

Hon'ble Supreme Court Directions on Preferential Transactions in Insolvency

The landmark decision in relation to the corporate insolvency resolution process (CIRP) of Jaypee Infratech Limited (JIL), the Hon'ble Supreme Court in Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Limited, has rested down the law on Preferential Transactions.

Indispensable Elements of a Preferential Transaction:

The Hon'ble Supreme Court, after carrying out analysis of Section 43(2) and (4) of the Code held that in the event the following conditions are met, a transaction is deemed to be a preferential transaction:

- the transaction is of transfer of property or interest of the CD, for the advantage of a creditor or surety or guarantor, for or because of a forebear financial debt or operational debt or other liability;
- 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 in accordance with Section 53 of the Code; and
- such transaction has been carried out during the period of two years preceding the CIRP commencement when the beneficiary is a related party (other than an employee), or in case of an unrelated party, during the period of one year preceding the CIRP.

However, preferential transactions satisfying the above conditions are permissible if:

- (i) Entered during the ordinary course of business of the corporate debtor 'and' transferee; or
- (ii) Resulting in provision of new value to the corporate debtor.

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