NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
1IA/10(IND) 2021 in TP 239 of 2019 [CP(IB) 370 of 2018

Order under Section 47 r.w 45 & 49 IBC

IN THE MATTER OF:

Munnalal Pannalal Constructions Pvt Ltd **.....Applicant**
V/s
Ravi Kapoor RP of SRK Devbuild Pvt Ltd & Ors **.....Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 05/11/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH,

I.A. No. 10 of 2021

IN

T.P. No. 239 of 2019

(An Application Under Section 47 read with Sections 45 and 49 of the Insolvency and Bankruptcy Code, 2016.)

IN THE MAIN MATTER OF:

AU SMALL FINANCE BANK LIMITED ...FINANCIAL CREDITOR

VERSUS

SRK DEVBUILD PRIVATE LIMITED ...CORPORATE DEBTOR

AND

IN THE MATTER OF

MUNNALAL PANNALAL CONSTRUCTIONS PRIVATE LIMITED

201-Kanika, 14/1 New Palasia, above Corporation Bank,
Indore-452001, Madhya Pradesh **...APPLICANT**

VERSUS

1. MR. RAVI KAPOOR

(LIQUIDATOR OF SRK

DEVBUILD PRIVATE LIMITED)

402, Shaival Plaza, Gujarat College Road,
Ellisbridge, Ahmedabad-380006 **...RESPONDENT NO. 1**

2. COMMITTEE OF CREDITORS OF

SRK DEVBUILD PRIVATE LIMITED

(THROUGH AU SMALL FINANCE BANK LIMITED)

19-A, Dhuleshwar Garden, Jaipur-302001, Rajasthan

...RESPONDENT NO. 2

3. AEGIS EDUCATIONAL SOCIETY

7/3, New Palasia, Indore-452001

Madhya Pradesh **...RESPONDENT NO. 3**

4. MR. SUBHASH AGRAWAL

(SUSPENDED DIRECTOR OF

THE CORPORATE DEBTOR)

13, Gulmohar Colony, Saket Nagar,

Indore-452018, Madhya Pradesh **...RESPONDENT NO. 4**

5. SMT. GULAB AGRAWAL

(SUSPENDED DIRECTOR OF

THE CORPORATE DEBTOR)

'Anusuiya Villa', 13, Gulmohar Colony,

Indore-452018, Madhya Pradesh **...RESPONDENT NO. 5**

CORAM:

Hon'ble Shri Brajendra Mani Tripathi, Member (Judicial)

Hon'ble Shri Man Mohan Gupta, Member (Technical)

APPEARANCE

For the Applicant: Mr. Pratik Tripathi, PCS

For the Respondents: Mr. Vijay Assudani, Adv. a.w.
Mr. Jayesh Sitlani, Adv.
Ms. Soumya Dharwa, Adv.

Order Pronounced on: 05.11.2026

O R D E R

1. This Interlocutory Application**, I.A. No. 10 of 2021**, has been filed by **Munnalal Pannalal Constructions Private Limited** ("Applicant"), **an operational creditor** of **SRK Devbuild Private Limited ("Corporate Debtor"/ "CD"),** under Sections 45, 47 and 49 of the Insolvency and Bankruptcy Code, 2016 ("Code"/ "IBC"). The Respondents are **Mr. Ravi Kapoor,** the Resolution Professional and now the Liquidator of the Corporate Debtor **("Respondent No. 1"/ "Liquidator"); the Committee of Creditors of the Corporate Debtor (Respondent No. 2); Aegis Educational Society ("Respondent No. 3"/ "R3");** and **Mr. Subhash Agrawal and Mrs. Gulab Agrawal, members of the suspended Board of Directors** (**Respondent Nos. 4 and 5).** The Applicant impugns the registered sale deed dated 02.01.2019, by which the Corporate Debtor sold

its land and school building at Survey No. 304, Village Mangliya Sadak, Tehsil Sanwer, District Indore, to R3 for Rs. 14,35,00,000/-, and has prayed for the following reliefs: -

i. *To declare the transaction of sale of the assets of the Corporate Debtor, registered by the sale deed dated 02.01.2019 (mentioned in the prayer as 01.02.2019), as void and to reverse its effect under Section 47 of the Code;*

ii. *To appoint a valuer and to direct R3(**AEGIS EDUCATIONAL SOCIETY**) to allow him to carry out the valuation and to provide necessary assistance;*

iii. *To pass necessary order under Section 49 read with Sections 69 and 70 of the Code;*

iv. *To pass necessary direction with regard to the conduct of the Resolution Professional;*

v. *To pass necessary order for a forensic audit of the Corporate Debtor; and*

vi. *To pass such other order(s) or direction(s) as this Tribunal may deem fit.*

2. The brief facts, as they appear from the pleadings and the documents on record, are as follows: -

i. The Corporate Debtor ran G.D. Goenka Public School at Indore on land admeasuring 3.03 acres at Survey No. 304, Village Mangliya Sadak, Tehsil Sanwer. On 22.10.2018 the Applicant filed a petition under Section 9 of the Code for an operational debt of Rs. 1,00,10,000/-, registered as CP (IB) No. 553/2018. CP (IB) No. 370/7/NCLT/AHM/2018, filed by AU Small Finance Bank Limited under Section 7 of the Code, and a petition of Bank of India were then pending against the Corporate Debtor, as the Applicant states.

ii. On 21.11.2018 S.K. Kaul & Company valued the property for R3(**AEGIS EDUCATIONAL SOCIETY)** at Rs. 13,37,00,000/-. On 22.11.2018 a public notice was published in Dainik Bhaskar and Nai Dunia that R3(**AEGIS EDUCATIONAL SOCIETY)** intended to purchase the land and building. The Applicant filed I.A. No. 462/2018 in CP (IB) No. 553/2018 seeking a stay on the sale; it was disposed of by order dated 05.07.2019, as the Code makes no provision for such a restraint.

iii. R3(AEGIS EDUCATIONAL SOCIETY**)** was registered as a society under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 on 28.12.2018 (Registration No. 03/27/01/21274/18).

iv. On 02.01.2019 the Corporate Debtor, through Respondent No. 4 (Mr. Subhash Agrawal) acting on the resolution of its Extraordinary General Meeting dated 02.11.2018, executed the sale deed in favour of R3, (AEGIS EDUCATIONAL SOCIETY with Devi Anusuiya Vidhya Sansthan, through Respondent No. 5, (Mrs. Gulab Agrawal) as consenting party. The deed (e-registration No. MP179092019A1003792) was registered on the same day. It records the consideration of Rs. 14,35,00,000/- as paid in full and includes the movable articles of the school.

v. CP (IB) No. 370/7/NCLT/AHM/2018 was admitted by order dated 03.01.2020 and the Corporate Insolvency Resolution Process (“CIRP”) commenced against the Corporate Debtor. Mr. Ravi Kapoor was appointed Interim Resolution Professional and then Resolution Professional. The claim of the Applicant

was admitted and the Applicant was included in the Committee of Creditors ("CoC").

vi. By letters dated 18.06.2020 and 21.07.2020 the Resolution Professional asked R3 (AEGIS EDUCATIONAL SOCIETY to pay Rs. 2,71,25,000/-, shown as outstanding in the latest accounts of the Corporate Debtor. By letter dated 27.07.2020 R3(AEGIS EDUCATIONAL SOCIETY stated that Rs. 1,37,50,000/- remained outstanding. The Resolution Professional demanded Rs. 1,37,50,000/- by letters dated 27.11.2020 and 18.02.2021.

vii. By letter dated 14.07.2020 the Applicant asked the Resolution Professional to move this Tribunal under Section 45 of the Code. The matter was taken up in the 4th meeting of the CoC held on 16.07.2020, where, according to the Applicant, the Resolution Professional stated that the transaction preceded his appointment. The Applicant wrote again on 27.08.2020. The CoC, in its meeting of 10.09.2020, decided to obtain a valuation, and Mr. Arvind Agrawal, a government approved valuer, reported on 28.10.2020 a market value of Rs.

14,40,89,650/-, a realisable value of Rs. 12,96,80,685/- and a distress value of Rs. 11,52,71,720/-.

viii. The Applicant filed this application in December 2020. The Resolution Professional filed his reply on 23.01.2021. By order dated 26.02.2021 this Tribunal ordered liquidation of the Corporate Debtor, and Respondent No. 1 (Mr. Ravi Kapoor) became its Liquidator. The Stakeholders Consultation Committee ("SCC") met on 22.06.2021. By order dated 24.08.2021 the Liquidator was directed to file an affidavit, which he filed on 13.09.2021.

ix. By order dated 25.03.2022 in I.A. No. 8(MP)/2022 this Tribunal allowed the Liquidator to file the required proceeding before the proper forum. R3(AEGIS EDUCATIONAL SOCIETY's appeal, Company Appeal (AT) (Insolvency) No. 577 of 2022, was disposed of by the National Company Law Appellate Tribunal ("NCLAT") on 25.05.2022. The Liquidator has since filed Commercial Suit No. 3/2026 against R3, which is pending before the Commercial Court at Indore.

CONTENTIONS OF THE APPLICANT

3. The Applicant has contended as follows: -

i. The Applicant is an operational creditor whose claim is admitted. The Resolution Professional did not move this Tribunal under Section 45 despite the Applicant's letters dated 14.07.2020 and 27.08.2020, and the Liquidator has not reported the transaction to this Tribunal. At the meeting of the CoC held on 16.07.2020 the Resolution Professional stated that the transaction had been executed before his appointment and that he was not in a position to pursue the matter. The Applicant, being a creditor, therefore has locus under Section 47.

ii. The deed recites that the entire consideration was paid, but the Resolution Professional's own letters and the minutes of the 4th meeting of the CoC held on 16.07.2020 show that it was not, and payments continued till 09.08.2019. A sale of immovable property is complete only on registration of the deed and payment of the consideration, and the deed was registered without the consideration having been received. The

transaction was never concluded and is still open, and falls within the period of one year under Section 46.

iii. In the alternative, Respondent no.3(AEGIS EDUCATIONAL SOCIETY is a related party and the period of two years applies. R3 (AEGIS EDUCATIONAL SOCIETY was registered on 28.12.2018, four days before the deed. Mr. Sarthak Agrawal, son of Respondent Nos. 4(Mr. Subhash Agrawal) and Respondent No. 5 (Mrs. Gulab Agrawal) holds a position in its governing body, Respondent No. 3 (Aegis educational society) was formed by Respondent No. 4 (Mr. Subhash Agrawal) in the name of his son, and although it is a non-profit society by the Memorandum of Understanding dated 31.12.2018 he is entitled to 49% of the income and assets of R3. Respondent No. 4 admits having executed that Memorandum as his power of attorney holder.

iv. The sale of the entire assets of the Corporate Debtor, made while the petitions of AU Small Finance Bank Limited, Bank of India and the Applicant were pending, was to defraud creditors and falls within Section 49. The part of the consideration

received was siphoned off by the promoters, and the inaction of the Resolution Professional shows collusion with Respondent No. 3 (Aegis educational society), Respondent No. 4 (Mr. Subhash Agrawal) and Respondent No. 5 (Mrs. Gulab Agrawal).

CONTENTIONS OF RESPONDENT NO. 1 (MR. RAVI KAPOOR, LIQUIDATOR)

4. The Liquidator has contended on the question of maintainability as follows: -

   i. Section 45 is available only to the liquidator or the resolution professional, and an operational creditor can come under Section 47 only if the transaction has not been reported to this Tribunal. The Liquidator placed the transaction audit report before the 4th meeting of the CoC held on 16.07.2020, filed IA No. 87 of 2020, obtained an independent valuation, from Mr. Arvind Agrawal placed the matter before the SCC on 22.06.2021, obtained leave in IA No. 8(MP)/2022 and has filed Commercial Suit No. 3/2026 against R3 to recover the unpaid balance of Rs. 1,37,50,000/- IA No. 87 of 2020 was

filed under Sections 43 and 44 on the transactions that the transaction audit report identified. The condition in Section 47 is not met, and this application would lead to parallel proceedings subvert the decision of the SCC and risk conflicting findings.

ii. The insolvency commencement date is 03.01.2020. The relevant period under Section 46 for a person who is not a related party is one year preceding it, and the deed dated 02.01.2019 falls before that period. R3 is a society whose members hold no interest in its assets.

iii. Section 49 cannot operate unless the transaction is first shown to be undervalued under Section 45, and the valuation report dated 28.10.2020 shows it was not. In Gluckrich Capital P. Ltd. v. State of West Bengal, 2023 SCC OnLine SC 1187, the Supreme Court held that recovery against third parties lies in civil remedies. The sale was in good faith, as Rs. 7,47,90,020/- of the consideration was applied to repay Bank of India, which issued a no-due certificate dated 02.01.2019.

CONTENTIONS OF RESPONDENT NO. 3 (AEGIS EDUCATIONAL SOCIETY)

5. Respondent no.3 has contended on the question of maintainability as follows: -

   i. The period of one year preceding the insolvency commencement date of 03.01.2020 began on 04.01.2019, and the deed was executed on 02.01.2019. R3 relies on V. Nagarajan v. Asset Reconstruction Company (India) Ltd., 2018 SCC OnLine NCLT 2020, and K.L. Jute Products Pvt. Ltd. v. Tirupati Jute Industries Ltd., 2020 SCC OnLine NCLAT 426, to say that a transfer of immovable property is effected on the date of execution of the deed.

   ii. R3 is not a related party. None of the eight members of its managing committee is related to the Corporate Debtor, a member of a society registered under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 has no right in its assets, and Mr. Sarthak Agrawal is not a member. The Memorandum of Understanding dated 31.12.2018 is forged and fabricated.

iii. Section 45 can be invoked only by the liquidator or the resolution professional, as held in Gluckrich Capital P. Ltd. v. State of West Bengal, 2023 SCC OnLine SC 1187, and Ritu Tandon v. Rain Automotive India Pvt. Ltd., 2023 SCC OnLine NCLT 444. Section 47 is not available because the Liquidator has reported the transaction: this Tribunal on 25.03.2022 allowed him to file a civil or commercial suit, the NCLAT on 25.05.2022 upheld that order, and Commercial Suit No. 3/2026 is pending. Two parallel proceedings on the same cause of action cannot be permitted.

iv. Section 49 cannot be invoked independently of Section 45, and Sections 49 and 66 operate in the same sphere, so that the application is not maintainable at the instance of a creditor against a third party. The sale was in good faith and for value, the transaction is not undervalued as two valuation reports show, one by its own valuer dated 21.11.2018 (Rs. 13,37,00,000/-) and one for the Resolution Professional dated 28.10.2020 (market value Rs. 14,40,89,650/-), and the

Applicant has placed no evidence of undervalue. Rs. 7,47,90,020/- of the consideration was paid to Bank of India.

CONTENTIONS OF RESPONDENT NO. 4 (MR. SUBHASH AGRAWAL)

6. Respondent No. 4, by his affidavit dated 21.07.2022, has stated that the application is false and frivolous, that R3 (Aegis educational society) has not paid Rs. 2,71,25,000/- of the consideration of Rs. 14,35,00,000/-, and that the Memorandum of Understanding dated 31.12.2018 was executed between Mr. Dipesh Khandelwal and his son Mr. Sarthak Agrawal, and that he signed it as the power of attorney holder of his son.

ANALYSIS AND FINDINGS

7. We have heard the learned representatives of the Applicant and the Respondents and perused the record. The matter was reserved for orders on the question of maintainability only. Accordingly, the only question that falls for our consideration is whether the present application, filed by the Applicant, an Operational Creditor, under Sections 45, 47 and 49 of the Code, is maintainable.

8. Section 45(1) of the Code requires the liquidator or the resolution professional, who on examination determines that undervalued transactions were made during the relevant period under Section 46, to make an application to the Adjudicating Authority to declare such transactions void and to reverse their effect. Section 45 is thus a provision for the liquidator and the resolution professional. A creditor stands on Section 47(1), which provides: -

"47. Application by creditor in cases of undervalued transactions. – (1) Where an undervalued transaction has taken place and the liquidator or the resolution professional as the case may be, has not reported it to the Adjudicating Authority, a creditor, member or a partner of a corporate debtor, as the case may be, may make an application to the Adjudicating Authority to declare such transactions void and reverse their effect in accordance with this Chapter."

9. The Applicant is a creditor of the Corporate Debtor whose claim was admitted in the CIRP. As an application under Section 45 as such it does not lie, and it can be entertained only under Section 47. The right of a creditor under Section 47 therefore depends on

the condition that the liquidator or the resolution professional "has not reported" the transaction to this Tribunal, and the question is whether that condition is met.

10. The record shows the following steps taken by the Resolution Professional, who is now the Liquidator. By his letter dated 18.06.2020 the liquidator asked Respondent No. 3 (Aegis educational society) to clarify the sale transaction and to pay the amount shown as outstanding. The transaction audit report was placed before the 4th meeting of the CoC held on 16.07.2020. The Applicant addressed him by its letters dated 14.07.2020 and 27.08.2020, and at the meeting of the CoC held on 10.09.2020 it was decided that a registered valuer be appointed and that if the market value was significantly higher than the consideration paid by Respondent No. 3 (Aegis educational society), necessary application be moved before this Tribunal. Mr. Arvind Agrawal, a government approved valuer, was appointed, and by his report dated 28.10.2020 assessed the market value at Rs. 14,40,89,650/-. The Liquidator states that, on this report, the consideration of Rs. 14,35,00,000/- cannot be construed to be significantly less than

the market value, and that no application under Section 45 was therefore moved. He filed the valuation report with his reply dated 23.01.2021 to this application.

11. The Liquidator sent further letters to Respondent No. 3 (Aegis educational society) on 21.07.2020, 01.08.2020, 27.11.2020 and 18.02.2021 for the outstanding amount. The matter was placed before the SCC at its 1st meeting held on 22.06.2021, which decided to file the necessary recovery proceeding. The Liquidator then filed IA No. 8(MP)/2022, in which this Tribunal by order dated 25.03.2022 allowed him to file the required proceeding before the proper forum. The appeal of Respondent No. 3 (Aegis educational society) against that order was disposed of by the NCLAT on 25.05.2022 with the observation that the order *"has not expressed any opinion on merits of the claim of either of the parties".* Pursuant to that liberty the Liquidator has filed *Commercial Suit No. 3/2026* against Respondent No. 3 (Aegis educational society) before the Commercial Court, Indore, and it is pending.

12. Section 47 provides a remedy to a creditor where the liquidator or the resolution professional has not brought an undervalued

transaction before this Tribunal. It is not a provision under which a creditor can reopen the view that the liquidator or the resolution professional has formed on examining the transaction, or carry on a proceeding parallel to the one he has been allowed to take. In the present case the Resolution Professional examined the sale to Respondent No. 3 (Aegis educational society) on the representations of the Applicant, obtained a valuation, placed the matter before the CoC and the SCC, and has, with the leave of this Tribunal, instituted proceedings against Respondent No. 3 (Aegis educational society) before the competent court. The sale to Respondent No. 3 (Aegis educational society) was thus examined and acted on by the Liquidator, and the condition in Section 47(1) that he "has not reported" the transaction is not satisfied. The Applicant therefore has no locus to maintain this application under Section 47.

13. Section 47(1) also presupposes that "an undervalued transaction has taken place". The valuation report dated 28.10.2020 of Mr. Arvind Agrawal, obtained by the Resolution Professional, is the valuation on the record, and on it the Liquidator formed the view

that the consideration of Rs. 14,35,00,000/- was not significantly less than the market value of Rs. 14,40,89,650/-. The Applicant objects to that report on the area adopted by the valuer and on the other assets conveyed by the deed, and by prayer and seeks the appointment of a valuer. These are objections to a valuation, which are matters of evidence on the merits. Section 47 does not enable a creditor to obtain a fresh valuation of a transaction which the Resolution Professional has examined on the basis of a valuation, and on the material before this Tribunal an undervalued transaction is not shown at this stage. We have not decided whether the valuation report is correct.

14. The Applicant has also invoked Section 49. That section forms part of the same Chapter as Sections 45 to 48, and the application is one by a creditor under Section 47 read with Sections 45 and 49. The right of the Applicant to approach this Tribunal for relief under Section 49 also rests on Section 47, and it does not arise when the condition in that section is not met.

15. The Applicant says that Respondent No. 3 (Aegis Educational society) is a related party of the Corporate Debtor, because it was

registered on 28.12.2018, four days before the sale deed, Mr. Sarthak Agrawal, son of Respondent No. 4 (Mr. Subhash Agrawal) and Respondent No. 5 (Mrs. Gulab Agrawal), holds a position in it, and under the Memorandum of Understanding dated 31.12.2018 he is entitled to 49% of its income and assets. Respondent No. 3 (Aegis educational society) denies this and states that the Memorandum is forged. Whether Respondent No. 3 (Aegis educational society) is a related party, whether the sale was undervalued and what relief follows are questions on the merits, and are for the competent court before which the Liquidator's proceeding is pending. They are not decided in this order. The allegation of the Applicant is a matter for the Liquidator to examine, and he is directed to place it before the SCC.

16. For these reasons, we hold that **I.A. No. 10 of 2021** is not maintainable at the instance of the Applicant under Sections 45, 47 and 49 of the Code.

ORDER

17. In exercise of the powers conferred under the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority hereby passes the following order: -

    a. **I.A. No. 10 of 2021** is not maintainable at the instance of the Applicant under Sections 45, 47 and 49 of the Code, and is dismissed on that ground.

b. The Liquidator shall place before the SCC, at its next meeting, the question whether Respondent No. 3 (Aegis Educational Society) is a related party of the Corporate Debtor, as raised in this application, for its consideration and decision in accordance with law.

c. Nothing in this order is an expression on the merits of the allegations of undervalue or of a related party, or on the proceedings in Commercial Suit No. 3/2026, and these are left to be decided by the competent court. This order is without prejudice to the rights and remedies of the Applicant, including its objections to the valuation report dated 28.10.2020, before the competent court.

d. Accordingly, **I.A. No. 10 of 2021** stands **dismissed & disposed of** in the above terms.

Sd/- Sd/-

MAN MOHAN GUPTA **BRAJENDRA MANI TRIPATHI**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

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