

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/239/KOB/2025

IN

CP(IBC)/12/KOB/2024

*(Under Section 43 and 44 of the
Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the
NCLT Rules, 2016)*

Date of Institution: 17.06.2025.

Order delivered on: 06.01.2026.

In the matter of:

Asten Properties and Developers Private Limited

Memo of Parties:

CA Sreenivasan P R

Resolution Professional of
Asten Properties and Developers Private Limited
Plot No.9-A, Jawahar Nagar,
Kadavanthra, Ernakulam, Kerala – 682020.

.....Applicant

1. Astern Realtors Private Limited

Represented by its Liquidator
No. 33/2440 F, Compass,
Chakkaraparambu, NH 47 Bye Pass,
Thammanam P.O, Ernakulam – 682032.

2. Mr. Siraj Mather

33129A,
The Promenade Mather Projects,
Padivattom, Edapally,
Pavoor Road, Kochi – 682024.

3. Moon Day Realtors Private Limited

148, E-1, 4th Main,
4th Cross, Hal 3rd Stage,
80 Feet Road, Bangalore,
Karnataka - 560075

.....Respondents

Coram:

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

Appearances:

For the Applicant : Mr. Vinod P V, Advocate
: Mr. Rajmohan R, Liquidator
For Respondent No. 1 : Mr. K R Shiyas, Advocate
For Respondent No. 2 & R3 : Mr. Pradeep Joy, Advocate
Mr. Rohan Kumar, Advocate

ORDER

1. This application is filed by the Resolution Professional of M/s Asten Properties and Developers Private Limited, the Corporate Debtor, against Respondent No. 1, Asten Realtors Private Limited, the holding company of the Corporate Debtor holding 99% of its shareholding. Respondent No. 1 is presently undergoing liquidation under the Insolvency and Bankruptcy Code, 2016, (hereinafter 'Code'), and the Applicant is also acting as its Liquidator. Respondent No. 2, Mr. Siraj Mather, is a Director of the Corporate Debtor, and Respondent No. 3, Moon Day Realtors Private Limited, is a related party of the Corporate Debtor, with Respondent No. 2 being a common Director in both entities. The present application is filed under Sections 43 and 44 of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, seeking the following reliefs:—

- a) *Pass an order for avoidance of the preferential transaction and direct the Asten Realtors Private Limited to pay an amount of Rs. 15,24,10,709.00/- to the account of the Corporate Debtor maintained by the Resolution Professional in the interest of justice, and*
- b) *Pass an order for avoidance of the preferential transaction and direct Mr. Siraj Mather to pay an amount of Rs.*

- 40,15,000.00/- to the account of the Corporate Debtor maintained by the Resolution Professional in the interest of justice, and*
- c) Pass an order for avoidance of the preferential transaction and direct the Moon Day Realtors Private Limited to pay an amount of Rs.80,000/- to the account of the Corporate Debtor maintained by the Resolution Professional in the interest of justice, and/or*
- d) pass such other order(s) that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case*

The Brief facts of the case are as follows: -

2. The applicant submitted that, vide order dated 13.06.2024 in CP (IBC) No. 12/KB/2024, this Tribunal admitted the application filed by Mr. Nizam Saleem Tharakandathil and others (Financial Creditors) under Section 7 of the Code against Aston Properties and Developers Private Limited, the Corporate Debtor, and appointed Mr. Rajendran P. R. as the Interim Resolution Professional.
3. It is submitted that the Interim Resolution Professional made a public announcement in Form-A on 14.06.2024, inviting claims, with the last date for submission being 27.06.2024. Upon collation and verification of the claims, the Interim Resolution Professional admitted total claims amounting to Rs.1,15,87,75,683/- and accordingly reconstituted the Committee of Creditors, comprising Piramal Trusteeship Services Private Limited, Westex Realty & Infra LLP, Silpa Projects & Infrastructure India Private Limited, Isac Joseph, Kim George Koshy, Dr. K. S. Mathew, Mibu John Paduthottu, Anish Khalid, Dr. Sunil A. Antony, Nizam Saleem Tharakandathil, and E. K. Paul as members.
4. It is submitted that the Corporate Debtor is engaged in the business of real estate development and its major asset is a partially constructed residential

project named “Dew Dale.” The project comprises a 19-storey building with multiple apartments, of which approximately 30% of the construction has been completed, and the work is presently stalled. The project is situated near Kanjirappally Town on the Ponkunnam–Kanjirappally Road and is constructed on land admeasuring 129.06 cents owned by the Corporate Debtor, with a total plinth area of 13,022.53 sq. meters.

5. It is further submitted that in the fourth meeting of the Committee of Creditors held on 19.08.2024, the CoC resolved to replace the Interim Resolution Professional and appointed the Applicant as the Resolution Professional, which appointment was confirmed by this Tribunal vide order dated 02.12.2024.
6. It is submitted that the Resolution Professional examined the transactions of the Corporate Debtor during the look-back period from 13.06.2022 to 12.06.2024 and identified certain transactions as preferential within the meaning of Section 43(1) of the Code, 2016. Pursuant to the recommendation of the Committee of Creditors in its meeting held on 26.12.2024, a Transaction Auditor, Mr. Vibin Vincent, FCA (Membership No. 222494), was appointed as Transaction Auditor on 07.01.2025. The Transaction Auditor submitted his final report dated 25.03.2025, which was received on 09.04.2025. After examining the audited financial statements, available books of accounts, bank statements up to the date of the order, the Transaction Audit Report, and the explanations provided, the Resolution Professional decided on 07.04.2025, declaring the following transactions as preferential.

Sr. No.	Party Name	Amount (in INR)
1	Asten Realtors Private Limited	₹ 15,24,10,709.00
2	Mr. Siraj Mather	₹ 40,15,000.00
3	Moon Day Realtors Private Limited	₹ 80,000.00
Total preferential transactions as per Section 43 of IBC		₹15,65,05,709.00

7. It is submitted that preferential transactions aggregating to Rs.15,24,10,709/- were carried out by the Corporate Debtor in favour of Asten Realtors Private Limited, the holding company and a related party holding 99% shareholding. The opening balance of the unsecured loan payable to Asten Realtors as on 13.06.2022 was Rs. 17,76,49,789.73. During the relevant two-year look-back period, the Corporate Debtor made preferential transactions in favour of Asten Realtors aggregating Rs.15,24,10,709/-. This included repayment of Rs. 8,05,24,631/- towards the unsecured loan and the transfer of 13 completed apartments (out of 25 apartments that were attached in arbitration proceedings) valued at Rs.7,18,86,078/- to Silpa Projects & Infrastructure India Private Limited under a settlement dated 08.08.2022 to discharge Asten Realtors' liability. These transactions resulted in preference being given to a related party over other creditors and were therefore determined as preferential transactions under Section 43 of the Code, 2016.

8. It is submitted that Mr. Siraj Mather, a director of the Corporate Debtor and therefore a related party, was an unsecured creditor with an opening loan balance of Rs. 9,95,649/- as on 13.06.2022. During the relevant two-year period prior to the commencement of CIRP, he infused additional funds of Rs. 32,05,834/-, making the total loan outstanding Rs.42,01,483/. Between 12.06.2022 and 31.07.2023, Mr. Siraj Mather withdrew Rs.40,15,000/- from

the Corporate Debtor. The Resolution Professional has determined that such withdrawals, made when other creditor dues existed, constitute preferential transactions. Consequently, the total preferential transaction in favour of Mr. Siraj Mather is Rs. 40,15,000/-, and he is not eligible for any set-off against the Corporate Debtor's dues.

9. It is submitted that Moon Day Realtors Private Limited, a creditor of the Corporate Debtor, is a related party as Mr. Siraj Mather is a common director of both entities. As on 13.06.2022, the outstanding balance payable to Moon Day Realtors was Rs. 1,49,993/-. On 08.02.2024, the Corporate Debtor paid Rs. 80,000/- against this outstanding debt. There were no regular business transactions between the Corporate Debtor and Moon Day Realtors during the relevant period. The Resolution Professional has determined that this payment constitutes a preferential transaction under Section 43 of the Insolvency and Bankruptcy Code, 2016. Accordingly, the total preferential transaction in favour of Moon Day Realtors Private Limited is Rs. 80,000/-.
10. The Resolution Professional is of the opinion that the Corporate Debtor had given preference to certain related parties through transactions during the relevant period. In terms of Section 43 read with Section 44(1)(d) of the Code, the Resolution Professional may apply to the Adjudicating Authority for avoidance of such preferential transactions and for directing the concerned persons to pay the amounts received from the Corporate Debtor. Accordingly, the present application is filed seeking a direction against Respondents No. 1 to 3 to repay the amounts determined as preferential transactions to the account of the Corporate Debtor maintained by the Resolution Professional.

11. It is further submitted by the RP that the Corporate Debtor is undergoing the Corporate Insolvency Resolution Process (“CIRP”) pursuant to the order of this Tribunal dated 13.06.2024, with the CIRP extended up to 09.07.2025. Under Regulation 35A, an application under Section 43 is to be filed within 130 days from the CIRP commencement date. The present application is filed on 14.06.2025, showing a delay of 366 days from the CIRP commencement. The delay occurred because the Interim Resolution Professional was replaced and the Resolution Professional was appointed only on 02.12.2024, after which a Transaction Auditor was appointed on 07.01.2025 and submitted the final report on 03.04.2025. The Resolution Professional made the determination on 07.04.2025, and counting from his appointment, the application is filed within 194 days, resulting in a delay of only 64 days beyond 130 days. It is submitted that the timeline under Regulation 35A is directory and not mandatory, and sufficient cause exists to condone the delay and admit the application.
12. The Respondent No. 1, in its reply affidavit, stated that Respondent No.1 is a related party of the Corporate Debtor and, being its wholly owned holding company, there were continuous business transactions between them. Both entities are engaged in the real estate business, with three projects of Asten Realtors and one project of the Corporate Debtor under active construction during the relevant period. Respondent No.1 had completed approximately 90% of the work in its Rajagiri Campus Court project, while the Corporate Debtor’s project “Dew Dale” had only its building structure completed.
13. Respondent No. 1 submitted that, as per the financial statements of the Corporate Debtor, Asten Realtors Private Limited, the holding company, was an unsecured creditor with an opening loan balance of

Rs.17,76,49,789.73 as on 13.06.2022, two years prior to the Insolvency Commencement Date. The Resolution Professional has determined that a total of Rs. 15,24,10,709/- as a preferential transaction in favour of Asten Realtors. During the relevant period, Asten Realtors advanced Rs.3,00,000 in cash and Rs. 7,27,75,308.58 by bank transfers, and incurred expenses of Rs. 99,832 on behalf of the Corporate Debtor, totaling Rs.7,31,75,140.58. Against these credits, the Corporate Debtor transferred Rs. 27,72,855 in cash and Rs. 7,83,51,776.03 by bank transfer back to Asten Realtors, totaling Rs. 8,05,24,631.03. Since these transfers were made when an antecedent financial debt of Rs. 17,76,49,789.73 was outstanding, the amount of Rs. 8,05,24,631.03 has been identified by the applicant as a preferential transaction under Section 43 of the Code, 2016.

14. Respondent No. 1 further stated that regarding the second part of the preferential transaction, based on the forensic audit report and the settlement agreement, the Applicant observed that liabilities of Asten Realtors Private Limited were settled through the transfer of immovable property of the Corporate Debtor to Silpa Projects & Infrastructure India Private Limited. Silpa Projects had initiated arbitration (CMA 452/2020) against Asten Realtors for Rs. 7,18,86,078/-, and vide order dated 14.12.2020, 25 apartments of the Corporate Debtor were allowed to be attached against Asten Realtors' liability. Subsequently, on 18.08.2022, Asten Realtors and the Corporate Debtor jointly entered into a settlement agreement with Silpa Projects, under which 13 completed apartments were transferred to settle Asten Realtors' liability of Rs. 7,18,86,078/- and the Corporate Debtor's liability of Rs. 2,82,15,988/-.

15. Since the liability of the Corporate Debtor amounting to Rs. 7,18,86,078/- was settled through the transfer of assets, this amount is treated as a preferential transaction. As of the commencement of the CIRP, the building was incomplete, with only the structure finished, so the transfer in the settlement agreement is only an allotment without actual possession of completed apartments. Therefore, Silpa Projects & Infrastructure Pvt Ltd remains an allottee and unsecured creditor in the Corporate Debtor's books. No resolution plan has been approved for the Corporate Debtor, and this Tribunal has ordered its liquidation. Consequently, Silpa Projects & Infrastructure Pvt Ltd is entitled to claim the amount under Section 53(1) of the Code and share in the distribution of assets accordingly. There are no secured creditors to the Corporate Debtor. Silpa Projects & Infrastructure Pvt Ltd's admitted claim constitutes approximately 11.16% of the unsecured debt. The settlement agreement was entered to amicably resolve various claims and lift court attachments involving the Corporate Debtor and Respondent No. 1, fulfilling their financial obligations towards Silpa Projects & Infrastructure Pvt Ltd and the Corporate Debtor.
16. Respondent No. 2 & Respondent No. 3 in their reply statement pointed out that the Applicant has failed to establish the essential elements required under Section 43 of the Code. Section 43 provides that a corporate debtor is deemed to have given a preference if:
- There is a transfer of property or an interest in property by the corporate debtor for the benefit of a creditor, surety, or guarantor on account of an antecedent financial or operational debt, or other liabilities owed by the corporate debtor; and
 - Such transfer places the creditor or surety, a guarantor, in a beneficial position than it would have been in the event of a distribution of assets being made under Section 53 of the Code;

17. According to Respondent No. 2 & Respondent No. 3, certain transfers are excluded from being treated as preferences, including those made in the ordinary course of business or those creating a security interest in newly acquired property under specified conditions. Furthermore, any transfer ordered by a court is not excluded from being considered a preference. The relevant time period for determining preference depends on whether the transaction was with a related party (two years preceding the insolvency commencement date) or a non-related party (one year preceding the insolvency commencement date).
18. It is submitted by Respondent No. 2 & Respondent No. 3 that for any transaction to qualify as a preferential transaction under Section 43 of the Code, two conditions must be met: firstly, there must be a transfer of property or an interest therein by the Corporate Debtor for the benefit of a creditor, surety, or guarantor on account of an antecedent financial debt, operational debt, or other liabilities owed by the Corporate Debtor; and secondly, such transfer must result in placing the creditor, surety, or guarantor in a more beneficial position than they would have been in the event of a distribution of assets in accordance with Section 53 of the Code.
19. It is submitted by Respondent No. 2 & Respondent No. 3 that the Applicant has failed to prove that the payments made by the Corporate Debtor to the 2nd Respondent arose 'on account of an antecedent financial debt.' The application states that the unsecured loan outstanding as of 13.06.2022 was Rs. 9,95,649/- and that the 2nd Respondent infused additional funds amounting to Rs. 32,05,834/- during the look-back period. However, the Applicant has not demonstrated how this infusion of funds during the look-back period constitutes an antecedent debt within the meaning of Section

43(2) of the Code. Furthermore, the Applicant fails to demonstrate how such transfers or withdrawals placed the 2nd Respondent in a more favourable position, especially since all creditors of the Corporate Debtor are unsecured. The Applicant does not explain how the transaction with the 2nd Respondent disadvantaged other lenders or creditors, including banks and financial institutions. Moreover, the Applicant has not shown whether any payments owed to other creditors were not honoured or if any preferential treatment was given at the time of such transaction or withdrawal.

20. It is further submitted by Respondent No. 2 & Respondent No. 3 that the Applicant has failed to demonstrate in its determination or in this Application whether the transactions in question fall within the exception for transfers made in the ordinary course of business, as provided under Section 43(3)(a) of the Code.

21. It is further submitted by Respondent No. 2 & Respondent No. 3 that the Applicant has intentionally omitted or wholly suppressed the observations of the Transaction Auditor in his report dated 25.03.2025, which clearly state that the transactions involving the 2nd Respondent, specifically the infusion of additional funds, are regarded as repayments of short-term infusions made by directors and therefore do not qualify as preferential payments. However, the present application remains silent on these observations and fails to provide any reasoning or justification for disregarding the Transaction Auditor's categorical finding that such payments constitute short-term infusions and should not be considered preferential transactions.

22. The 3rd Respondent contends that the determination made by the Applicant with respect to such allegations is baseless, illegal, arbitrary, and does not

satisfy the requirements of Section 43 Code. It is further stated that the Applicant has failed to demonstrate how the alleged payment put the 3rd Respondent in a beneficial position relative to other creditors, most of whom are unsecured, or whether such payment adversely affected the repayment to any other creditors.

23. It is submitted that the Applicant has not undertaken the necessary steps as required under Section 43 of the Code for the determination of preferential transactions, as has been emphasized by the Hon'ble Supreme Court in ***Anuj Jain vs. Axis Bank Limited and Ors.*** [MANU/SC/0228/2020; dated **26.02.2020**]. According to Respondent No. 2 & Respondent No. 3, the application is based on an arbitrary and legally untenable determination, founded on incomplete data. The transactions alleged as preferential are in fact transactions conducted in the ordinary course of business of a real estate company and, therefore, do not warrant any relief under the Code.
24. The Applicant in the rejoinder submitted that both Respondent No.2 and Respondent No.3 are related parties of the Corporate Debtor. Respondent No.2 is a director of the Corporate Debtor, and Respondent No.2 is also a director of Respondent No.3. The Applicant submits that any transactions carried out by the management of the Corporate Debtor in favour of its director or related parties of the director, while there are outstanding liabilities to other creditors, constitute a preferential transaction under Section 43 of the Code. Further, the Respondents have failed to produce any evidence to prove that such transactions were conducted in the ordinary course of business and, therefore, cannot claim the benefit of any exceptions under Section 43 of the Code. Accordingly, the transactions in question have conferred a preference on the Respondents over other creditors of the

Corporate Debtor, placing them in a more favourable position than they would have been in the event of distributing assets in accordance with Section 53 of the Code.

25. The Applicant submitted that his determination was made after verification of the records of the Corporate Debtor and following a detailed transaction audit. The determination of the Resolution Professional satisfies the requirements of Section 43 of the Code. It is incorrect to claim that there is no antecedent financial debt as of the date of commencement of the Corporate Insolvency Resolution Process (CIRP). The antecedent financial debt must be determined as on the commencement date of CIRP.
26. The Applicant further submitted that the Respondent No.2 has received a preferential transaction of Rs. 40,15,000/-. As per the audited balance sheet of the Corporate Debtor as on 13.06.2024, there exists an antecedent debt of Rs. 42,01,483/- owed to Respondent No.2. The evidence supporting these transactions is available in the ledger statements produced at Pages 166-167, along with Annexure A/4 – Transaction Audit Report. Respondent No.2 has not produced any evidence to show that the payments made during the period from 12.06.2022 to 31.07.2023 were made in the ordinary course of business.
27. It is submitted that Respondent No.3 has received a preferential transaction of Rs. 80,000/-. As per the audited balance sheet of the Corporate Debtor as on 13.06.2022, there exists an antecedent debt of Rs.1,49,993/- payable to Respondent No.3. The relevant ledger statement is produced at Page 168 of the Application. Respondent No.3 has also not produced any evidence to prove that the transaction was done in the ordinary course of business.

28. It is further submitted that Respondents No.2 and 3 are related parties of the Corporate Debtor and do not enjoy any priority over other unsecured financial creditors, even if the payment made by Respondent No.2 is considered as an unsecured financial debt. The Applicant has received total claims of Rs. 1,15,87,75,682/- from various creditors as on the insolvency commencement date. The Corporate Debtor was in the development of the real estate project "Dew Dale" and received advances from home buyers. As per the audited balance sheet as on 31.03.2021, customer advances amounted to Rs. 46,463,112.64. Out of this, the liability towards home buyers in the Dew Dale project was Rs. 4,62,07,468.60/-. The Resolution Professional has received claims totalling Rs. 18,47,54,408/- from home buyers.
29. The project is incomplete, and the amounts payable to home buyers are still due. Furthermore, the Corporate Debtor had provided a corporate guarantee to Piramal Trusteeship Services Private Limited, which had raised a claim of Rs. 64,20,34,777/-. The erstwhile management was aware of the dues of these creditors, who are entitled to preference over Respondents No.2 and 3 in the event of distribution, yet knowingly transferred funds to related parties. Therefore, any withdrawals by Respondents No.2 and 3 without settlement of the dues of home buyers and other unsecured creditors constitute a preferential transaction under Section 53(1) of the Code. While there are no secured financial creditors, the dues of home buyers and other unsecured creditors take precedence over the claims of Respondents No.2 and 3, whose claims are negligible.
30. The Applicant has produced the Transaction Audit Report. According to the Applicant, the Resolution Professional does not have the authority to adjust

payments against short-term infusions when the payments are made in respect of an antecedent financial debt. There is no evidence that the transactions arose in the ordinary course of business. Further, none of the provisions of law permit the Resolution Professional to adjust such payments. The provisions of the Code do not restrict antecedent financial debt to only the look-back period. If a transfer is made for the benefit of a creditor in preference to other creditors entitled to priority in distribution, the Respondents are liable to return such amounts under Section 43 of the Code.

FINDINGS:

31. This Adjudicating Authority has heard the learned Counsel for the Applicant, the learned Counsel appearing for the Respondents and has carefully perused the Transaction Audit Report, ledger statements, audited financials, and other materials placed on record.
32. The Resolution Professional has pointed out that there has been a delay in filing the present application. However, it is alleged that such a delay is neither deliberate nor fatal to the maintainability of the application. In this regard, the Hon'ble Appellate Tribunal, in ***Jagdish Kumar Parulkar, Resolution Professional v. Vinod Agarwal & Ors., (2023) ibclaw.in 132 NCLAT***, has categorically held that the timelines prescribed under Regulation 35-A of the CIRP Regulations for the formation of opinion, determination, and filing of avoidance applications are directory and not mandatory. The Hon'ble Appellate Tribunal observed that the time required by a Resolution Professional depends on several factors, including the availability of records, non-cooperation of the suspended management, complexity and layering of transactions, and delays in completion of

transaction audits, many of which are beyond the control of the Resolution Professional. It was further held that mere delay from the Insolvency Commencement Date cannot, by itself, render such applications non-maintainable, particularly where sufficient and bona fide reasons are shown. In view of the aforesaid settled position of law, the delay in filing the present application stands duly explained and does not affect its maintainability.

33. The present Application has been filed under Sections 43 and 44 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 to 3, all of whom are admittedly related parties within the meaning of Section 5(24) of the Code.

34. Section 5(24) of the Code is as under :-

“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;*
- (l) 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;*

35. In the present case, Respondent No.1 is the holding company of the Corporate Debtor holding 99% of its share capital, Respondent No.2 is a Director of the Corporate Debtor, and Respondent No.3 is a private company in which Respondent No.2 is a common Director. Accordingly, all three Respondents squarely fall within the definition of “related party” under Section 5(24) of the Code. The existence of such a relationship is admitted and not in dispute.

36. Section 43(2) of the Code provides that a transaction shall be deemed to be preferential if:

- (i) there is a transfer of property or interest thereof for the benefit of a creditor, surety, or guarantor on account of an antecedent financial or operational debt; and
- (ii) such transfer has the effect of putting such creditor in a more beneficial position than it would have been in the event of distribution of assets under Section 53 of the Code.

37. The Hon'ble Supreme Court in **Anuj Jain, IRP of Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors.** has authoritatively held that, for the determination of a preferential transaction under Section 43 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority is required to examine: (i) the existence of an antecedent financial or operational debt; (ii) the timing of the transfer in relation to the insolvency commencement date; (iii) the effect of such transfer on the priority of distribution under Section 53 of the Code; and (iv) whether the transaction falls within any of the statutory exclusions provided under Section 43(3) of the Code. The Hon'ble Supreme Court has further clarified that transactions involving related parties require strict scrutiny, as such transactions are inherently susceptible to conferring preference over other creditors.
38. In the case of related parties, the relevant look-back period is two years preceding the insolvency commencement date, as prescribed under Section 43(4)(a).
39. It is undisputed that as on 13.06.2022, i.e., two years prior to the Insolvency Commencement Date, Respondent No.1 was an unsecured creditor of the Corporate Debtor with an outstanding antecedent debt of Rs. 17,76,49,789.73. During the look-back period, the Corporate Debtor made the following transfers in favour of Respondent No.1:

Description	Amount
Actual payments made towards an unsecured loan (A)	Rs. 8,05,24,631.00
Transfer of 13 apartments to Silpa Projects & Infrastructure (I) Pvt. Ltd. towards Respondent No.1's liability (B)	Rs. 7,18,86,078.00
Additional funds infused / expenses met by Respondent No.1 during look-back period (C)	(Rs. 7,31,75,140.50)

40. This Adjudicating Authority finds that:

- a. The payments of Rs. 8,05,24,631/- were made towards an existing unsecured loan, thereby satisfying the test of antecedent debt under Section 43(2)(a).
 - b. The transfer of immovable property belonging to the Corporate Debtor to discharge the liability of Respondent No.1 clearly constitutes a transfer of the Corporate Debtor's property for the benefit of a related-party creditor.
 - c. Such transfers were effected when substantial dues of home buyers and other unsecured creditors were outstanding, thereby placing Respondent No.1 in a more beneficial position than it would have occupied under the waterfall mechanism prescribed under Section 53.
41. The Hon'ble Supreme Court in ***Anuj Jain (supra)*** has held that the burden to establish that a transaction falls within the exclusion under Section 43(3) squarely lies on the beneficiary of the transaction. No documentary evidence has been produced to establish that repayment of old unsecured loans or alienation of assets to settle a holding company's liability constitutes the ordinary course of business of a real estate developer.
42. This Adjudicating Authority notes that the purpose of avoidance of preferential transactions under Sections 43 and 44 of the Insolvency and Bankruptcy Code, 2016, is to restore the financial position of the Corporate Debtor and not to impose a penalty on the beneficiary of the transaction. The objective is to reverse the unfair advantage gained by a creditor and place all creditors on an equal footing, as they would have been under Section 53 of the Code.

43. In the present case, although payments and asset transfers aggregating to Rs. 15,24,10,709/- were made by the Corporate Debtor in favour of Respondent No.1 during the look-back period, it is also evident from the record that Respondent No.1 had, during the same period, infused additional funds and incurred expenses amounting to Rs. 7,31,75,140.50/- for the benefit of the Corporate Debtor, which were recorded as unsecured loans.
44. These transactions are part of a continuous financial relationship between the same parties and cannot be viewed in isolation. If the entire amount of Rs. 15,24,10,709/- is directed to be refunded without accounting for the funds infused by Respondent No.1 during the same period, it would result in unjust enrichment of the Corporate Debtor, which is not the intent of the Code.
45. The avoidance provisions are intended to neutralise the preferential effect of a transaction and restore the Corporate Debtor's estate to the position it would have occupied but for such preference, and not to impose a punitive liability on the beneficiary. In the present case, while the Corporate Debtor made preferential payments and asset transfers aggregating to Rs. 15,24,10,709/- in favour of Respondent No.1 during the look-back period, it is simultaneously evident that Respondent No.1 infused additional funds and incurred expenses amounting to Rs. 7,31,75,140.50/- during the same period for the benefit of the Corporate Debtor, which were duly recorded as unsecured loans. To avoid unjust enrichment of the Corporate Debtor and to give effect to the true intent of the avoidance provisions, the said amount of Rs. 7,31,75,140.50/- is liable to be adjusted against Rs. 15,24,10,709/-. After such adjustment, the net preferential benefit derived by Respondent

No.1 is quantified at Rs. 7,92,35,568.50/-, which alone is liable to be refunded to the Corporate Debtor in terms of Section 44 of the Code.

46. Respondent No.2, being a Director of the Corporate Debtor, is a related party. As on the insolvency commencement date, an antecedent unsecured debt of Rs. 42,01,483/- stood recorded in his favour. During the look-back period, withdrawals aggregating to Rs. 40,15,000/- were made.

47. The contention that such payments were mere adjustments of short-term infusions is untenable. The audited balance sheet and ledger statements clearly establish the existence of an antecedent financial debt. The Hon'ble Appellate Tribunal in ***Jagdish Kumar Parulkar, Resolution Professional v. Vinod Agarwal & Ors., (2023) ibclaw.in 132 NCLAT***, further held that payments made by the Corporate Debtor towards personal liabilities, medical expenses, loan repayments or reimbursements of directors or their relatives do not fall within the 'ordinary course of business' and squarely constitute preferential transactions under Section 43 of the Code, especially when such transactions place related parties in a more beneficial position than under Section 53.

48. No evidence has been produced to establish that these withdrawals were made in the ordinary course of business. Therefore, the amount of Rs. 40,15,000/- received by Respondent No.2 is held to be a preferential transaction and is liable to be refunded.

49. Similarly, Respondent No.3 is a related party of the Corporate Debtor, and as on 13.06.2022, an antecedent unsecured debt of Rs. 1,49,993/- stood recorded in its favour. During the relevant look-back period, a payment of Rs. 80,000/- was made on 08.02.2024. The said payment has not been supported by any contemporaneous agreement, invoice, or documentary

material to establish that it arose out of any genuine commercial transaction or was made in the ordinary course of business of the Corporate Debtor. The existence of an antecedent debt coupled with the timing of the payment during the look-back period clearly satisfies the ingredients of Section 43(2)(a) of the Code. Further, in the absence of any evidence to bring the transaction within the exclusion carved out under Section 43(3), the payment had the effect of conferring a preference upon Respondent No.3, a related-party unsecured creditor, by enabling it to recover its dues ahead of other similarly placed creditors, thereby placing it in a more beneficial position than it would have occupied in the event of distribution under Section 53 of the Code. Accordingly, the payment of Rs. 80,000/- made in favour of Respondent No.3 is held to be a preferential transaction liable to be avoided.

50. In exercise of powers under Section 44(1)(d) of the Insolvency and Bankruptcy Code, 2016, this Adjudicating Authority directs as follows:

- a. Respondent No.1 – Asten Realtors Private Limited shall refund a sum of Rs. 7,92,35,568.50/- to the account of the Corporate Debtor maintained by the Resolution Professional;
- b. Respondent No.2 – Mr Siraj Mather shall refund a sum of Rs. 40,15,000/- to the account of the Corporate Debtor maintained by the Resolution Professional;
- c. Respondent No.3 – Moon Day Realtors Private Limited shall refund a sum of Rs. 80,000/- to the account of the Corporate Debtor maintained by the Resolution Professional.

51. It is clarified that the avoidance of preferential transactions under Sections 43 and 44 of the Insolvency and Bankruptcy Code, 2016, shall not result in the extinguishment or waiver of the underlying debts or claims of the Respondents. The amounts involved in such preferential transactions, once

reversed, shall restore the financial position of the Corporate Debtor as if the preferential payments had not been made. Consequently, the original claims of the Respondents shall revive and shall be treated strictly in accordance with the priority of payments prescribed under Section 53 of the Code.

52. The Resolution Professional is directed to include the amounts recovered from the avoidance of preferential transactions into the Corporate Debtor's estate and treat the Respondents as creditors in accordance with law. However, being related parties, Respondents No.1 to 3 shall not be entitled to any voting rights in the Committee of Creditors, and the Committee shall be reconstituted accordingly in line with the provisions of the Code and settled legal position.

53. In view of the above directions, **IA(IBC)/239/KOB/2025** IN CP(IBC)/12/KOB/2024 is **partly allowed** and **disposed of**.

54. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

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

56. File be consigned to records.

Sd/-

VINAY GOEL

(MEMBER JUDICIAL)

Signed on this the 6th day of January, 2026

A Steno_A*