended) and the member of the board of director of the Corporate Debtor and Respondent No.
- III. Respondent No. 3 is the proprietor of the Respondent No. 4 and the wife of the Respondent No. 1.
- IV. Respondent No. 4 is the Proprietor Company and Respondent No. 4 is the Proprietor of Respondent No. 3 and wife of the Respondent No. 1.

- V. Respondent No. 5 is the director and partner and hold more than 2% share Capital of the Respondent No. 9 and Respondent No. 10 and is the Son of the Respondent No. 1.
- VI. Respondent No. 6 is the is the partner and hold more than 2% of the share capital in Respondent No. 10 and Respondent No. 6 is the daughter of the Respondent No. 1.
- VII. Respondent No. 7 is the private limited company and the Respondent No. 2 and Respondent No. 3 are the Director and hold more than 2% of the share capital Respondent No. 3 is the wife of the Respondent No. 1.
- VIII. The Respondent No. 8 is the Partnership Firm and Respondent No. 1 is the Designated Partner and Holding more than 2% of the Capital.
- IX. Respondent No. 9 is the Private limited Company and Respondent No.3 and Respondent No. 5 are the Director.
- X. The Respondent No. 10 is the Partnership Firm and Respondent No. 5 and Respondent No. 6 are the Partners in the Respondent No. 10.

Brief facts as per the Application:

- 3. The Corporate Insolvency Resolution Process (**‘CIRP’**) of Nirmangold Alloys Pvt. Ltd. (**‘Corporate Debtor’**) was commenced on 22.11.2021 and Mr. Prakash Dattatraya Naringreka was appointed as the Interim Resolution Professional (**‘IRP’**). It is submitted that in 2nd Committee of Creditors (**‘CoC’**) meeting dated 22.02.2022, M/s Bhushan Khot & Co., Chartered Accountant (**“the Transaction Auditor”**) were awarded the assignment for conducting the Transaction/Forensic Audit as approved by the CoC members, and the final copy of the Transaction Audit Report (**‘TAR’**) dated

17.06.2022 was submitted to the Applicant. Following Transactions were thus identified for action:

A. Preferential Transactions-Payment/ Advancing Funds to related party prior to Secured Lender- Transactions of Respondent No.1 with Respondent No.7

- i. The Applicant submits that, as per the Transaction Audit Report, the Corporate Debtor's account was classified as NPA on 29.10.2019, with a default of Rs. 28,60,00,000/-. As on 31.03.2020, an amount of Rs. 2,83,39,205/- was receivable from Respondent No. 7, including Rs. 72,24,148/- paid during FY 2019-20. The said transactions were undertaken in favour of Respondent No. 7, a related party, without the consent or intimation of Abhyudaya Co-operative Bank Limited ("**the said Bank**"), in violation of the applicable sanction terms.
- ii. The Applicant submits that the aforesaid transactions, having been undertaken during the look-back period under Section 43(4) of the Code, in favour of a related party and outside the ordinary course of business, resulted in Respondent No. 7 being placed in a beneficial position over the other creditors and stakeholders and, accordingly, constitute preferential transactions under Section 43 of the Code.

B. Repayment of Unsecured Loans to related Parties – in respect of Respondent No. 3

- i. The Applicant submits that, against an outstanding amount of Rs. 1,04,27,830/- as on 01.04.2020, the Corporate Debtor repaid an aggregate amount of Rs. 87,25,174/- to Respondent

No. 3 during FY 2020-21 and up to 22.11.2021, as detailed below:

Date	Particular	Amount (Rs.)
11.12.2020	Paid through Shivaji Nagar Bank Current A/c 100710046000540	1,00,000/-
12.01.2021	Amount Paid by R S Traders in Shekhar Enterprises (Respondent No. 4)	2,75,174/-
10.06.2021	Paid through Canara Bank (A/c 3916201000582)	20,00,000/-
24.06.2021	Paid Through Canara Bank (A/c 3916201000582)	3,50,000/-
27.09.2021	Paid through Shivaji Nagar Bank Current A/c 100710046000540	30,00,000/-
	Total	87,25,174/-

- ii. It is submitted that, under the sanction terms of the Petitioning Creditor, the Corporate Debtor was prohibited from liquidating unsecured loans or reducing its own/quasi capital without prior written consent. The aforesaid repayments to Respondent No. 3 were made without such consent and during the relevant look-back period, thereby conferring a preferential benefit upon the said Respondent.

C. Repayment of Unsecured Loans to Director and shareholder – in respect of Respondent No. 1

- i. The Applicant submits that, against an outstanding amount of Rs. 3,75,50,689/- as on 31.03.2020, the Corporate Debtor repaid an aggregate amount of Rs. 1,98,18,635/- to Respondent No. 1 up to 22.11.2021, as follows:

Date	Particular	Amount (Rs.)
01.10.2020	Transfer of Debit Balance of Solitaire Industries LLP	1,33,04,441/-
01.10.2020	Transfer of Debit Balance of Tuljai Industries	37,11,806/-
01.10.2020	Transfer of motor car (Skoda Rapid at WDV)	1,95,859/-

01.10.2020	Transfer of motor bike (Hero Honda at WDV)	6,529/-
01.04.2020	Transfer of Debit Balance of Ravikumar Kombade	10,00,000/-
30.05.2020	Transfer of Debit Balance of RS Traders	16,00,000
	Total	1,98,18,635/-

- ii. The Applicant submits that the aforesaid transactions were undertaken without the written consent or intimation of Abhyudaya Co-operative Bank Limited, in violation of the sanction terms prohibiting liquidation of unsecured loans and reduction of own/quasi capital.
- iii. It is further submitted that the Corporate Debtor had, since FY 2013-14, recorded in its books a personal car and the loan against the Skoda Rapid purchased in the name of Respondent No. 1, and had made payments towards the principal and interest of the said loan between FY 2016-17 and 28.12.2018. The related party transactions were not disclosed in the audited financial statements or reported under Clause 23 of Form 3CD. The subsequent transfer of the said car by the Corporate Debtor to Respondent No. 1 on 01.10.2020 further evidences the preferential nature of the transaction.
- iv. Accordingly, the aforesaid transactions, having been undertaken in favour of a related party during the relevant look-back period and outside the ordinary course of business, constitute preferential transactions under Section 43 of the Code.

D. Repayment of Unsecured Loans to related parties:

- i. The Applicant submits that, as on 31.03.2020, an amount of Rs. 37,11,806/- was outstanding as receivable from

Respondent No. 9. The Transaction Auditor further identified a payment of Rs. 40,00,000/- made by the Corporate Debtor to Respondent No. 9 on 10.04.2019 from the Creditor Bank's CC Account-15 maintained with Abhyudaya Co-operative Bank Limited.

- ii. The said payment was made without the consent or intimation of the Bank and in violation of the sanction terms, which prohibited utilisation of the sanctioned funds for purposes other than those for which they were sanctioned. The payment, being made to a related party during the relevant period and outside the ordinary course of business, conferred a beneficial position upon Respondent No. 9 and is, therefore, preferential under Section 43 of the Code.
4. The Applicant submits that the aforesaid transactions adversely affected the business and profitability of the Corporate Debtor, substantially diminishing its net worth and causing grave prejudice to its CIRP. The directors of the Corporate Debtor also failed in their fiduciary duties by diverting funds of the Corporate Debtor to the detriment of its other creditors.
5. It is submitted that payments aggregating to Rs. 7,18,18,968/- were made to Related Parties, namely Respondents No. 1, 3, 7 and 9, during the look-back period, which were not in the ordinary course of business and constitute preferential transactions under Section 43 of the Code. Accordingly, the said transactions are liable to be reversed in the interest of the Corporate Debtor. The Applicant relied on judgement of Hon'ble Supreme Court in case of *f Anuj Jain, Interim Resolution Professional for*

Jaypee Infratech Limited Versus Axis Bank Limited Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) ibclaw.in 06 SC.

Affidavit in Reply, in brief:

6. Respondent No. 1 has filed the Affidavit in Reply in his individual Capacity and as per authority received by him from Respondent No. 2 to 10.
7. It is submitted that the Corporate Debtor is private limited by shares, duly incorporated on 30.08.2010 (CIN: U28112MH2010PTC207250), engaged in manufacturing of dish antennas, electrical junction boxes, AC boxes, DB boxes, Ironing Boards and cloth drying stands.
8. The Respondent No. 1 states that the financial creditor has been claiming that the company's account was classified as a Non-Performing Asset in the month of November, 2019 however, till date no documents whatsoever have been furnished by the financial creditor evidencing the default. It is further submitted that Financial Creditor has never issued any Demand Notice U/s. 13(2) of SARFAESI Act, 2002 to the Corporate Debtor.
9. The Corporate Debtor was admitted into CIRP on 11.11.2019. Pursuant thereto, CoC was formed consisting of Abhyuday Cooperative Bank Ltd. as the sole member. CoC approved the withdrawal of the CIRP application at that time on 10.08.2020. If so, it is unclear why the Financial Creditor subsequently voted in favour of withdrawal of the CIRP, despite having itself initiated and secured admission of the insolvency proceedings against the Corporate Debtor.
10. It is submitted that during Covid 19 period, the area of Aurangabad was marked in the red zone and there was no permission to operate the company during the raging pandemic but simultaneously salary, security, electricity

needed to be paid, owing to which the liability of the Company kept soaring without any matching revenue during the time of covid which stretched for almost two years. The Respondents submits that Post Covid 19, raw material (Steel) prices had sky rocketed (almost doubled), in view of which the company having order in hand could not supply or satisfy the Purchase. These were purely because of no funds being available with the Corporate Debtor.

11. It is submitted that, in respect of transactions concerning Respondent No. 3, Mrs. Anita Bhushan Patil, the Bank sanctioned a loan of Rs. 5 Crores by way of WCTL, subject to the condition that a specified amount be immediately repaid. To comply with this requirement, the Corporate Debtor transferred funds to Respondent No. 8, who in turn transferred the same to Respondent No. 4, from where the funds were transferred back to the Corporate Debtor for repayment to the Bank. The transactions were as follows:

Sr. No.	Particulars	Amount paid to CD (Rs.)
1.	Transfer from CD to Respondent No. 8 Transfer from Respondent No. 8 to 4 Transfer from Respondent No. 4 to Corporate Debtor (for repayment to bank)	10,40,000/-
2.	Transfer from CD to Respondent No. 8 Transfer from Respondent No. 8 to 4 Transfer from Respondent No. 4 to Corporate Debtor (for repayment to bank)	79,60,000/-
3.	Transfer from CD to Respondent No. 8 Transfer from Respondent No. 8 to 4 Transfer from Respondent No. 4 to Corporate Debtor (for repayment to bank)	17,00,000/-
	Total	1,07,00,000/-

12. The Corporate Debtor also purchased material from Respondent No. 4 in the ordinary course of business. Accordingly, payments towards such legitimate business dues were made as follows:

Date	Particulars	Amount (Rs.)
11.12.2020	Paid through Shivaji Nagar Bank	1,00,000/-
10.06.2021	Paid through Canara Bank	20,00,000/-
24.06.2021	Paid through Canara Bank	3,50,000/-
27.09.2021	Paid through Shivaji Nagar Bank	30,00,000/-
	Total	54,50,000/-

13. In addition, towards dues arising in the ordinary course of business, the Corporate Debtor, through R.S. Traders, paid Rs. 32,75,174/- to Respondent No. 4 on 12.01.2021. The Respondents submit that the payments involving Respondent Nos. 3 and 4 were bona fide transactions undertaken towards discharge of the Corporate Debtor's liabilities. The transactions between the Corporate Debtor and Respondent No. 4 were undertaken in the ordinary course of business and are accordingly covered by the exception under Section 43(3) of the Code. Significantly, the Corporate Debtor continues to owe approximately Rs. 18 lakhs to Respondent No. 4.
14. With respect to Respondent No. 1, it is submitted that the Corporate Debtor had substantial outstanding dues towards Respondent No. 1, amounting to Rs. 2,38,46,796/- as on the date of admission. The outstanding balance arose from the financial assistance extended by Respondent No. 1 to the Corporate Debtor from time to time as and when funds were required. The Corporate Debtor had outstanding liabilities towards Solitaire Industries LLP of Rs. 1,33,04,441/-, Tuljai Industrial Products Pvt. Ltd. of Rs. 37,11,806/-, Ravikumar M. Kombde of Rs. 10,00,000/-, and R.S. Traders of Rs. 16,00,000/-. Pursuant to the understanding between the parties, the account of Respondent No. 1 was debited and the respective accounts of these creditors were credited.
15. It is submitted that these were accounting adjustments whereby the Corporate Debtor's liabilities towards the aforesaid entities were

discharged against amounts receivable from Respondent No. 1. Consequently, the amount payable to Respondent No. 1 reduced from Rs. 4,36,65,431/- to Rs. 2,38,46,796/-. Since these were journal entries involving reclassification and adjustment of accounts, without any corresponding payment by the Corporate Debtor to Respondent No. 1, they cannot be construed as repayment of an unsecured loan.

16. The Applicant has produced no evidence demonstrating that the Corporate Debtor made any payment of Rs. 1,98,18,635/- to Respondent No. 1. Further, the Skoda Rapid car is owned by Respondent No. 1. The vehicle was permitted to be used for the Corporate Debtor's business, against which the Corporate Debtor paid the applicable instalments. Upon cessation of such use, the vehicle was returned to Respondent No. 1, being its lawful owner. The Applicant has, therefore, proceeded on an incorrect and incomplete interpretation of the transactions. Respondent No. 1, on the contrary, consistently provided financial support to the Corporate Debtor to the extent possible to facilitate its operations.

17. With respect to Respondent No. 9, Rs. 40,00,000/- was transferred by the Corporate Debtor to Respondent No. 9 pursuant to an arrangement under which the funds were ultimately utilised for repayment to the Bank through Respondent No. 7, as required for regularisation of the Bank account. The movement of funds was as follows:

Date	Particulars	Amounts (Rs.)
10.04.2019	Payment from Corporate Debtor to Respondent No. 9	40,00,000/-
10.04.2019	Respondent No. 9 paid to Respondent No. 4 on an immediate basis	40,00,000/-
10.04.2019	Respondent No. 4 paid to Bank through Respondent No. 7 for regularising the account	36,00,000/-
11.04.2019	Payment of labour for the purpose of Corporate Debtor from Respondent No. 4	3,54,325/-

18. The Transaction Auditor and the Applicant have failed to appreciate that Rs. 36,00,000/- was ultimately utilised towards repayment to the Financial Creditor, pursuant to the Bank's requirement that the funds be routed through Respondent No. 7. The relevant movement was:

Date	Particulars	Amounts (Rs.)
10.04.2019	Payment from Respondent No. 9 (Karur Vysya Bank) to Respondent No. 4 (Cosmos Bank)	36,00,000/-
10.04.2019	Payment from Respondent No. 4 (Cosmos Bank) to Respondent No. 7 (Abhyuday Sahkari Bank) Ch. No. 20422	36,00,000/-
10.04.2019	Respondent No. 4 paid to Bank through Respondent No. 7 for regularising the account	36,00,000/-
11.04.2019	Payment from Respondent No. 7 to Abhyudav Sahakari Bank LTD. to repay the loan	36,00,000/-

19. It is further submitted that the remaining Rs. 4,00,000/- was transferred to Respondent No. 1, who had settled the dues of the Operational Creditor to facilitate the Corporate Debtor's exit from the Corporate Insolvency Resolution Process. The relevant transactions were:

Date	Particulars	Amounts (Rs.)
16.03.2019	Payment from Respondent No. 1 (HDFC A/c) to Chaitanya Industries 2 (State Bank of India)	5,00,000/-
10.04.2019	Payment from Respondent No. 9 (Karur Vyasya Bank) to Respondent No. 1 (HDFC Bank)	4,00,000/-
11.04.2019	Payment of labour from Respondent No. 4 for Corporate Debto	3,54,325/-

20. It is submitted that despite the Bank's non-cooperation, Respondent No. 1 made efforts to secure alternative financial assistance for the Corporate Debtor. In this regard, an MoU was executed with Saimaa Technologies LLP; however, the proposed arrangement could not materialise owing to the Bank's non-cooperation.

21. It is further submitted that the Respondent No. 1 had also taken Rs. 80 lacs from time to time from one of his related company (Respondent No. 10) in order to repay the liabilities of the Corporate Debtor, staff, workers etc.
22. The Respondent submits that the Transaction-Based Audit Report fails to consider the transactions in their entirety and commercial context. The Respondent No. 1 doubts the integrity of the forensic auditor as it completed the audit in a mechanical manner. The said report contains material irregularities and factual inaccuracies rendering the report unreliable and contrary to the true factual position.
23. During the lockdown and adverse business conditions, the Respondents infused substantial funds into the Corporate Debtor, as evidenced by the outstanding amount of approximately Rs. 2,38,46,798/- receivable by Respondent No. 1. The transactions were undertaken in the ordinary course of business, particularly when several vendors had stopped supplying material due to non-payment of their dues and had effectively restricted the Corporate Debtor's accounts. Consequently, to ensure continuity of operations, materials were procured through other entities and payments were routed through such entities. These arrangements were necessitated by the prevailing commercial circumstances and were not intended to confer any undue benefit.

Analysis and Findings

24. We have heard the Ld. Counsels for the parties and perused the documents placed on record.
25. When the matter came up for hearing on 05.10.2026, the following order was passed:

“IA/2595/2022: - This IA has been filed by the RP against 10 Respondents. Learned counsel for the Applicant submits that Respondent no. 7 is undergoing CIRP and accordingly, he does not press any relief against Respondent no. 7 and submits that the name of Respondent no. 7 be dropped from the array of parties. In view of such submission on behalf of learned counsel for the Applicant, the name of the Respondent no. 7 is dropped from the array of parties. Learned counsel for the Applicant submits that he is not pressing on the transaction note at Point V (A) on page 18, description of which has been given on page 19, 20 and 21. The Applicant seeks liberty to take appropriate action.

2. Heard, learned counsel for the Applicant and Respondent nos. 1 to 10 except for Respondent no. 7. A combined reply has been filed for all the Respondents. Accordingly, matter is Reserved for orders.”

26. Accordingly, the Application is now to be decided against the remaining Respondents (Respondent Nos. 1 to 6 and 8 to 10), and the transaction at Point V(A) of the Application is not being considered.

27. Through the present Interlocutory Application, the Applicant seeks a declaration that the transactions undertaken of Rs. 3,62,55,615/- and paid to Respondent Nos. 1, 3 and 9 are Preferential transactions under Section 43 of the Code and that consequential directions be passed against Respondent Nos. 1, 3 and 9, to reverse the transaction of amount Rs. 3,62,55,615/- to the account of Corporate Debtor.

28. *Per Contra*, the Respondents contends that the transactions in respect of Respondent No. 1, 3 and 9 by the Corporate Debtor were done in normal course of business therefore it is placed in the exempted category as specified under section 43(3) of Code.

29. The Respondents further contend that they were not privy to the appointment of M/s. Bhushan Khot & Co. and is therefore unaware of the

manner and timing of the audit. In this regard, it is pertinent to note that the appointment of the Transaction Auditor was approved at the 2nd CoC meeting held on 22.02.2022, which Respondent No. 1 attended via Zoom, as evidenced by the attendance register. The minutes further record that the Transaction audit report (**‘the said Report’**) would be shared with the directors for their comments and justifications.

30. Additionally, upon perusal of the said Report, it is noted that documents and supporting records were provided during the audit, observations were discussed with the promoters/management and the Applicant, and replies of the suspended directors were duly recorded against the auditor’s remarks. Respondents No. 3 to 10, were neither in the management of the Corporate Debtor nor its promoters, but merely related parties; hence, their observations were not required to be sought. Therefore, the contention that the Respondents lacked notice of the appointment or opportunity to participate in the audit is untenable.
31. As regards to the contention of the Respondents that the said report fails to consider the transactions in their entirety and in their commercial context, that the Transaction Auditor completed the audit in a mechanical manner, and that the report contains material irregularities and factual inaccuracies which render it unreliable and contrary to the true factual position, it is noted that the said Report is advisory in nature based on which the Resolution Professional may form its opinion under section 43(1) of the Code. In the present case, the Applicant, after considering the Report together with the facts and circumstances, formed the opinion as contemplated by Regulation 35A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that the Corporate Debtor had entered into Preferential Transaction. The contention of

Respondent Nos. 1 to 6 and 8 to 10 that the Application rests on an unreliable report is therefore untenable.

32. Before proceeding further on the matter, we would refer to Section 43 of the code relating to preferential transaction which is reproduced herein below for the easy reference:

“Section 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 transfer —*
 - 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 starting from] two years preceding the [initiation date and ending on the insolvency commencement date]; or*
 - b. a preference is given to a person other than a related party during the [period starting from] one year preceding the [initiation date and ending on the insolvency commencement date].”*

33. Upon a plain reading of Section 43 of the Code it is clear that a transaction is deemed as a preferential transaction where the conditions prescribed under Section 43(2) are satisfied i.e., the transfer was made for the benefit of a creditor towards an antecedent liability and had the effect of placing such creditor in a more beneficial position than under Section 53. However, Section 43(3)(a) expressly excludes transfers made in the ordinary course

of the business or financial affairs of the Corporate Debtor or the transferee. Section 43(4) of the Code states that a preference is deemed to have been given at the relevant time where the transaction is with a related party during the period of two years preceding the relevant insolvency period, or with a person other than a related party during the period of one year preceding such period.

34. As regards the fact of transaction is actually taken place or not, there is no dispute. Respondents have contended that the transactions referred to in the application were carried out in the ordinary course of business and cannot be treated as a preferential transaction. Therefore, the question arises whether the transaction with Respondent No. 1, 3 and 9 were undertaken in the ordinary course of business or not.
35. The term ordinary course of business has not been defined under the Code. According to the Black's Law Dictionary meaning of ordinary course of business is the normal routine in managing a trade or business. It is noted that the Guidance Note of related party transaction issued by Institute of Company Secretaries, which is also referred to by the Hon'ble NCLAT in the Judgement of ***Sahyog Infrastructure Private Limited and Ors. Vs. Anuj Agarwal*** (2023) ibclaw.in 311 NCLAT wherein the Hon'ble NCLAT held that the guidance note has persuasive value though it cannot be read in place of statutory provisions. The guidance notice could be correct in attempting the definition of ordinary course of business.

Guidance Note of related party transaction issued by Institute of Company Secretaries

“In common parlance, ‘ordinary course of business’ would include transactions which are entered into in the normal course of business pursuant to or for promoting or in furtherance of the company’s business objectives, as per the

charter documents of the company. For example, in case of a manufacturing company, purchase and sale of goods, taking premises on lease/rent, construction of factory, employing workers, etc. will be considered as ordinary course of business. To carry on a business, several activities are carried on by the company; all such activities will be considered to be in the ordinary course of business.

However, if a manufacturing company, for the purpose of diversification, decides to acquire another company which is engaged in a completely unrelated business, this activity will not be considered to be in the ordinary course of business.

To decide whether an activity which is carried on by the business is in the ordinary course of business, the following factors may be considered:

- a. Whether the activity is covered in the objects clause of the Memorandum of Association*
- b. Whether the activity is in furtherance of the business*
- c. Whether the activity is normal or otherwise routine for the particular business (i.e. activities like advertising, staff training etc).*
- d. Whether the activity is repetitive/frequent*
- e. Whether the income, if any, earned from such activity/transaction is treated as business income in the company's books of account*
- f. Whether the transactions are common in the particular industry*
- g. Whether there is any historical practice to conduct such activities*
- h. The financial scale of the activity with regard to the operations of the business*
- i. Revenue generated by the activity*
- j. Resources committed to the activity*

The above list is not exhaustive. Individually, none of the above parameters can amounts to the transactions being in the ordinary course of business.

In other words, any activity which is routine and in accordance with the usual customs and practices of a particular business

can be described to be 'in the ordinary course of businesses. For a company, the interpretation needs to be contextual, taking into account the nature of the activity and its relevance in the overall context of the company's business'.

36. The Respondents have though contended that the impugned transactions were carried out in the ordinary course of business. In terms of Section 43(2) of the Code a transaction is deemed to be preferential transaction and for the exception provisions of 43(3) to operate it needs to be demonstrated that the transaction/transfer has taken place in ordinary course of business and such fact specifically needs to be established and it just cannot be assumed.
37. As regards the impugned transaction of Rs. 87,25,174/- by the Corporate Debtor with Respondent No. 4, the Respondents contend that they were made to clear dues arising in the ordinary course of business from the Corporate Debtor's purchase of material from Respondent No. 4. It is admitted that Respondent No. 3 is the proprietor of Respondent No. 4 and that the payments were made to clear dues and it is admitted by the Respondents that Corporate Debtor still owes amount of Rs. 18 Lakhs to the Respondent No. 4. This is an admission that the Corporate Debtor owed Respondent No. 3 a liability before the payments, which satisfies the antecedent-debt requirement of Section 43(2)(a) of the Code.
38. Upon perusal of the documents placed on record, it is seen that the Corporate Debtor's ledger of Respondent No. 4 records the five payments as Rs. 1,00,000/- on 11.12.2020, Rs. 32,75,174/- on 12.01.2021, Rs. 20,00,000/- on 10.06.2021, Rs. 3,50,000/- on 24.06.2021 and Rs. 30,00,000/- on 27.09.2021, which aggregates to Rs. 87,25,174/-. We note that the said transactions fall within the look-back period prescribed under Section 43(4) of the Code. Further, the burden of establishing the exception

under Section 43(3)(a) of the Code lies on the Respondents. In the present case, the Respondents have not produced invoices, purchase orders, delivery challans or any other document showing that material was supplied and the payments were made for the continuing purchase of material or that the payments were made in the ordinary course of the business of the Corporate Debtor.

39. The Respondents contend that the impugned entries of Rs. 1,33,04,441/-, Rs. 37,11,806/-, Rs. 10,00,000/- and Rs. 16,00,000/- were book adjustments against amounts payable by the Corporate Debtor to Respondent No. 1, and not repayments of unsecured loans. Respondent No. 1 submits that, as promoter and director, he had funded the Corporate Debtor and incurred various business expenses on its behalf, thereby reducing the amount payable to him from Rs. 4,36,65,431/- to Rs. 2,38,46,796/-. He further submits that the Skoda Rapid was his personal property, which was used by the Corporate Debtor for business purposes, and subsequently returned to him.

40. We note the Respondent No. 1's own admission that the amount owed by the Corporate Debtor to him fell from Rs. 4,36,65,431/- to Rs. 2,38,46,796/- through the above entries, resulting in a reduction of Rs. 1,98,18,635/-. Such reduction is on account entries and transaction of Rs. 1,33,04,441/-, Rs. 37,11,806/-, Rs. 16,00,000/- and Rs. 10,00,000/-, together with the car and motor-cycle transferred on 01.10.2020 (Rs. 1,95,859/- and Rs. 6,529/-). The management reply recorded in the Transaction Audit Report states that the Corporate Debtor "*returned the money*" to Respondent No. 1 to the extent of Rs. 1,98,18,636/- and that the "*transfers were made to satisfy a liability*". This contradicts the Respondents' contention that no payment was made to Respondent No. 1. Further, the Corporate Debtor's ledger describes the balances of

Respondent No. 8 and Respondent No. 9 as loan funds advanced to those entities for a steel purchase that was cancelled, and records that the amounts were “*deducted from Bhushan P. Patil unsecured loan account*”. The impugned entries were therefore adjusted against the liability of the Corporate Debtor to Respondent No. 1. This clearly means that the payments made initially to Respondent Nos. 8 and 9 as loans, were subsequently appropriated against the antecedent debt of Respondent No. 1, instead of the same being refunded to Corporate Debtor, even when the proposed steel purchase was subsequently cancelled. The relevant portion of the Corporate Debtor's ledger of Respondent No. 1 is reproduced below for the impugned transactions:

NirmanGold Alloys Pvt Ltd BHUSHAN PUNDLIKRAO PATIL Ledger Account : 1-Apr-2020 to 31-Mar-2022					Page 2
Date	Particulars	Vch Type	Debit		Credit
	Brought Forward		10,00,000.00	3,81,64,828.10	
30-5-2020	Cr R.S Traders	Journal	16,00,000.00		
	BEING AMOUNT RECEIVED IN BHUSHAN PATIL ACCOUNT				
5-6-2020	Dr ANAND ENTERPRISES	Journal		50,000.00	
	Dr Sabha Enterprises	Journal		15,000.00	
	Dr Unpaid Salary- Pradip G Shekde	Journal		10,000.00	
	jan -20 Salary Advance				
7-6-2020	Dr Sabha Enterprises	Journal		5,000.00	
	Dr Unpaid Salary-Umakant Patil	Journal		18,000.00	
8-8-2020	Dr Shri Satguru Gas Agency	Journal		50,000.00	
	HDFC BANK ONLINE				
	Dr Payable - Electricity Expenses	Journal		2,85,000.00	
	HDFC BANK ONLINE				
1-10-2020	Cr Motor Car Skoda Rapid	Journal	1,95,859.46		
	BEING SKODA CAR WRONGLY BOOKED IN NGAPL ACCOUNT TRANSFER TO OWNER MR. BHUSHAN P PATIL				
	Cr MOTOR CYCLE HERO HONDA	Journal	6,529.50		
	BEING MOTOR CYCLE WRONGLY BOOKED IN NGAPL ACCOUNT TRANSFER TO OWNER MR. BHUSHAN P PATIL				
	Cr SOLITAIRE INDUSTRIES LLP	Journal	1,33,04,441.00		
	BEING AMOUNT TRANSFER FROM STCL LOAN TO PARTNERSHIP FIRM FOR STEEL PURCHASE BUT ORDER WAS CANCELLED HENCE AMOUNT DEDUCTED FROM BHUSHAN P PATIL UNSECURED LOAN ACCOUNT AS PARTNER IN LLP				
	Cr Tuljai Industrial Product Pvt Ltd	Journal	37,11,806.12		
	BEING AMOUNT TRANSFER FROM STCL LOAN TO SISITER CONCERN FOR STEEL PURCHASE BUT ORDER WAS CANCELLED HENCE AMOUNT DEDUCTED FROM BHUSHAN P PATIL UNSECURED LOAN ACCOUNT				

41. In respect of the vehicles, the Corporate Debtor's ledger records that on 01.10.2020 the Skoda Rapid car (Rs. 1,95,859.46/-) and the Hero Honda motor-cycle (Rs. 6,529.50/-) transferred by debits to the account of Respondent No. 1. The narration describes the vehicles as “*wrongly booked in NGAPL account*” and transferred “*to owner Mr. Bhushan P. Patil*”. The said report in Observation 9 (Annexure-3, pages 109-110 of the Application) records that the car was booked as a fixed asset of the Corporate Debtor in FY 2013-14 at Rs. 10,55,000/- against a Cosmos Bank car-loan liability of Rs. 9,50,000/-, that the Corporate Debtor paid Rs. 6,86,734/- towards the loan between Financial Year (FY) 2016-17 and on 28.12.2018, and that depreciation was claimed on the vehicles up to FY 2019-20. The Registration Certificate (RC) also bears the Corporate Debtor’s address, and no Board resolution authorising the transfer was produced. It is admitted that that the amount owed by the Corporate Debtor to Respondent No. 1 fell from Rs. 4,36,65,431/- to Rs. 2,38,46,796/- which includes the Skoda Rapid car (Rs. 1,95,859.46/-) and the Hero Honda motor-cycle (Rs. 6,529.50/-). This shows that the vehicles value were adjusted against his loan. If these vehicles had truly been property of Respondent No. 1 from the beginning, returning them would not have reduced the amount owed to Respondent No. 1.

42. In terms of Section 43(3)(a) of the Code, the burden of establishing that the transaction is covered under exception, lies on the Respondents. In respect of the impugned transactions, Respondent No. 1 has not placed on record any vouchers, invoices, bank statements or other documents to substantiate that he made payments on behalf of the Corporate Debtor to vendors and suppliers, for salaries and wages, pollution licence fees, insurance, travelling expenses, provident fund and ESIC dues, and legal expenses, among other items, and no board resolution or valuation was

produced with regards to transferring the Skoda Rapid Car and Hero Honda Motor cycle to the Respondent No. 1 and show that the entries were made in the ordinary course of business of the Corporate Debtor.

43. The existence of an antecedent debt owed to Respondent No. 1 is established by the Corporate Debtor's own ledger of his account and by the Respondent's admission that Rs. 2,38,46,796/- is still payable to him. It is not disputed that Respondent No. 1 is the promoter and a 65% shareholder of the Corporate Debtor and a designated partner of Respondent No. 8, therefore, the concerned entities are related parties. The entries relating to the impugned transactions were made on 01.04.2020, 30.05.2020 and 01.10.2020, which fall within the look-back period, and therefore, are clearly covered within the meaning of Section 43(2) and 43(4) of the Code.
44. As regards the impugned transaction of Rs. 77,11,806/- concerning Respondent No. 9, Tuljai Industries Products Private Limited, it is noted that Rs. 40,00,000/- was paid on 10.04.2019. The CIRP was initiated on 22.11.2021, and Respondent No. 9 is admittedly a related party. Accordingly, under Section 43(4) of the Code, the relevant look-back period commenced on 22.11.2019. Since the payment predates the relevant period, it cannot be treated as a preferential transaction under Section 43 of the Code.
45. As regards the remaining amount of Rs. 37,11,806/-, the same has already been accounted for in the reduction of Rs. 1,98,18,635/- in the unsecured loan account of Respondent No. 1, as discussed in paragraph 40. The Corporate Debtor's ledger shows that, on 01.10.2020, the amount was adjusted against the unsecured loan owed to Respondent No. 1 by setting off the receivable from Respondent No. 9. No independent payment or transfer was made in favour of Respondent No. 9 so as to attract Section

43 of the Code. Accordingly, the prayer in respect of Respondent No. 9 is **rejected**.

46. In view of the facts and circumstances and the discussion hereinabove, we hold that the impugned transactions of Rs. 87,25,174/- in favour of Respondent No. 3 and Rs. 1,98,18,635/- in favour of Respondent No. 1, being transactions with related parties during the look-back period, fall within the ambit of Section 43 of the Code. As recorded in the order dated 05.10.2026, no relief is pressed against Respondent No. 7 in respect of the transaction at Point V(A) of the Application. Therefore, no order is called for in respect thereof. Accordingly, we direct as under:

A. Respondent No. 1, being a suspended director, and Respondent No. 3, being a related party of the Corporate Debtor, who were responsible for the impugned transaction, are directed jointly, severally or individually to repay/refund the amount of Rs. 2,85,43,809/- to the account Corporate debtor within 30 days of this order along with interest at SBI PLR rate plus 2% interest from the date of the transaction till the date of realization of the amount into account of the Corporate Debtor.

47. Accordingly, with the above directions, the IA No. 2595 of 2022 is **partly allowed** and **disposed of**.

Sd/-

Vinay Goel
Member (Judicial)

Saumya, LRA

Sd/-

Charanjeet Singh Gulati
Member (Technical)