# IN THE NATIONAL COMPANY LAW TRIBUNAL

## KOCHI BENCH

**IA (IBC)/07/KOB/2025**
**IN**
**CP(IBC)/38/KOB/2023**

*(Under Section 43(1) and 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35(a) of the IBBI (Insolvency Resolution of corporate persons) Regulations 2016 and Rule 11 of the National Company Law Tribunal Rules 2016)*

***Date of Institution: 04.01.2025***

***Order delivered on:15.10.2026***

***In the matter of M/s Jomer Properties and Investments Private Limited***

**MEMO OF PARTIES:**

**Mr. Kizhakkekara Kuriakose Jose**
Resolution Professional of
M/s Jomer Properties and Investments Pvt Ltd,
KK Jose & Associates, Yenvee Complex,
Temple Road, Aluva, Kerala-683101.

**.... Applicant**

**-Vs-**

**Mr. M M JOSE,**
Ex-Director, Jomer Arcade, 2nd Floor,
South Junction, Chittoor Road,
Ernakulam -682016

**...Respondent No.1**

**Mr. Renju Jose,**
Jomer Arcade, 2nd Floor, South Junction,
Chittoor Road, Ernakulam -682016.
**...Respondent No. 2**

Coram:

**HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL**

**HON'BLE MEMBER (TECHNICAL) : SHRI. RAVICHANDRAN RAMASAMY**

***Appearances:***

For the Applicant : Mr. Sankar P Panicker, Adv.
For the Respondent No.1 : Ex-parte
For the Respondent No.2 : Ex-parte

**O R D E R**

**Per Coram**

1. The present Application has been filed by the Resolution Professional of M/s Jomer Properties and Investments Pvt Ltd under Section 43(1) and 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35(a) of the IBBI (Insolvency Resolution of corporate persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following prayers: -

*1. In the matter of Sl no 1 in paragraph vi (g) supra, direct the R1 to deposit a sum of Rs 13,09,000/- in the bank account of CD handled by the Applicant RP.*
*2. In the matter of Sl no 2 in paragraph vi (1) supra, direct the R2 to deposit a sum of Rs 2,02,536/- in the bank account of CD handled by the Applicant RP.*
*3. Any other order which this Hon'ble Tribunal deem fit and proper and in the circumstances of the case in the interest of justice.*

**The Brief facts of the case are as follows: -**

2. The Corporate Debtor, M/s. Jomer Properties and Investments Pvt. Ltd., was admitted into CIRP vide order dated 16.02.2024 in CP(IBC)/38/KOB/2024. The Applicant was appointed as the Resolution Professional vide order dated 16.04.2024 in IA(IBC)/149/KOB/2024. During the CIRP, due to non-cooperation by the suspended Directors and Promoters in furnishing the requisite books, records and information, the Applicant was unable to ascertain the existence of any PUFE transactions within the prescribed period. Accordingly, the Applicant filed IA(IBC)/194/KOB/2024 under Section 19(2) of the IBC seeking necessary directions for cooperation. Pursuant to repeated directions of this Tribunal, the suspended Directors and Promoters furnished certain information, while some information continued to remain outstanding. During the hearing on 19.11.2024, the Respondents assured that the available information would be furnished to the Applicant, and IA(IBC)/194/KOB/2024 was posted for further consideration.

3. The Applicant stated that the Committee of Creditors, in its 2nd meeting held on 18.04.2024, resolved to conduct a forensic audit of the Corporate Debtor for the period of two years preceding the commencement of CIRP, i.e., from 16.02.2022 to 16.02.2024, and accordingly appointed CA Ambika Varma A.C. of R. Rajan Associates, Chartered Accountants, Kochi, for the said purpose. The CoC considered the Final Forensic Audit Report dated 18.09.2024 in its 6th meeting held on 10.10.2024, wherein the CoC resolved to file an application before this Tribunal seeking appropriate reliefs on the basis of the findings of the forensic audit.

4. It is stated that Mr. M.M. Jose, who served as a Director of the Corporate Debtor from 30.09.1994 to 08.02.2023, is a related party of the Corporate

Debtor within the meaning of Section 2(24) of the IBC. The forensic audit, upon scrutiny of the ledger account of Mr. M.M. Jose, identified transactions amounting to Rs. 13,09,000/- during the period from 16.02.2022 to 16.02.2024, pursuant to which the said Director was allegedly placed in a beneficial position over other creditors. The transactions were accordingly reported as falling within the ambit of preferential transactions under Section 43 of the IBC. The forensic audit further noted that Mr. M.M. Jose claimed to have incurred expenses of Rs.11,52,788/- on behalf of the Corporate Debtor. However, the Corporate Debtor failed to furnish supporting documents to establish that such expenses were incurred for legitimate business purposes or in the ordinary course of business.

5. It is further stated that, based on the findings of the Forensic Auditor and the examination conducted by the Resolution Professional, the audited financial statements for the year ended 31.03.2023 establish that funds were transferred in favour of the Director during the relevant period, thereby conferring an undue preference upon Respondent No. 1 over other creditors. The said transaction, having the effect of placing the Respondent in a beneficial position in respect of repayment of debts, constitutes a preferential transaction within the meaning of Section 43 of the IBC, 2016.

6. It is stated that Mr. Renju Jose, who served as an Additional Director of the Corporate Debtor from 01.04.2021 and became its Managing Director on 02.08.2023, is a related party within the meaning of Section 2(24) of the IBC. The forensic audit, upon examination of the ledger titled "Advance for Land/Building Renju Jose" and the audited financial statements, identified transactions during the period from 16.02.2022 to 16.02.2024, wherein Mr. Renju Jose withdrew a net amount of Rs. 2,02,536/- towards repayment of

amounts allegedly advanced for purchase of the Corporate Debtor's land at Panangadu. However, adequate supporting documents were not furnished to the Resolution Professional to verify the authenticity and purpose of the payments. The transactions were accordingly identified as preferential transactions under Section 43 of the IBC, having allegedly conferred an undue benefit upon the related party.

7. It is stated that, as per the findings of the Forensic Auditor and the examination conducted by the Resolution Professional, Mr. Renju Jose withdrew a net amount of Rs.2,02,536/- from the Corporate Debtor during the relevant period, despite outstanding dues to other creditors, thereby placing himself in a beneficial position. The RP and the Forensic Auditor also noted that sufficient information and supporting documents were not furnished to verify the authenticity of all transactions between Mr. Renju Jose and the Corporate Debtor. The said transaction, having allegedly conferred an undue preference upon the Director over other creditors, was accordingly identified as a preferential transaction within the meaning of Section 43 of the IBC, 2016.
8. It is stated that, based on the foregoing findings, the aggregate amount of the preferential transactions identified during the relevant period is Rs.15,11,536/-, comprising Rs.13,09,000/- in respect of the transactions with Respondent No. 1, Mr. M.M. Jose, and Rs.2,02,536/- in respect of the transactions with Respondent No. 2, Mr. Renju Jose. Accordingly, the Applicant seeks a direction to Respondent No. 1 to deposit Rs.13,09,000/- and Respondent No. 2 to deposit Rs.2,02,536/- into the bank account of the Corporate Debtor operated by the Applicant Resolution Professional.

9. It is stated that ITMA Hotels India Pvt. Ltd., a sister concern of the Corporate Debtor, was admitted into CIRP on 31.12.2021 in CP(IB)/30/KOB/2021, wherein the Applicant was appointed as the Resolution Professional. During the said CIRP, the Applicant filed IA(IBC)/163/KOB/2022 under Section 43 of the IBC in respect of preferential transactions, wherein Respondent No. 1 herein was also impleaded as a respondent. This Tribunal, vide order dated 03.05.2023, allowed the said application and held the transactions to be in contravention of Section 43 of the IBC, directing the respondents, including Respondent No. 1, to pay the amounts determined therein. The said order is relied upon by the Applicant to substantiate the present application and the reliefs sought therein.

10. Despite being granted sufficient opportunities and specific directions to comply with the earlier orders and file their reply affidavit, the Respondents failed to do so and remained absent when the matter was called on several occasions. Accordingly, in view of their continued non-compliance and absence, the Respondents were proceeded against ex parte vide order dated 29.08.2025. Though in some orders there exists the presence on behalf of the Respondents, they failed to file any application for setting aside the ex parte order or made any attempt to file a reply in this matter.

**Analysis and Findings**

11. This Adjudicating Authority has heard the learned Counsel for the Applicant, and has carefully perused the Forensic Audit Report, ledger statements, audited financials, and other materials placed on record.

12. The present Application has been filed under Section 43 of the Insolvency and Bankruptcy Code, 2016, seeking avoidance of preferential transactions

allegedly carried out by the Corporate Debtor in favour of Respondents No.1 and 2.

13. It is the case of the Applicant that the Corporate Debtor was admitted into CIRP on 16.02.2024 and, pursuant to a decision of the CoC, a forensic audit was conducted for the period from 16.02.2022 to 16.02.2024. Based on the findings of the Forensic Auditor and the examination undertaken by the Applicant, preferential transactions amounting to Rs.15,11,536/- were identified, comprising Rs.13,09,000/- in respect of Respondent No.1, Mr. M.M. Jose, and Rs.2,02,536/- in respect of Respondent No.2, Mr. Renju Jose, both being related parties of the Corporate Debtor. It is further stated that the Respondents failed to furnish supporting documents to establish the nature, purpose or ordinary course of the transactions. The Applicant has also relied upon the proceedings in the CIRP of ITMA Hotels India Pvt. Ltd., a sister concern of the Corporate Debtor, wherein IA(IBC)/163/KOB/2022 filed under Section 43 of the IBC was allowed by this Tribunal vide order dated 03.05.2023, with Respondent No.1 herein being one of the respondents therein.

14. At this juncture, this Adjudicating Authority would like to reproduce section 43 of the Insolvency and Bankruptcy Code,2016:-

> *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 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 1[period starting from] two years preceding the 2[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 1[period starting from] one year preceding the 2[initiation date and ending on the insolvency commencement date].*

15. A plain reading of Section 43 of the Code provides that a transaction would constitute a preferential transaction if it involves a transfer of the property or interest of the Corporate Debtor for the benefit of a creditor on account of an antecedent liability and such transfer places the creditor in a more beneficial position than it would have been in under Section 53 of the Code. In the case of a related party, such transaction is required to have been made during the period specified under Section 43(4)(a) of the Code.

16. In this context, it is also relevant to refer to the decision of the Hon'ble Supreme Court in ***Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd.,*** ***(2020) ibclaw.in 06 SC***, wherein the Hon'ble Supreme Court, while examining the ingredients of a preferential transaction under Section 43 of the Code, observed as follows:

> *20. The analysis foregoing leads to the position that in order to find as to whether a transaction, of transfer of property or an interest thereof of the corporate debtor, falls squarely within the ambit of Section 43 of the Code, ordinarily, the following questions shall have to be examined in a given case:*
> *(i). As to whether such transfer is for the benefit of a creditor or a surety or a guarantor?*

> *(ii). As to whether such transfer is for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor?*
> *(iii). As to whether such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53?*
> *(iv). If such transfer had been for the benefit of a related party (other than an employee), as to whether the same was made during the period of two years preceding the insolvency commencement date; and if such transfer had been for the benefit of an unrelated party, as to whether the same was made during the period of one year preceding the insolvency commencement date?*
> *(v) As to whether such transfer is not an excluded transaction in terms of sub-section (3) of Section 43?*

17. At this stage, it is relevant to refer to Section 5(24) of the Insolvency and Bankruptcy Code, 2016, which defines the expression "related party":

> *"related party", in relation to a corporate debtor, means-*
> *(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*
> *(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;*
> *(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;*
> *(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;*
> *(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;*
> *(f)anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;*
> *(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;*

> *(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;*
> *(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;*
> *(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;*
> *(1) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;*
> *(m) any person who is associated with the corporate debtor on account of-*
> *(i) participation in policy making processes of the corporate debtor; or*
> *(ii) having more than two directors in common between the corporate debtor and such person; or*
> *(iii) interchange of managerial personnel between the corporate debtor and such person; or*
> *(iv) provision of essential technical information to, or from, the corporate debtor;*

18. In the present case, the Notes forming part of the Accounts to the Annual Financial Statements of the Corporate Debtor for the financial years ended 31.03.2022 and 31.03.2023 disclose Mr. M.M. Jose and Mr. Renju Jose as "Key Managerial Personnel" under the head "Related Party Transactions". Accordingly, both Mr. M.M. Jose and Mr. Renju Jose fall within the definition of "related party" under Section 5(24) of the Code. Their status as related parties is also reflected in the audited financial statements of the Corporate Debtor.

19. The Corporate Debtor was admitted into CIRP on 16.02.2024, which constitutes the insolvency commencement date. In terms of Section 43(4) of the Code, in respect of a transaction entered into with a related party, the relevant look-back period is two years preceding the insolvency commencement date. Accordingly, the transactions entered into during the

period from 16.02.2022 to 16.02.2024 fall within the period relevant for examination under Section 43 of the Code.

20. Further, on examination of the transactions pertaining to Respondent No.1, it is seen from the audited financial statements of the Corporate Debtor for the financial years 2020-21, 2021-22 and 2022-23 that an unsecured loan was standing in the name of Respondent No.1. This establishes the existence of an antecedent debt payable by the Corporate Debtor to Respondent No.1.

21. At this stage, it is pertinent to reproduce the relevant portion of the forensic audit report showing payments made to the Respondent No.1 during the relevant period which is reproduced below:

1. **Repayment of Unsecured Loans obtained from Mr. M. M. Jose (Director)**

   a. As per Audited Financial Statements, we understand that Mr. M. M. Jose is a Director in the Company. Upon a scrutiny of "Loan A/c – M.M Jose" ledger as maintained in books of accounts, we have identified the following transactions during the period 16 February 2022 to 16 February 2024, which were routed through the loan account of the director:

| Sl. No | Particulars | Amount (in INR) | Amount (in INR) |
|---|---|---|---|
| 1. | Salary Payable to Director | | 38,40,000 |
| 2. | Other credits to the account being:<br>Expenses of the Company allegedly met by Director<br>Cash allegedly lent by Director | <br>11,52,788<br>33,000 | <br><br>11,85,788 |
| **Total credits to Director's Loan account during the period under consideration** | | | **50,25,788** |
| **Total repayments made against Loan outstanding (refer below table for transaction wise breakup)** | | | **13,09,000** |

Breakup of repayments made against the Loan outstanding of the Director, is as follows *(all repayments are through the Bank account of the Company)*:

| Sl.No | Date | Description of transaction as appearing in the books of accounts of the Company | Amount involved (in INR) |
|---|---|---|---|
| 1 | 18-Feb-22 | Credit card payment against Electricity Bill Paid | 1,00,000.00 |
| 2 | 11-Mar-22 | chq paid to mm jose HDFC | 15,000.00 |
| 3 | 16-Aug-22 | advance | 25,000.00 |
| 4 | 26-Aug-22 | advance | 50,000.00 |
| 5 | 26-Aug-22 | advance Refund | 1,00,000.00 |
| 6 | 21-Nov-22 | Amount paid for KSEB Amount LT for Jomer Properties | 10,000.00 |
| 7 | 03-Dec-22 | Amount Paid for Water Charges Jomer | 25,000.00 |
| 8 | 23-Dec-22 | Fund Paid for KSEB payment | 20,000.00 |
| 9 | 28-Dec-22 | Fund Trf for Payment of Kseb for Jomer | 25,000.00 |
| 10 | 11-Jan-23 | Salary advance to hdfc account | 30,000.00 |
| 11 | 11-Jan-23 | Salary advance to hdfc account Vytilla | 30,000.00 |
| 12 | 11-Jan-23 | Salary advance to Mr.M M Jose SBI Mg road ernakulam | 50,000.00 |
| 13 | 25-Jan-23 | Water Bill Paid by MM Jose | 11,000.00 |
| 14 | 30-Jan-23 | Chq Paid for MM Jose as Salary Arrears | 1,20,000.00 |
| 15 | 04-Feb-23 | Salary Arrears Paid | 25,000.00 |
| 16 | 04-Feb-23 | Salary arrears | 50,000.00 |
| 17 | 07-Feb-23 | Salary Arrears Paid | 25,000.00 |
| 18 | 07-Feb-23 | Salary Arrears Paid | 40,000.00 |
| 19 | 13-Feb-23 | Salary Arrears | 20,000.00 |
| 20 | 22-Feb-23 | Salary Arrears | 1,35,000.00 |
| 21 | 27-Feb-23 | Salary Arrears | 20,000.00 |
| 22 | 28-Feb-23 | salary arrear | 65,000.00 |
| 23 | 03-Mar-23 | Salary arrears | 25,000.00 |
| 24 | 04-Mar-23 | SALARY ARREARS | 8,000.00 |
| 25 | 11-Mar-23 | salary arrears | 15,000.00 |
| 26 | 29-Mar-23 | Salary Arrears | 25,000.00 |
| 27 | 29-Mar-23 | Salary Arrears | 1,45,000.00 |
| 28 | 29-Mar-23 | Salary Arrears | 25,000.00 |
| 29 | 29-Mar-23 | Salary Arrears | 1,00,000.00 |
| | | | **13,34,000.00** |
| | | *Less: Refund of Payment made on 16 August 2022* | -25,000.00 |
| | | Net Repayments made during the period 16 February 2022 to 16 February 2024 | **13,09,000.00** |

22. On perusal of the transactions set out in the Forensic Audit Report and upon verification of the same with the corresponding entries in the books of account and the bank statements of the Corporate Debtor, we find that the transactions reported by the Forensic Auditor are duly reflected in the books of account and supported by the corresponding bank entries. The records indicate that an aggregate amount of Rs.13,34,000/- was paid by the Corporate Debtor to Mr. M.M. Jose during the relevant period. After adjusting the refund of Rs.25,000/-, the net amount paid to Respondent No.1 works out to Rs.13,09,000/-. Thus, the payment of Rs.13,09,000/- to Respondent No.1 during the relevant period stands established from the records placed before us.

23. Further, the Respondents have not appeared before this Adjudicating Authority or filed any reply or produced any supporting documents to the Forensic Auditor to establish that the payments made to Respondent No.1 were towards genuine business expenses, salary arrears or were made in the ordinary course of business or financial affairs of the Corporate Debtor. In the absence of such evidence, the payment of Rs.13,09,000/- is treated as repayment of the antecedent liability owed to Respondent No.1, a related party. By receiving such payment during the relevant period, Respondent No.1 was placed in a more beneficial position than he would have been in the event of distribution of the assets of the Corporate Debtor under Section 53 of the Code. Thus, the requirement under Section 43(2)(b) of the Code stands satisfied.

24. With respect to the Respondent No. 2, the Annual Financial Statements of the Corporate Debtor for the financial years ending March 2021, March 2022 and March 2023 reflect a long-term liability in favour of Respondent No. 2. The continued reflection of the said liability in the books of the Corporate Debtor establishes the existence of an antecedent debt due to Respondent No. 2 prior to the transactions under consideration.

25. The ledger account maintained under the head “Advance for Land/Building – Renju Jose” records the transactions between the Corporate Debtor and Respondent No. 2 during the relevant period. Upon examination of the said ledger account, the Forensic Auditor has identified the fund transfers to and from the Corporate Debtor and the relevant portion of the forensic audit report is reproduced as under:

**2. Repayment of Advance obtained from Mr. Renju Jose (Director)**

a. As per Audited Financial Statements, it is inferred that Mr. Renju Jose is a Director in the Company. Upon a scrutiny of "Advance for Land/Building-Renju Jose" ledger as maintained in books of accounts, we have identified the following transactions during the period 16 February 2022 to 16 February 2024, which are in the nature of repayment of loans/ advances obtained from the Directors

| Sl.No | Description of Transaction | Amount (in INR) |
|---|---|---|
| 1. | Fund Transfer to Company | 26,07,464 |
| 2. | Fund Transfer from Company | 28,10,000 |

26. We have examined the ledger account and the transactions identified in the Forensic Audit Report. It is observed that Respondent No. 2 transferred Rs.26,07,464/- to the Corporate Debtor, whereas the Corporate Debtor transferred Rs.28,10,000/- to Respondent No. 2 during the relevant period. Thus, after adjusting the amount received from Respondent No. 2 against the amount paid to him, the Corporate Debtor made an excess payment of Rs.2,02,536/- to Respondent No. 2.

27. Even after affording reasonable opportunities, the Respondent No.2 have not appeared before this Adjudicating Authority or placed on record any material to the Forensic Auditor explaining the nature and purpose of the excess payment or establishing that the same was made in the ordinary course of business. In the circumstances, the said excess payment of Rs.2,02,536/- had the effect of conferring a benefit upon Respondent No. 2 and placing him in a beneficial position during the relevant period. Accordingly, the said payment falls within the ambit of a preferential transaction under Section 43 of the Code and the amount of Rs.2,02,536/- is liable to be restored to the Corporate Debtor.

28. In this context, it is relevant to refer to the decision of the Hon'ble NCLAT in ***Rajesh Toshniwal and Anr. v. Kamal Nayan Jain and Ors.,*** ***(2026) ibclaw.in 58 NCLAT***, wherein it was held that once it is established that money has been transferred to related entities, the reciprocal onus shifts upon the Directors of the Corporate Debtor to explain as to why such transactions should not be treated as preferential transactions.

29. In the present case, despite reasonable opportunities, the Respondents have failed to place any material explaining the nature and purpose of the transactions or establishing that the same were made in the ordinary course of business. In view of the foregoing findings, the transactions involving Respondent Nos. 1 and 2 are held to be preferential transactions within the meaning of Section 43 of the Code. Accordingly, Respondent No.1 and Respondent No.2 are directed to pay the sum of Rs.13,09,000 and Rs. 2,02,536, respectively, to the bank account of the Corporate Debtor handled by the Applicant /Resolution Professional within 30 days, together with interest at the rate of 12 % per annum with monthly rest or SBI Prime Lending Rate plus 2% per annum with monthly rest, whichever is higher, from the date of this order to till the date of realisation of the entire amount.

30. Further, the submissions of the Applicant on the proceedings relating to ITMA Hotels India Pvt. Ltd., a sister concern of the Corporate Debtor, do not have any bearing on the determination of the present application, as the said proceedings arose out of a separate CIRP and involved distinct transactions. The present application is considered on its own facts and merits, based on the records and material placed before this Adjudicating Authority.

31. In the light of the foregoing discussion, the present application, **IA (IBC)/07/KOB/2025**, is **allowed** and disposed of.

32. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

33. Let the certified copy of this order be issued upon compliance with the requisite formalities.

34. File be consigned to records.

| | |
|---|---|
| **Sd /-** | **Sd /-** |
| **RAVICHANDRAN RAMASAMY** | **VINAY GOEL** |
| **(MEMBER TECHNICAL)** | **(MEMBER JUDICIAL)** |

Signed on this the 15th day of October, 2026.

At*