

NATIONAL COMPANYLAW TRIBUNAL  
GUWAHATIBENCH  
GUWAHATI

ORDER SHEET OF THE HEARING ON 30<sup>th</sup> APRIL 2026

IA (IBC)/48/GB/2022  
CP (IB)/19/GB/2021

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha  
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	Mukut Chandra Deka Vs J S B Entrade Pvt. Ltd.
Under Section	U/s 7 of IBC, 2016

Appearances (via video conferencing/physically)

IA (IBC)/48/GB/2022

For Petitioner (s) : Mr. Nirmal Goenka, Adv.

For Respondent (s) : Mr. Mukesh Sharma, Adv. for R-1 to 3

**ORDER**

Order pronounced in open court *vide* separate sheets.

Sd/-  
Yogendra Kumar Singh  
Member (Technical)

Sd/-  
Rammurti Kushawaha  
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

IA (IBC)/48/GB/2022

In

CP (IB)/19/GB/2021

*An Application under Section 66 of the Insolvency and Bankruptcy Code (IBC), 2016;*

*In the matter of CP (IB)/19/GB/2021:*

**Mukut Chandra Deka**

**...Financial Creditor**

*-Versus-*

**J S B Entrade Private Limited**

**...Corporate Debtor**

*-And-*

*In the matter of IA (IBC)/48/GB/2022:*

**Mr. Purshotam Gaggar**, (Resolution Professional for J S B Entrade Pvt Ltd) having registered address at P. Gaggar & Associates, 3rd Floor Advika Building, Opp. Sukreswar Ghat Guarden, M. G. Road, Panbazar, Guwahati, Assam– 781001;

**...Applicant/Resolution Professional**

*-Versus-*

**Mr. Amiyo Ishlary**, S/o Useen Ishlary having registered address at Udaynagar, Khanapara, Guwahati, Assam– 781022;

**...Respondent No. 1**

*-And-*

**Mr. Nobel Sangma**, S/o Taranson Marak having registered address at Vill. Marakdani, Jorabat, Guwahati, Assam– 781023;

**...Respondent No. 2**

*-And-*

**Mr. Santosh Kumar Harlalka**, S/o Ramswarup Harlalka having registered address at Bajrang Stores, R.K. Bose Road, PO. Dhubri, Assam– 783301;

**...Respondent No. 3**

*-And-*

**Mr. Kamal Kumar Harlalka**, S/o Ram Swarup Harlalka having address at 3rd Floor, Shree Sadan, B.R. Phookan Road, Kumarpara, Guwahati, Assam– 781001;

...Respondent No. 4

-And-

**Mr. Mukut Chandra Deka**, S/o Ajit Deka having address at House No.3, Behind Nabajyoti Gas Agency, Hatigarh Chariali, P.O-Zoo Road, Guwahati, Assam– 781024.

...Respondent No. 5

**Coram:**

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

**Appearances (through video conferencing / Physical):**

For Petitioner : Mr. Nirmal Goenka, (Adv.)

For Respondent : Mr. M. Sharma, Mr. K. Borad (Adv.) (R-1 to R-3)

Order pronounced on: 30.04.2026

**As Per Bench**

1. The instant Interlocutory Application i.e. **IA(IBC)/48/GB/2022** is filed by Mr. Purshotam Gaggar, the Resolution Professional for J S B Entrade Pvt Ltd (“**Corporate Debtor or CD**”), under Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**IBC or the Code**”), seeking for the following reliefs:-
  - a. *Pass an order declaring that the transactions as stated in the present application are fraudulent in terms of Section 66 (1) and (2) of the Insolvency and Bankruptcy Code, 2016;*
  - b. *Pass an order thereby directing the Respondents being the suspended board of directors / erstwhile directors / promoters / related party to make such contributions to the assets of the corporate debtor as this Hon'ble Tribunal may deem fit on account of fraudulent and wrongful trading in terms of Section 66 of the Code;*
  - c. *For such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*
2. The relevant submissions of the Applicant made *vide* their Petition are extracted hereunder:

- 2.1 The Applicant submitted that this Tribunal *vide* order dated 10.12.2021, allowed CP(IB)/19/GB/2021, titled “*Mukut Chandra Deka vs JSB Entrade Pvt Ltd*” thereby initiating CIRP against the Corporate Debtor and appointed Mr. Manish Agarwalla as IRP. A copy of the order dated 10.12.2021 is annexed as ‘*Annexure A-1*’ of the petition.
- 2.2 Thereafter, in the 2nd Meeting of the Committee of Creditors dated 25.02.2022, it was resolved to replace Mr. Manish Agarwalla and appoint the Mr. Purshotam Gaggar (Applicant herein) as Resolution Professional (RP) of Corporate Debtor.
- 2.3 Further, this Tribunal *vide* order dated 07.04.2022, allowed the application bearing IA (IBC)No.22/GB/2022 in C.P.(IB)/19/GB/2021, for appointment of Mr. Purshotam Gaggar as RP of Corporate Debtor. A copy of the order dated 07.04.2022 is annexed as ‘*Annexure A-2*’ of the petition.
- 2.4 The Applicant in pursuance of his duties as the Resolution Professional appointed a J N Gupta & Co. as the Transaction Auditor to carry out investigation into the affairs of the Corporate Debtor. Copy of the appointment letter dated 30.04.2022 issued by the RP to the transaction auditor is annexed as ‘*Annexure A-3*’ of the petition.
- 2.5 The Applicant received the final Transaction Audit Report on 11.06.2022. Upon perusal of the Transaction Audit Report so submitted, it was ascertained that business of the corporate debtor was carried out with the intent to defraud the creditors of the Corporate Debtor. A copy of the Transaction Audit report is annexed as ‘*Annexure A-4*’ of the petition.
- 2.6 Thereafter, applicant *vide* letter dated 18.06.2022, sought clarification from the suspended board of directors with respect to the findings and observations stated in the transaction audit report. A Copy of letter dated 18.06.2022 is annexed as ‘*Annexure A-5*’ of the petition.
- 2.7 Furthermore, the applicant submitted that it may be noted that no reply was filed by the suspended Board of Directors. Instead, a reply was submitted by Respondent No. 4, Mr. Kamal Kumar Harlalka, the promoter/erstwhile director of the Corporate Debtor, who ceased to be a director in 2013 but appears to continue exercising control over its affairs. The Respondent No. 4 submitted a reply to the transaction auditor’s observations *via* email dated 30.06.2022. However, the reply given is evasive and do not in any manner rebut or refute

observations made during the transaction audit. A copy of the reply dated 30.06.2022 is annexed as 'Annexure A-6' of the petition.

- 2.8 The Applicant further submitted the brief background of Corporate Debtor that:
- a. The Corporate Debtor, JSB Entrade Pvt. Ltd. (incorporated on 19.05.2010) is a private limited company having its registered office at House No. 3/1, Rajdeep Complex, F.A. Road, Kumarpara, Guwahati-781009, Assam. It is engaged in the business of manufacturing of Empty TIN and Trading of Paddy, Oil Seeds, Mustard Oil and Blended Oil etc.
  - b. The Corporate Debtor has three directors (presently under suspension), namely Respondent No. 1 – Mr. Amiyo Ishlary, Respondent No. 2 – Mr. Nobel Sangma, and Respondent No. 3 – Mr. Santosh Kumar Harlalka. The master data of the Corporate Debtor is annexed as 'Annexure A-7' and the list of shareholders is annexed as 'Annexure A-8' of the petition.
  - c. The list of Director/erstwhile director of CD are mentioned below:

S. No.	Name of Directors	Date of Appointment	Date of Cessation
1.	Amiyo Ishlary	21.09.2012	—
2.	Santosh Kumar Harlalka	06.08.2014	—
3.	Nobel Sangma	26.12.2017	—
4.	Kamal Kumar Harlalka	19.05.2010	04.01.2013
5.	Hemant Harlalka	19.05.2010	06.08.2014
6.	Nanda Rangsa Marak	04.01.2013	26.12.2017
7.	Rohit B Marak	29.03.2013	13.08.2014
8.	Mukut Chandra Deka	29.04.2019	21.03.2020

- 2.9 The applicant further submitted that it is pertinent to note that the application under Section 7 of the code (for initiation of CIRP of Corporate Debtor) was filed by one of the erstwhile directors of the Corporate Debtor namely Mr. Mukut Chandra Deka (Respondent No. 5 herein) which clearly shows the contentions of the suspended board that the Corporate Debtor defaulted in repayment of loan taken from an erstwhile director in itself raises grave suspicion with respect to the functioning of the Corporate Debtor.
- 2.10 Further, it is submitted that while conducting the transaction audit, the transaction auditor observed that the Directors of the Corporate Debtor and

Harlalka family group hold directorship/membership/partnership in other related concerns which are represented as under:

S.No.	RELATED PARTY TO CORPORATE DEBTOR	RELATION
1.	Mr. Amiyo Ishlary	DIRECTOR
2.	Mr. Nobel Sangma	DIRECTOR
3.	Mr. Santosh Kumar Harlalka	DIRECTOR
4.	Mr. Kamal Kumar Harlalka	PROMOTER/SHAREHOLDER
5.	Mrs. Nisha Harlalka	Wife of Kamal Kumar Harlaika
6.	RSH Agro Products Ltd. (under CIRP)	Common Directors
7.	JSB Properties Pvt Ltd	Common Directors
8.	Navya Agro Products Pvt Ltd (under CIRP)	Common Directors
9.	JSB Cement LLP	Amiyo Ishlary is a partner
10.	JSB Drums	Partnership firm in which Mr. Kamal Kumar Harlalka and Mr. Hemant Harlalka are partners
11.	JSB Foods	Partnership Firm in which JSB Properties Pvt Ltd is a Partner
12.	Hemant Industries	Partnership firm in which one of Partner is Smt. Sarda Devi Harlalka
13.	Balajee Industries	Partnership firm in which Mr. Naresh Kumar Harlalka and Smt. Babita Harlalka are partners

2.11 The Applicant further submitted that as mentioned in the transaction audit report during FY 2020-21, the Corporate Debtor withdrew huge amount of cash from its banker namely ICICI Bank and made the following cash payments. A copy of the account statement (01.08.2019 to 27.10.2021) is annexed as 'Annexure A-9' of the petition.

**CASH PAYMENT TO SUNDRY CREDITOR:**

- i. The Corporate Debtor withdrew huge amounts of cash from ICICI Bank, which were allegedly utilized for making payments to a sundry creditor, namely Purbanchal Road Carrier, during FY 2020–21.
- ii. It is observed that a total sum of Rs. 26.60 lakhs was paid in cash through continuous withdrawals and payments of Rs. 10,000/- on an almost daily

basis during the period from 01.05.2020 to 31.03.2021 to Purbanchal Road Carrier, without a single scrap of paper being taken as money receipt.

- iii. It is further noteworthy that such cash payments were made even during the complete lockdown period in May and June 2020, when movement of vehicles was restricted to essential services, thereby raising serious doubts regarding the genuineness of the transactions, particularly considering that the payments were purportedly made to a transport/carrier entity.
- iv. The Respondents have failed to provide any cogent or satisfactory explanation for these transactions. The reply of Respondent No. 4 merely states that the creditor was making pressure for payment from the CD; however, no justification has been provided as to why such substantial amounts were withdrawn in cash and paid in this manner. Upon examination of available records, only four invoices issued by the said creditor have been found, the total value of which does not exceed Rs. 50,000/-. In contrast, the ledger of the Corporate Debtor reflects an amount of Rs. 50 lakhs, while the ledger of the alleged creditor reflects an amount exceeding Rs. 65 lakhs, moreover there is no explanations as to for what purpose such amount was payable to the said alleged sundry creditor that warranted such a huge payment.
- v. It appears that the entire transaction has been carried out with the clear motive of siphoning off the funds of the Corporate Debtor from its bank account for the benefit of Respondents. It appears that the ledgers given by the Respondents are nothing but manufactured documents and the existence of the alleged creditor by the name of Purbanchal Road Carrier is itself doubtful. Copies of the relevant ledgers are annexed as '*Annexure A-10*' & '*Annexure A-11*' and Copy of the bilty issued by the Purbanchal Road Carrier is '*Annexures A-12*'.

**CASH EXPENSES ON LAND AND SITE DEVELOPMENT:**

- i. On verification of Books of Accounts and reviewing the Financial Statements of CD for the period of FY 2019-20 and FY 2020-21, the CD has incurred heavy expenses in cash for land and site development. No supporting documents have been produced, including invoices, transport records, statutory permissions or expert reports.

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- ii. As per the reply of Respondent No. 4, the expense was incurred for filling the land with sand and hard soil due to inundation and caving. However, no vouchers for such purchases or documents evidencing transportation to the factory site have been provided. The Respondents have only submitted sample payment vouchers of local vendors in a day-wise sheet.
  - iii. The vouchers shared by Respondent No. 4 are limited to selected dates and complete vouchers for all payment dates have not been provided. While vouchers totalling Rs. 2,43,600/- have been submitted by the Respondent No. 4, the ledger reflects cash expenses of Rs. 1,57,95,500/- for the period 02.01.2021 to 21.08.2021.
  - iv. Upon closer verification of the vouchers submitted by Respondent No. 4, it is observed that the same set of labourers have been shown charging varying rates on different dates, along with discrepancies in their signatures. The vouchers also lack any description of the work performed or the basis for determining such rates. These inconsistencies raise serious doubts, indicating that the vouchers are sham documents created subsequently in response to queries raised by the Applicant and the transaction auditor.
  - v. It is further surprising that the Corporate Debtor incurred cash expenses of Rs. 1.58 crore towards alleged land and site development during the same period when it purportedly failed to pay a similar amount to its erstwhile director (Respondent No. 5), leading to initiation of CIRP. This indicates that no genuine steps were taken to avoid CIRP and it appears that Respondents No. 1 to 4 acted in collusion with Respondent No. 5 to initiate CIRP with the intent to defraud the legitimate creditors of the Corporate Debtor. Copy of the ledger by the CD is annexed as '*Annexure A-13*' and copy of the voucher is annexed as '*Annexure A-11*'.

**TRANSACTIONS, *INTER-ALIA*, WITH DIRECTORS AND RELATED PARTIES:**

**Mr. Amiyo Ishlary (Suspended Director)**

- i. In the year 2012, the Corporate Debtor had purchased the following lands from the funds of the Corporate Debtor:
  - a. Land - 8 Bighas, 3 Katha covered by Dag No 75, Patta - 27, Vill-Ambher, Mouza- Sonapur, Circle- Sonapur, for a sum of Rs. 43 Lacs,

- b. Land - 13 Bighas, covered by Dag No 99, Patta - 42. Vill-Ambher, Mouza- Sonapur, Circle- Sonapur, for a sum of Rs. 15 Lacs.
- ii. However, it is surprising that in 2016, i.e., four years after the purchase of the said properties, the Corporate Debtor passed board resolutions stating that the properties had been inadvertently purchased in its name instead of Mr. Amiyo Ishlary (Respondent No. 1). Pursuant thereto, the properties were transferred to Mr. Amiyo Ishlary in 2016 through execution of two rectification deeds.
- iii. It is further surprising that, subsequently, by way of a lease deed dated 03.05.2018, the suspended director leased one of the aforesaid lands (Dag No. 75, Patta No. 27) to the Corporate Debtor for a period of 99 years. The said lease deed was for a sum of Rs. 43 Lacs, payable for 86 years and amount for the remaining 13 years would be adjusted against interest that would accrue at the rate of 12% p.a. compound interest annually on the said sum of Rs. 43 Lacs. Notably, the said amount of Rs. 43 lakhs had already been paid by the Corporate Debtor in 2012 towards purchase of the same land. This transaction clearly reflects misutilisation and misappropriation of the funds of the Corporate Debtor by the suspended directors.
- iv. While the amount spent by the Corporate Debtor for purchase of land at Dag No. 75, Patta No. 27 is sought to be adjusted against the lease, no such arrangement exists for the land at Dag No. 99, Patta No. 42. It is admitted that this land was purchased using the funds of the Corporate Debtor; however, pursuant to the rectification deed, Mr. Amiyo Ishlary is shown as the owner, despite not having paid any consideration for the said land. Copy of the Rectification deed dated 26.04.2014, of property bearing Land - 8 Bighas, 3 Katha covered by Dag No 75, Patta 27, Vill-Ambher, Mouza-Sonapur, Circle-Sonapur is annexed as '*Annexure A-15*', Copy of lease deed dated 03.05.2018, executed between Corporate Debtor and Mr. Amiyo Ishlary is annexed as '*Annexure A-16*' and Copy of the Rectification deed dated 26.04.2014, of property bearing Land - 13 Bighas, covered by Dag No 99, Patta - 42, Vill- Ambher, Mouza- Sonapur, Circle-Sonapur is annexed as '*Annexure A-17*'.

**M/S JSB CEMENT LLP**

- i. As per the records, the Corporate Debtor way back in 2012-13 (when Mr. Amiyo Ishlary and Mr. Kamal Kumar Harlalka were partners in JSB Cetnent LLP) had advanced a sum of Rs. 89.74 Lacs to JSB Cement LLP. Hence, it is clear that the funds of the Corporate Debtor were mis-utilized by the directors/erstwhile directors to provide loan to an entity in which they had personal interest. Moreover, after giving such loan no attempt was made to 2 cover the said amount.
- ii. In response to the query raised by the applicant, the Respondent No. 4 made a reference to an alleged dispute between the partners of JSB Cement. However, no response has been given as to why no attempt has been made by the Corporate Debtor for more than 8 years to recover the said amount. On the contrary, the Respondent No. 4 has stated that since the loan amount was in the financial year 2012-13, the same is outside the purview of the transaction audit. It may be noted that the said act of Respondents is contrary to the interest of the Corporate Debtor and its creditors.

**JSB FOODS**

- i. In April 2019, the Corporate Debtor advanced Rs. 33,00,000/- to its related party, JSB Foods (14% Shares Held by Directors of Corporate Debtor and 61.7% Shares Held by Mr. Kamal Harlalka and Mr. Hemant Harlalka). Correspondence between the CD and JSB Foods reflects that an amount of Rs. 47,26,490/- was outstanding as on 01.04.2021. However, no payment has been received till date, nor have any effective steps been taken by the suspended board to recover the dues, despite clear acknowledgment of debt by JSB Foods.
- ii. It is further noted that while the Corporate Debtor was unable to repay its own creditors, it continued to extend advances to group entities. The conduct of the suspended board indicates no actions was taken to prevent CIRP and rather, decisions and transactions that contributed towards the Corporate Debtor being admitted into CIRP. No measures appear to have been taken to safeguard the interests of the creditors. Copies of the correspondence is annexed as '*Annexure A-18 (colly)*'.

- iii. In addition to the aforesaid as on 10.12.2021, a further sum of Rs. 4.55 Crores is receivable by the Corporate Debtor from M/s JSB Foods, the details of which is as below:

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	Total
Sale of Mustard Seed (incl GST)	Rs.9,39,73,110/-	Nil	Nil	Rs. 93,973,110/
Payment Received	Rs. 3,59,35.000/-	Rs. 12,500,000/-	Nil	Rs. 48,435,000/-
<b>Balance Outstanding</b> (Rupees Four Crores Fifty-Five Lacs Thirty Eight Thousand One Hundred and Ten Only)				Rs. 4,55,38,110/-

- iv. From the above, it is evident that during the period 31.08.2019 to 06.11.2019, the Corporate Debtor sold mustard seeds to JSB Foods for Rs. 9,39,73,110/-, out of which only Rs. 4,84,35,000/- has been paid, however an amount of Rs. 4,55,38,110/- is still outstanding.
- v. However, the documents provided by Respondent No. 4 raise serious doubts regarding the genuineness of the above transaction. The sample transportation documents and e-way bills do not mention the transporter's name and no weighment slips or store movement registers have been furnished. Further, as observed by the transaction auditor, there is no record of transportation, loading, or unloading charges in the books of the Corporate Debtor.
- vi. Moreover, for the aforesaid sale to the related party, the Corporate Debtor purchased mustard seeds worth Rs. 6.57 crore entirely in cash. In response to queries, Respondent No. 4 provided only sample purchase vouchers instead of the complete set of vouchers supporting the transactions. Additionally, the vouchers submitted which are signed either by pen or thumb impression of the farmers, with noticeable discrepancies, including mismatches in party names and signatures across multiple entries. Additionally, no money receipts or store movement registers were made

available for verification. These deficiencies and inconsistencies raise serious doubts regarding the authenticity and completeness of the transactions.

- vii. It was further observed that although entry and exit records of commercial vehicles/trucks are maintained at the security gate, the relevant registers for FY 2019–20 and FY 2020–21 were not produced for verification of the movement of mustard seeds and paddy/rice in relation to the alleged purchases and sales.
- viii. In response to the query regarding weighment slips, Respondent No. 4 stated that weighing was done using manual weighing machines. This is surprising given the large quantity involved and raises serious doubts about the genuineness of the transactions, indicating that the purchases may be sham.
- ix. It is submitted that the transactions relating to purchase and sale of mustard seeds, including sales to the related party, appear to be wholly fictitious. Even assuming the transactions did occur, the records and correspondence indicate that a sum of Rs. 4,55,38,110/- remains due and payable by the related party to the Corporate Debtor. Copy of purchase register for mustard seeds by the Corporate Debtor is annexed as 'Annexure A-19', Copy of ledger (from 20.08.2019 to 26.11.2019) maintained by corporate debtor for purchase of mustard seeds is annexed as 'Annexure A-20' and Copy of the correspondence between Corporate Debtor and JSB Foods is annexed as 'Annexure A-21 (Colly)'.

**KAMAL KUMAR HARLALKA (Promoter/Erstwhile Director)**

- i. The books of the Corporate Debtor reveal that on 12.11.2019, an interest-free loan of Rs. 50,00,000 was advanced to its promoter and erstwhile director, Mr. Kamal Kumar Harlalka (Respondent No. 4), without any identifiable board resolution authorizing such transaction, indicating a violation of the Companies Act, 2013. Out of this amount, only Rs. 5,00,000 was repaid on 22.11.2019.
- ii. It is stated that the Corporate Debtor not only advanced the loan without proper authorisation but also, surprisingly, passed a Board Resolution dated 24.03.2021 resolving not to initiate any legal action against the promoter for recovery of the outstanding amount of Rs. 45,00,000, which is admittedly due and payable to the Corporate Debtor.

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- iii. It is further stated that, despite several communications between the Corporate Debtor and the promoter seeking repayment, the promoter has failed to discharge the liability and has merely taken the plea that the amount was invested in a group company as a justification for non-payment. It is further noted that the said group company, in which the promoter claims to have invested the funds has itself been admitted into CIRP upon an application filed by the promoter under Section 10 of the IBC, 2016.
- iv. From the above, it is evident that the promoter has been using the funds of the Corporate Debtor as his personal assets and utilising the same for his own benefit. It further appears that the suspended Board of Directors has acted in collusion with the promoter in facilitating such siphoning of funds of the Corporate Debtor for personal use. Copies of the correspondence exchanged between the Corporate Debtor and Mr. Kamal Kumar Harlalka are annexed as '*Annexure A-22 (Colly.)*' and the Board Resolution dated 24.03.2021 is annexed as '*Annexure A-23*'.

**MRS. NISHA HARLALKA (Wife of Mr. Kamal Kumar Harlalka / Promoter of Corporate Debtor)**

- v. It is further stated that the Corporate Debtor also given an interest-free loan of Rs.3,00,000 to the promoter's wife, Mrs. Nisha Harlalka, in year 2016, without any formal documentation. Notably, no repayment has been made to date and the Corporate Debtor has not taken any steps to recover the said amount. Copies of the correspondence exchanged with Mrs. Nisha Harlalka are annexed as '*Annexure A-24 (Colly.)*'.
- 2.12 The Applicant submitted that there are some other doubtful transactions made by the Corporate Debtor:

**MS. DEBOPRIYA DEB ROY**

- i. Admittedly, the Corporate Debtor during the period 2019-2021, has given a loan amounting to a sum of Rs. 15,00,000/- (Rupees Fifteen Lacs Only) to one Ms. Debopriya Deb Roy to assist her in pursuing Dental Course with Bangalore Institute of Dental Sciences & Hospital.
- ii. It may be noted that the Respondent No. 4 in its reply claims that the said amount has been given as an Educational Loan, however, further states that the Corporate Debtor is not in the business of giving educational loan and

that the sum is actually a CSR activity. It is stated that the dual stand taken by the Respondent No. 4 in itself appears to be untrue and falsified in order to legitimise a transaction which apparently the Corporate Debtor could not have entered into. Furthermore, there appears to be no reason for the Corporate Debtor to carry out CSR activity of such nature especially when the Corporate Debtor was financially burdened and unable to pay its own debts. It is evident that the said transaction has been carried out with the mala fide intention of siphoning off the funds of the Corporate Debtor so that the same is not available for its creditors.

**MRS. SHANKARI DEB ROY**

- i. It is observed from the records of the Corporate Debtor that a total sum of Rs. 20,50,000/- was paid to Mrs. Shankari Deb Roy, comprising Rs. 13,00,000 during the Financial Year 2019–2020 and Rs. 7,50,000/- during the Financial Year 2020–2021. It is further noted that out of the aforesaid amount, Rs. 10,50,000/- was treated as salary in FY 2020–2021, however, no tax deductions were made on the said sum.
- ii. Upon query raised, Respondent No. 4 produced an Appointment Letter dated 05.04.2019 appointing Mrs. Shankari Deb Roy as Manager-cum-Assistant at a monthly salary of Rs. 87,500/- (Rs. 10,50,000 per annum). However, no salary was recorded in the books for FY 2019–2020, raising doubts regarding the genuineness of the appointment.
- iii. It is further noted that the remaining Rs. 10,00,000/- is reflected as a loan to Mrs. Shankari Deb Roy, with Respondent No. 4 claiming that the same is to be adjusted towards salary for FY 2021–2022. The advance payment of a full year's salary, particularly when no salary was paid in FY 2019–2020, appears unusual and suggests that the appointment letter may have been created to justify the transaction. A copy of the said appointment letter dated 05.04.2019 is annexed as '*Annexure A-25*'.

**ANINDITA DEY ROY**

- i. The Following payment were advanced to Ms. Anindita Dey Roy:
  - a. 04.12.2019 -Rs. 155,000/- (Charged as Salary on 04.12.2019)
  - b. 23.12.2020 -Rs. 1,24,000/- (Charged as Salary on 31.03.2021)
  - c. 16.08.2021 - Rs. 3,72,000/- (Charged as Salary on 16.08.2021)

However, there was no regular monthly accrual or consistency in such payments and no supporting documents have been provided to establish her appointment, designation or agreed salary.

- ii. Further, Respondent No. 4 in its reply has claimed that Ms. Anindita Dey Roy was engaged as a trainee with a monthly stipend of Rs. 31,000/-, however, no documentary evidence has been furnished to substantiate this claim.
- iii. In the absence of any credible records, the alleged employment appears to be fictitious and the payments shown as salary seem to be a means of siphoning off funds of the Corporate Debtor.

**FICTICIOUS SALE AND PURCHASE TRANSACTIONS**

- i. The Corporate Debtor in its books of accounts has shown the following entries with respect to sale and purchase of paddy rice:

<b>FY 2019-20</b>	<b>QTY (QTL)</b>	<b>AMOUNT (IN RS)</b>	<b>REMARKS</b>
Opening Stock	11,383.29	Rs. 1,70,89,935/-	
Sale	376.00	Rs. 5,07,600/-	Cash sale on 05.09.2019
Sale	11,017.29	Rs. 1,52,59,777/-	Cash sale from 06.11.2019 to 26.11.2019
Closing Stock			
<b>Loss Incurred</b>		<b>Rs. 13,22,558/-</b>	

<b>FY 2020-21</b>	<b>QTY (QTL)</b>	<b>AMOUNT (IN RS)</b>	<b>REMARKS</b>
Opening Stock			
Purchase	7000/-	Rs. 98,00,000/-	Cash purchase on 12.12.2020

Sale	5,600/-	Rs. 6,81,800/-	Cash Sale during the period 28.01.2021 to 30.01.2021
Damage due to moisture loss	1,400/-		Stock out on 31.01.2021
Closing Stock	.	-	
<b>Loss Incurred</b>		<b>Rs. 91,18,200/-</b>	

- ii. Upon perusal of the aforementioned transaction in the books of the Corporate Debtor the following facts emerge:
- a. It is observed that the Corporate Debtor was operating at a negative gross margin. No supporting documents such as purchase bills, stock receipt records, transportation proofs, weighment slips or stock movement registers were produced for verification.
  - b. Further, although entry and exit records of commercial vehicles were maintained at the security at the entrance gate, the relevant registers for FY 2019–2020 and FY 2020–2021 were not made available to verify movement of goods.
  - c. It is also noted that the entire purchases in FY 2019–2020 were made from Dhubri based M/s. Hemant Industries and M/s. Balajee Industries (both are Related Parties of the Corporate Debtor) and in FY 2020-21 around 97% of the purchases were made from M/s. Hemant Industries (Related Party of the JSBEPL).
  - d. Additionally, a significant portion of sale proceeds received in cash was not deposited in the bank but was allegedly utilized for cash purchases of Rice, Paddy, Oil Seeds and Land/Site Development as evident from the below chart:

(All amount in INR)

Particulars	FY 2019-20	FY 2020-21	FY 2021-22	TOTAL
Cash Sales	4,60,69,397	9,33,451		4,70,02,848
Cash Receipts	3,32,51,911	4,02,000	50,000	3,37,03,911

Cash Deposited				
Cash withdrawal from Bank	3,25,00,000	2,24,85,000	37,95,000	5,87,80,000
Land & Site Development	-	97,48,800	60,46,700	1,57,95,500
Cash Purchases	6,57,05,478	98,50,360		7,55,55,838

e. A chart describing the cash retained by the Corporate Debtor in FY 2019-20 and FY 2020-21 is as below:

S.NO.	CASH RETAINED	No. of days in FY 2019-20	No. of days in FY 2020-21
1	<50 Lacs	153	163
2	50 Lacs - 100 Lacs	71	91
3	100 Lacs - 150 Lacs	47	111
4	150 Lacs - 200 Lacs	31	-
5	200 Lacs - 250 Lacs	26	-
6	250 Lacs - 300 Lacs	6	-
7	>300 Lacs	32	-

The maximum Cash Balance in FY 2019-20 was Rs. 3.58 Crores on 15th August 2021 and in FY 2020-21 was Rs. 1.16 Crores on 24th Sep 2020.

- f. It is observed that the transactions relating to sale of paddy and purchase of mustard seeds appear to be fictitious, as the movement of goods could not be verified due to non-production of the Vehicle Movement Register and Stock Movement Register. Further, no loading or unloading charges were incurred in either financial year.
- g. The management's contention that the paddy was damaged due to moisture and therefore sold at a loss is not substantiated, as no supporting evidence or insurance claim documents have been provided.
- h. It is further noted that despite incurring continuous losses in the paddy trade, the Corporate Debtor continued such transactions, primarily in

cash and with related parties. The absence of supporting documentation casts serious doubt on the genuineness of these transactions and suggests that they were undertaken to divert funds to related parties. Copies of relevant ledgers for purchase and sale of rice and paddy, the Board Resolution dated 25.01.2021 along with letter dated 20.01.2021, and the day-wise cash balance from 2019 to 2021 are annexed as 'Annexures A-26 to A-31'.

**REVALUATION OF CLOSING STOCK**

- i. The Corporate Debtor in its books of accounts has shown the following entries with respect to sale and purchase of soya refined oil:

FY 2020-21	QTY (MT)	AMOUNT (IN RS)	REMARKS
Opening Stock			
Purchase	411.02	Rs. 3,31,27,537	Purchased from Askharan Rakesh Kumar Pincha Jorhat from Apr 2020 to Nov 2020
Purchase	45.00	Rs. 35,56,870	Purchased from Askharan Rakesh Kumar Pincha Jorhat in Jan 2021
Sale	30.45	Rs. 27,06,660	Sales Aug 20 to Nov 2020
Damaged due to Leakage / Storage	38.31		Stock Out on 31.01.2021
Closing	387.26	Rs. 58,08,900	Revalued due to Poor Quality of Oil
Loss Incurred		Rs. 2,81,68,847/-	

- ii. Upon perusal of the aforementioned transaction in the Books of the Corporate Debtor the following facts emerge:
- a. It is observed that during FY 2019–2020, the Corporate Debtor wrote off 38.31 MT of oil stock, allegedly due to leakage and storage shortages.

However, no supporting documents have been provided to substantiate this claim.

- b. Similarly for the period of F.Y.2020-21, it was observed that the Corporate Debtor had incurred losses amounting to Rs 2.81 Crores on Soya Retined Oil due to Leakages/Shortages and revaluation of 387.26 MT from a rate of Rs. 80,445/- per MT to Rs. 15,000/- per MT. It is however surprising that no insurance claim was lodged and no claim was made to the supplier Mr. Askaran Rakesh Kumar Pincha (o/s as on 10.12.2021 is Rs. 1.90 Crores) for the poor quality of oil.
- c. Despite requests made, no records of storage of goods were provided by the suspended board of directors and merely a tally record was made available. Even records for physical verification of the stocks were not shared.
- d. It is observed that the Corporate Debtor continued purchasing large quantities of oil for storage, with minimal corresponding sales. Out of 411.02 MT purchased up to November 2020, only 30.45 MT was sold, leaving a substantial unsold stock, which further increased to 425.57 MT after additional purchases in January 2021.
- e. Subsequently, 38.31 MT was written off as damaged due to leakage/shortage and the remaining 387.26 MT was drastically revalued from Rs. 80,445 per MT to Rs. 15,000 per MT. Notably, no insurance claims were lodged, nor were any claims made against the supplier for alleged defects.
- f. The Corporate Debtor thus incurred losses amounting to Rs. 2.81 crores in the oil trading business during FY 2019–2020 and FY 2020–2021. The explanation of damage due to air and moisture remains unsubstantiated, as no expert reports were provided. The pattern of excessive purchases, negligible sales and significant losses indicates possible mala fide intent on the part of the management. Copies of the stock journal voucher and ledger for soya refined oil are annexed as '*Annexures A-32 and A-33*'.

2.13 The Applicant further submitted that, despite non-availability of complete data and documents from the Corporate Debtor, it is evident that the impugned transactions are fraudulent in nature and were undertaken with the intent to

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siphon off funds, thereby ensuring that no assets remained available for satisfaction of creditors' dues. It is further submitted that the suspended Board of Directors failed to make any effort to recover the amounts advanced by the Corporate Debtor and had timely recovery steps been taken, the Corporate Debtor may not have been pushed into CIRP and could have met its liabilities. The conduct of the suspended Board thus squarely falls within the ambit of Section 66(1) and Section 66(2) of the IBC, 2016.

- 2.14 Furthermore, the Applicant submitted that the dubious nature of the transactions, coupled with the glaring lack of supporting documentation, raises serious suspicion that the same were merely a facade to falsify the books of accounts and misappropriate funds of the Corporate Debtor. The absence of any plausible explanation for conducting substantial transactions in cash further indicates that such transactions were sham arrangements intended to deprive creditors of access to the Corporate Debtor's funds. These unsubstantiated cash dealings clearly point towards fraudulent and wrongful trading within the meaning of Section 66(1) and Section 66(2) of the IBC, 2016.
- 2.15 The Applicant further submitted that the aforesaid transactions are liable to be set aside as fraudulent under Section 66 of the IBC, 2016, and appropriate directions ought to be issued against the Respondents, who knowingly carried on the business of the Corporate Debtor in a fraudulent manner, to contribute to the assets of the Corporate Debtor. It is also submitted that the Directors are equally liable to make such contributions as deemed fit and proper. Additionally, the conduct of the management reflects a lack of due diligence and indicates siphoning of borrowed funds for purposes other than those intended, thereby rendering them liable for fraud.
- 2.16 Furthermore, the Applicant submitted that the balance of convenience lies in its favour and unless the reliefs sought are granted, the Applicant and the creditors of the Corporate Debtor would suffer irreparable loss and prejudice. Hence, this application.
3. Submission by the Respondent No. 01 to 03 *vide* reply affidavit dated 15.09.2022:
- 3.1 The Respondent No. 3 submitted that he has carefully perused the contents of the Interlocutory Application filed by the Applicant/Resolution Professional under Section 66 of the Insolvency and Bankruptcy Code, 2016, together with the

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accompanying Transaction Audit Report dated 11.06.2022 and all annexures thereto and has fully understood the purport and import thereof.

- 3.2 It was further submitted that there exists no prima facie case whatsoever against Respondent No. 03 for fraudulent trading or wrongful trading as contemplated under Section 66 of the IBC, 2016. The first and foremost requirement for maintainability of such an application is the establishment of specific intent to defraud creditors through identifiable transactions of a fraudulent or wrongful nature, which is completely absent in the present case. The Transaction Audit fails to identify even a single transaction that can be categorized as fraudulent or wrongful, while the books of account of the Corporate Debtor transparently reflect details of each and every transaction without any concealment whatsoever.
- 3.3 Further, the present Application, as framed and filed, is not maintainable against Respondent No. 03 either on facts or in law and the same is abuse of the process of this Hon'ble Tribunal. A thorough reading of the entire application fails to disclose any prima facie case of fraudulent trading, wrongful trading, or any intention whatsoever on the part of Respondent No. 03 to defraud the creditors of the Corporate Debtor.
- 3.4 Respondent further submitted that this Application is liable to be dismissed in limine for deliberate suppression of material facts by the Applicant, including that: (a) all records and premises of the Corporate Debtor were taken into custody by the Resolution Professional immediately upon admission of CIRP; (b) the Transaction Auditor was appointed and sought replies without providing access to the accounts which were in the exclusive custody of the Resolution Professional; and (c) the demand for replies was made within an unreasonably limited period. By Such conduct of applicant, the application needs no further adjudication in limine with cost.
- 3.5 That the Transaction Audit Report dated 11.06.2022 is full of surmises, containing no single instance of fraudulent or wrongful trading that demonstrates intent to defraud creditors. The Report is replete with general limitations and disclaimers (specifically appearing at pages 62 and 63 of the application), rendering it inconclusive and unreliable as concrete proof. The application is accordingly liable to be dismissed.

- 3.6 Respondent further submitted that write-offs, inter-linked entities and reduction in carrying value of stock do not constitute fraudulent conduct. Write-offs are standard internal accounting procedures followed by every corporate entity and do not demonstrate fraudulent intention
- 3.7 Respondent further submitted that the subject matter of the Interlocutory Application does not fall within the jurisdiction of this Hon'ble Tribunal.
- 3.8 Furthermore, Respondent submitted that with regard to statements made in Para 3 of the Interlocutory Application, it is denied that the application was filed at the earliest opportunity upon receipt of the Transaction Audit Report. Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 prescribes that the Resolution Professional form an opinion by the 115th day of CIRP as to whether the Corporate Debtor was subject to fraudulent transactions under Section 66 and file such application by the 135th day. No genuine reason has been cited for the inordinate delay, rendering the application barred by limitation and liable to dismissal for want of jurisdiction.
- 3.9 Reliance is placed on *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*, [(2015) 1 SCC 680] and *Castle Distributor Private Limited and Ors. vs. Vivek Murlidhar Dabhade* [M.A. No. 3477/2019 in CP No. 2956/2018], where the Hon'ble Court reiterated about the maxim *vigilantibus non dormientibus jura subveniunt* i.e. law does not come to the aid of those who sleep over their rights. In the present case CIRP was initiated on 10.12.2021 the Applicant in the instant matter has filed Section 66 application with the Hon'ble Tribunal after more than 7 months of initiation of CIRP and failed to justify the reason behind that.
- 3.10 Respondent further submitted that the 'opinion' that several transactions were fraudulent and business conducted to defraud creditors is based on the Transaction Audit Report dated 11.06.2022, without independent application of mind by the Resolution Professional as required under Section 66. The Auditor has not concluded that all referred transactions are fraudulent. Further, the audit was conducted pursuant to a letter of appointment dated 30.04.2022 unsupported by proper CoC resolution, rendering the entire process defective. In the 3rd CoC meeting held on 29.04.2022, the RP merely apprised members of receiving

quotations without disclosing auditor names or pricing and no minutes are annexed to this IA.

- 3.11 Furthermore, it is submitted that no observations of the Transaction Auditor were placed before the CoC, demonstrating pre-determination to implicate the suspended directors under punitive IBC provisions without proper verification. Post-admission, no service staff was available at the Corporate Debtor's office, yet the Auditor drew conclusions without checking transaction conformity with counter-parties. Upon receipt of the Final Audit Report on 11.06.2022, it is denied that business was carried on to defraud creditors. Notably, the following transactions highlighted as fraudulent are clearly not: (a) Loss on sale of empty tins; (b) Routine advances to parties; (c) Loss on revaluation of closing stock.
- 3.12 That there is no basis for suspicion when a Promoter responds on behalf of the company, as defined under Section 2(69) of the Companies Act, 2013. The reply dated 30.06.2022 furnished by Respondent No. 4/Shri Kamal Kumar Harlalka to the Auditor's findings was cogent, comprehensive and directly rebutted the observations raised – not evasive as alleged.
- 3.13 Respondent further submitted the CIRP admission order dated 10.12.2021 passed by this Hon'ble Tribunal after due process cannot now be impugned. All allegations of fraud in admission are baseless, coercive and fictitious. Shri Mukut Chandra Deka, an erstwhile Director, advanced loans to the Corporate Debtor which remained unpaid, leading to legitimate recovery proceedings. The RP/CoC conveniently ignored the restructuring proposal submitted to PNB on 02.03.2020, openly available in CD records and shifted entire blame to erstwhile directors.
- 3.14 It is further submitted that the contents of Para 4.11(A-F) of the Interlocutory Application are vehemently denied and disputed, with the burden of proof squarely upon the Applicant:
- a. **Cash Payments to Sundry Creditors:** Cash of Rs.26.60 lakhs paid to Purbanchal Road Carriers in FY 2020-21 which was withdrawn from ICICI Bank. Creditors pressured payment amid negative company news and COVID lockdowns, accepting cash or cheque. This humanitarian gesture in extraordinary circumstances was legitimate business practice, with entries

duly booked. Balance confirmations and ledgers of key creditors as on 31.03.2021 confirm positions. Copy of the ledger is annexed as 'Annexure F'.

b. **Cash Expenses on Land and Site Development:** Cash expenses were done towards urgent factory maintenance required post-inundation near tank structures. Local labour engaged (no formal bills). Payment vouchers furnished to Auditor; signature variations natural (human error). Auditor exceeded scope as non-forensic expert. Essential for asset preservation even post-leasing.

c. **Transactions with Directors and Related Parties:**

i. **Advance of Rs. 58.60 lakhs to Ms. Amiyo Ishlary:** This amount was advanced loan in connection with purchase of lands bearing Dag No. 75 & 99 at Sonapur location, Assam. Initially, the lands were purchased in the name of the Corporate Debtor itself. Subsequently, as instructed by the Bank's legal advocate, the title was rectified in the name of Ms. Amiyo Ishlary, who was one of the Directors of the Company. Thereafter, the Corporate Debtor took back the same lands on 99-year lease through another Tribal Director, Mr. Nobel Sangma, with the lease deed specifically mentioning that the advance money would be adjusted during the 99-year lease period. The land actually stands registered in the name of Ms. Amiyo Ishlary and the amount has been correctly treated as a loan from the Company to the Tribal Director. These lands were purchased way back in the year 2012, well before any bank loan was taken by the Corporate Debtor – a fact which the Applicant themselves admits in their application. The bank loan was sanctioned only in 2015 and it was at the Bank's insistence that the rectification deed was executed. Multiple balance sheets were submitted to the Bank post-loan sanction and no objections were ever raised by Stock Auditors or Bank's Legal Audit team. Moreover, Amiyo Ishlary was the mortgagor and guarantor to the bank facility in question and verification documents were duly accepted by the Bank, demonstrating that nothing was done behind the Bank's back and there existed no intention whatsoever to defraud creditors or any persons claiming through the Corporate Debtor.

- ii. **Advance of Rs. 89.74 lakhs to Designated Partners of JSB Cement LLP (Mr. Adarsh Jhunjunwala & Mr. Akshat Jhunjunwala):** This payment was made way back in FY 2012-13, much before the bank loan sanction in FY 2015-16. The matter is sub-judice before the appropriate Court of law. A copy of the Arbitration Award dated 03.06.2013 was shared with the Transaction Auditor. Since this transaction occurred two years prior to bank loan sanction, it could not have utilized any bank-disbursed funds and falls completely outside the purview of the present audit.
- iii. **Advance of Rs. 47.26 lakhs to JSB Foods:** This advance was made for jointly entering into a government contract for supply of paddy rice. Unfortunately, the contract with the concerned Government Department could not materialize. Thereafter, the CD insisted that JSB Foods refund the advance amount. However, JSB Foods informed that their funds were stuck with their debtors and upon realization, they would refund the advance. Detailed correspondence was exchanged between the parties and assurance was received for refund. This correspondence was duly shared with the Transaction Auditor, as acknowledged in their report itself. Further, purchase invoices for mustard seeds purchased in cash during FY 2019-20 were submitted to auditors. All stock receipt records are maintained in Tally system only (no manual records). Weights are recorded directly in vouchers since purchases are from farmers. Transportation documents for mustard seeds sold to JSB Foods were already provided. Mustard seeds were procured from local farmers who delivered directly at factory gate (no transport records required). Weighment done manually as no weighbridge exists at factory. Store movement maintained only in Tally.
- iv. **Advance of Rs. 45.00 lakhs to Shri Kamal Kumar Harlalka:** Shri Kamal Kumar Harlalka was the main Promoter and Shareholder holding 5000 shares (0.20% equity) who single-handedly looked after all aspects of the Company. Due to his efforts alone, the Company achieved peak turnover of more than Rs. 53 crores in FY 2017-18. He personally invested Rs. 9.65 crores in group company M/s RSH Agro Products Limited (equity + loans) and mobilized funds from friends/relatives. The Company

requested repayment, which he committed but could not execute as his funds were stuck in bad investments. The Board consciously decided against legal recovery, considering his contributions. All companies where he was director/guarantor turned NPA due to factors beyond control, including non-disbursement of sanctioned Rs. 55.34 crore additional loan to RSH Agro. His investments (Rs. 4.70 crores shares + Rs. 3.23 crores loans) turned bad. PNB encashed FDRs lien worth Rs. 0.84 crores. Market borrowings payable: Rs. 9.83 crores (escalating). His Individual net worth as on 31.03.2020 is negative Rs. 7.92 crores.

- v. **Advance of Rs. 3.00 lakhs to Smt. Nisha Harlalka:** This was a loan advance. The Corporate Debtor communicated with her seeking repayment. She requested additional time as her LIC policy assigned to group company Navya Agro Products Pvt. Ltd. was encashed by the Bank without compensation till date. Being currently without funds, she cannot repay until compensated by Navya Agro. Transactions duly booked and acknowledged cannot constitute fraud.

3.15 **Respondent** further submitted that other Transactions made by the Corporate Debtor stand fully explained as legitimate expenditures:

- i. Rs. 16.00 lacs was advanced to Debopriya Deb Roy, it is denied that the payment was fraudulent in any nature. It is submitted that as explained to auditor also, the advance was given to her in the form of Educational Loan for higher Medical Studies. The company gave an interest free advance to Debopriya Deb Roy in order to maintain its corporate image in the society.
- ii. Rs. 10.00 lacs was advanced to Smt. Shankari Deb Roy, it is denied that the payment was fraudulent in any nature. It is submitted that the payment was done on account of salary to be booked for FY 2021-22. She gave technical and managerial assistance in streamlining the operations of the company and suggested necessary adjustment in the unit.
- iii. Rs. 5.27 lacs was advanced to Miss Anindita Dey Roy, it is denied that the payment was fraudulent in any nature. It is submitted that as explained to auditors, she had worked as a trainee in the company to learn the skills about how to manage the operations of a factory. Her monthly salary was fixed at Rs.31,000/-, which keeps on accumulating every month with the

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company and whenever she needs some funds, the same is paid to her and salary is booked in her name.

- 3.16 Respondent further submitted that the allegations of fictitious sale and purchase transactions are wholly denied and are based on incorrect appreciation of facts. It is submitted that for the Financial Year 2019–2020, the paddy was purchased at approximately Rs. 1500/- per quintal and subsequently sold at lower rates of Rs. 1350/- to Rs. 1380/- per quintal due to normal market fluctuations influenced by demand, supply and quality, resulting in genuine business loss.
- 3.17 It is further submitted that for the Financial Year 2020–2021, the loss occurred due to unforeseen circumstances, including the COVID-19 pandemic and improper storage conditions, which led to deterioration in the quality of stock. The paddy purchased during May–June 2020 remained unsold due to prolonged lockdowns, and upon inspection in January 2021, a substantial quantity became unfit for consumption. Consequently, approximately 7000 quintals of stock was sold at minimal value after due management approval. The decline in market demand owing to Government distribution of free ration further impacted prices. Such loss arising out of market conditions and quality deterioration cannot be termed as fraudulent.
- 3.18 It is submitted that all transactions were duly supported by purchase invoices, transportation documents, e-way bills, and bank records. The absence of separate stock movement registers or weighbridge does not render the transactions fictitious, as records were maintained in the regular course of business and weighing was conducted manually. It is further submitted that transactions with M/s Hemant Industries and M/s Balajee Industries were conducted in the ordinary course of business at arm's length and merely being related parties does not render such transactions fraudulent.
- 3.19 It is also submitted that utilization of cash proceeds for purchase of mustard seed was a normal trade practice, particularly in dealing with small farmers, and maintaining cash in hand for such transactions has been consistently followed by the Corporate Debtor. Therefore, the allegations made by the Applicant are baseless and devoid of merit.
- 3.20 Respondent further submitted that the write-off of stock by the Corporate Debtor was on account of genuine business reasons, including leakage, damage during

storage, expiry, rejection by customers and certain quantities being untraceable at the time of inspection. It is submitted that insurance claims were not lodged as such losses, including leakage and deterioration in quality, were not covered under the insurance policy. The Respondent submits that the Corporate Debtor had commenced purchase of soya refined oil from May 2020 in anticipation of favourable market conditions; however, due to unforeseen circumstances, including prolonged COVID-19 lockdowns, the demand did not materialize and the quality of oil deteriorated over time owing to exposure to air and moisture, thereby reducing its value and necessitating sale in loose form.

- 3.21 It is further submitted that during January 2021, the factory manager reported that the tins used for storage had deteriorated, resulting in leakage, particularly in lower layers due to pressure from stacked containers, which led to the entire stock being adversely affected. The deterioration was exacerbated by continuous lockdown conditions and the overall impact of the COVID-19 pandemic, as recorded in the inspection report dated 20.01.2021. Consequently, approximately 28,371 pieces of stock were damaged, severely affecting sales and the management, as a last resort, approved disposal of such material in loose form to recover some value, in terms of Board Resolution dated 25.01.2021.
- 3.22 The Respondent submits that such losses are inherent in business operations and are influenced by factors such as market conditions, storage risks, demand-supply dynamics, and unforeseen events, and therefore cannot be attributed to any fraudulent intent. It is further submitted that the transaction audit report is biased and has been prepared without appreciating the financial stress faced by the Corporate Debtor, including non-disbursement of sanctioned loans to its group entity and its consequent dependence thereon. The Corporate Debtor had also submitted a restructuring proposal to the bank in March 2020 in light of mounting losses. The Respondent submits that all transactions were bona fide business decisions taken by the management in the ordinary course, and the losses incurred were due to operational challenges, quality deterioration, human error, leakage, pandemic-related disruptions, and decline in demand owing to Government distribution schemes, and therefore cannot be termed as fraudulent in any manner.

- 3.23 Respondent further submitted that there is nothing on record to attract the provisions of Section 66 of the Insolvency and Bankruptcy Code, 2016, as there has been no misrepresentation, concealment, or intent to defraud creditors on the part of the Respondent. The transaction audit report itself is inconclusive and subject to multiple limitations, and even suggests obtaining independent legal opinion before initiating any action. It is further submitted that the mandatory timeline prescribed under Regulation 35 of the CIRP Regulations has not been adhered to, and the appointment of the Transaction Auditor, along with determination of its fees, was carried out without proper approval of the Committee of Creditors, in violation of Regulation 34 of the CIRP Regulations.
- 3.24 It is further submitted that that during previous 3 year, total loss incurred under manufacturing activity business only was Rs. 540.08 lakhs out of working capital limit of Rs. 500.00 lakhs disbursed by banks. Residual working capital left is NIL only and as on 10.12.2021, closing stock prevailing as per books of accounts was Rs. 62.43 lakhs. Thus, working capital given by banks was lost in manufacturing sector only. Further, the CD has taken loan of Rs. 498.00 lakhs from banks and if loaas in manufacturing activtyare accounted, then available bank funds are Rs. 457.92 lakhs against which bank's total recovery is Rs. 1512.19 lakhs i.e., 330.23%.
- 3.25 Furthermore, the Transaction Auditor failed to analyze key aspects of the Corporate Debtor's financial position, including significant manufacturing losses (Rs. 540.08 lakhs) compared to the sanctioned working capital loan (Rs. 500 lakhs) and the company's performance after loan disbursement despite repaying Rs. 692.19 lakhs. It also ignored the Corporate Debtor's restructuring proposal submitted in March 2020 due to these losses, where the company sought additional working capital and reduced credit limits. Further, an independent TEV study by Dun & Bradstreet for PNB acknowledged these financial issues and recommended restructuring support, indicating that the losses were genuine and duly disclosed to the bank.
- 3.26 The Respondent submitted that the Corporate Debtor's manufacturing unit has been incurring losses since inception with accumulated losses of Rs. 540.08 lakhs as of the insolvency commencement date (10.12.2021), which continue. The working capital loan was entirely eroded due to these losses. The primary reason

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cited is the bank's failure to disburse funds for the RSH Agro Unit II, despite knowing that the business depended on it, thereby preventing the unit from generating profits. Additionally, the Corporate Debtor holds fixed assets valued at Rs. 457.75 lakhs, while the bank has already recovered substantial amounts through subsidies, fixed deposits and income (Rs. 692.19 lakhs in total), including interest earnings.

- 3.27 The Respondent submits that all transactions were undertaken in the ordinary course of business and the Applicant has failed to demonstrate even a single transaction that would fall within the ambit of fraudulent or wrongful trading. There has been no concealment of transactions from stakeholders, nor any attempt to prejudice the interests of creditors. In view of the foregoing, the present Application is devoid of merit and is liable to be dismissed.
4. This Tribunal notes that the Reply Affidavit dated 29.09.2022 filed by Respondent No. 4 is verbatim identical to the Reply already filed by Respondent Nos. 1 to 3. In view thereof, the Reply of Respondent No. 4 is taken on record and shall be read and considered in conjunction with the Reply of Respondent Nos. 1 to 3.
5. Submission by the Respondent No. 05 *vide* reply affidavit dated 02.11.2022:
- 5.1 The Respondent No. 05 submitted that Respondent No. 5 herein, Erstwhile Director of the Corporate Debtor, JSB Entrade Private Limited against which CIRP proceedings are pending before this Hon'ble Tribunal. Respondent No. 05 have been taking steps by its own in the above-noted case and fully acquainted with the facts and circumstances of the case and competent to swear this instant affidavit.
- 5.2 Respondent further submitted that he was an Erstwhile Director of the Corporate Debtor and affirms hereby that he has no role in the company affairs of the Corporate Debtor since the date of his cessation i.e., 21.03.2020 and is unaware of any financial transaction thereto.
- 5.3 Furthermore, the Respondent submitted that he had not signed any documents in favour of CD as a Guarantor for repayment of loan or financial Assistance taken by the CD.
- 5.4 The CD had approached the Respondent for a loan of Rs. 1,40,00,000/- which was agreed by the Respondent. Pursuant to this, the Respondent had disbursed

the amount as debt to CD *vide* loan agreement dated 24.02.2020 which would be repayable on or before 26.08.2020 @ 1.25% per month.

- 5.5 The Respondent submitted that the main company Petition CP (IB)/19/GB/2021 under section 7 of the Code for Initiation of CIRP against M/s. JSB Entrade Private Limited who had failed to pay its aforementioned debt was preferred by the Respondent No. 05.
  - 5.6 Furthermore, the instant Interlocutory Application's subject matter does not fall within the jurisdiction of the Hon'ble Tribunal. Further submitted that he was an Erstwhile Director of the Corporate Debtor and affirms hereby that he has no role into the company affairs of the Corporate Debtor since the date of his cessation i.e., 21.03.2020 and was unaware of any financial transaction thereto.
  - 5.7 It is submitted with respect to the list of Directors/Erstwhile Directors, the respondent submitted that these are matter of facts. Further, company application was already admitted on 10.12.2021 by this Hon'ble Tribunal after following due procedure of law and now the applicant hereby, is disputing the sanctity of this Hon'ble Tribunal and the judgment passed by it.
  - 5.8 Furthermore, the Respondent No. 03 submits that the averments made in the present Interlocutory Application are incorrect, misconceived and are vehemently denied. It is contended that the Respondent has not been involved in any fraudulent activity as alleged and the burden of proof lies upon the Applicant. The Respondent further submits that the transactions in question do not fall within the scope of Section 66 of the code, as they were neither carried out during the CIRP period nor with any intent to defraud the creditors.
  - 5.9 The Respondent further submitted that it reserves the right to place on record such additional documents and materials as may be necessary at the appropriate stage, and to advance further submissions at the time of hearing.
  - 5.10 In view of the aforesaid, it is respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the present Application with costs, and pass such other and further order(s) as may be deemed fit and proper in the facts and circumstances of the case.
6. Heard the submissions made by the Learned Counsel for the parties and perused the records.

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7. The present Interlocutory Application being IA (IBC) No. 48/GB/2022 has been filed by the Resolution Professional under Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking appropriate directions against the Respondents for fraudulent and wrongful trading and for contribution to the assets of the Corporate Debtor.
  8. This Tribunal is of the considered view that each of the issues arising in the present matter, in light of the submissions advanced by the Resolution Professional as well as the Respondents, deserves to be dealt with in detail. Accordingly, this Tribunal proceeds to examine and adjudicate upon each issue, one by one.

**APPLICATION IS FILED BEYOND 135<sup>TH</sup> DAY FROM INSOLVENCY COMMENCEMENT DATE.**

9. The Learned Counsel for the Respondents submitted that the present Application under Section 66 of the Code has been filed beyond the period of 135 days from the Insolvency Commencement Date. It is contended that Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 prescribe that the Resolution Professional is required to form an opinion by the 115th day of the CIRP as to whether the Corporate Debtor has been subjected to fraudulent transactions under Section 66 of the Code and to file the appropriate Application within 135 days.
10. In support of the aforesaid contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*, [(2015) 1 SCC 680], wherein it has been reiterated that the maxim *vigilantibus non dormientibus jura subveniunt*, i.e., the law assists those who are vigilant and not those who sleep over their rights, is to be duly applied.
11. For a better appreciation of the issue under consideration, we need to notice the important CIRP milestones involved and their time-lines in the backdrop of the present case. It is noticed that CIRP commenced on 10.12.2021 and the Resolution Professional was appointed on 07.04.2022. The application under Section 66 was filed by the Resolution Professional on 18.07.2022 which as per Regulations should have been filed on or before 19.04.2022 being the 130th day counted from 10.12.2021. As against the due date of filing application under Section 66 falling on 19.04.2022, the application was actually filed on 18.07.2022 which was after 90 days from due date.
12. This Tribunal further observes that the Resolution Professional (Applicant) came to be appointed on 07.04.2022, i.e., after a lapse of 118 days from the Insolvency

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Commencement Date. Thereafter, the Resolution Professional appointed a Transaction Auditor on 30.04.2022, who submitted the Transaction Audit Report on 11.06.2022. Pursuant thereto, on 18.06.2022, the Resolution Professional sought clarifications from the suspended Board of Directors and Respondent No. 4 furnished its reply on 30.06.2022. Subsequently, upon consideration of the said reply and completion of the requisite process, the present Application came to be filed by the Resolution Professional.

13. The Tribunal finds merit in the reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) Insolvency No. 583 of 2021 (*Aditya Kumar Tibrewal v. Om Prakash Pandey & Ors.*), wherein it was observed that the timeline under Regulation 35A is directory not mandatory in nature and further in Company Appeal (AT) (Insolvency) No. 483 of 2022 in *Jagdish Kumar Parulkar RP v. Vinod Agarwal & Ors.*, wherein it was held that Regulations 35-A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135th day of the ICD is only directory.
14. This Tribunal has also relied upon the judgment of the Hon'ble NCLAT in Comp. App. (AT) No. 42 of 2024, *Rajendra Prasad Jain v. Registrar of Companies Mumbai*, wherein the Hon'ble NCLAT New Delhi held that at "Para 4. Considering the submissions made in the appeal and also considering the law laid down in *Vamsidhar Maddipatla Vs. Teckbond Laboratories Pvt. Ltd. & Ors. Comp. App. (AT) No. 364 of 2017* wherein it was held the Learned NCLT is not powerless to condone the delay beyond 30 days per Rule 15 of the NCLT Rules, 2016.....".
15. Accordingly, in view of the aforesaid legal position and considering the factual matrix of the present case, particularly the stage at which the Resolution Professional was appointed and the time consumed in conducting the transaction audit and seeking necessary clarifications, this Tribunal is satisfied that the delay in filing the present Application stands sufficient. So, after careful consideration, this application is treated as not barred by **limitation** and stands **maintainable**. Accordingly, the contention of the Respondents seeking dismissal of the Application on the ground of limitation is, therefore, rejected.

**TRANSACTIONS ARE PRIOR TO FY 2019-20, HENCE ARE BEYOND THE SCOPE OF SECTION 66 OF IB CODE, 2016**

16. Further, the Respondent submitted that there are certain transactions which are prior to FY 2019-2020 and hence beyond the scope of Section 66 of the IBC, Code 2016. It is a settled law that unlike other types of transactions provided under the Code, there is no specified look back period for fraudulent trading under Section 66 of IB Code, 2016. Section 66 of the Code does not provide for any ‘look back period’ as far as fraudulent transactions are concerned.
17. This Tribunal finds merit in the reliance on the judgment of the Hon’ble National Company Law Appellate Tribunal in Company Appeal (AT) Insolvency No. 293 of 2021 (*Mr. Thomas George Vs. K. Easwara Pillai RP M/s. Mathstraman Manufacturers and Traders Pvt. Ltd*), wherein it was observed that “13. Unlike other types of transactions provided under the Code, there is no specified look back period for fraudulent trading under Section 66. Hence, the Resolution Professional is allowed to retrieve/repossess without any limitation of time and correct all the wrong doings for any relevant point of time.....”.
18. In view of the aforesaid settled legal position, the contention raised by the Respondents that the transactions prior to FY 2019–2020 are beyond the scope of Section 66 is devoid of merit and is hereby rejected. Accordingly, the objection as to maintainability on this ground does not sustain.

**RESPONDENT NO. 05 WAS NOT A MANAGING DIRECTOR OF CD AND WAS NOT INVOLVED IN THE DAY TO DAY AFFAIRS OF THE CD**

19. Further, the Respondent submitted that he was an Erstwhile Director of the Corporate Debtor and affirms hereby that he has no role into the company affairs of the Corporate Debtor since the date of his cessation i.e., 21.03.2020 and is unaware of any financial transaction. Further, the Respondent affirms that he was not a managing director and was not involved in the day-to-day transactions/ affairs of the Corporate Debtor neither he was shareholder of the CD.
20. Coming to the facts of the present case, it is seen that the RP has filed the present Application under Section 66 of IBC, 2016. However, the RP has not clarified whether the transactions impugned in these applications pertain to 66(1) or 66(2) of IBC, 2016. In this context it is relevant to extract Section 66 of IBC, 2016, which is as follows
66. Fraudulent trading or wrongful trading. –
- (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass

an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under subsection (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A

21. The word ***“any person who were knowingly parties to”*** in Section 66(1) of IB Code, 2016 is to be given wide import to cover even those who could not be said to have carried out business directly but in somehow, directly, or indirectly, participated in the fraudulent act of the CD
22. This Tribunal finds merit in the reliance on the judgment of the Hon’ble National Company Law Appellate Tribunal in Company Appeal (AT) Insolvency No. 350 of 2021 (*Shibu Job Cheeran & Ors. vs. Ashok Velamur Seshadri & Ors.*), wherein it was observed that *“42. It is seen from the above that Section 66 of the I & B Code, 2016, gives powers to the ‘Adjudicating Authority’ to pass suitable orders, if it is found that any person has carried on the business of the ‘Corporate Debtor’ with an intention to defraud its ‘Creditors’ or other ‘stakeholders’. Section 66 also Company Appeal (AT) (CH) (Ins.) No. 350 of 2021 & IA No.727/2021 16 of 23 give powers to the ‘Adjudicating Authority’ to give directions for making contribution to the assets of the ‘Corporate Debtor’. This also includes Directors of the ‘Corporate Debtor’, and their personal liability towards contribution, provided such Directors did not exercise due diligence or failed to take reasonable steps to minimize potential losses to the creditors when there was no possibility of avoiding the commencement of ‘Corporate Insolvency Resolution Process’ .....”*

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23. In view of the aforesaid, the contention of the Respondent that he cannot be proceeded against on account of non-involvement in day-to-day affairs or cessation as Director is not tenable. The scope of Section 66 being wide enough to cover all persons knowingly party to the fraudulent conduct, hence the objection is rejected.
24. Furthermore, the contention of the Respondent that the present Application is liable to be dismissed in limine on the ground that the Transaction Auditor sought replies without granting access to the accounts and demand replies within an unreasonable limited period. Upon perusal of the record, it is evident from the reply dated 30.06.2022 submitted by Respondent No. 4 that no grievance was raised at that time regarding lack of access to the accounts or insufficiency of time. There is nothing on record to indicate that the Respondent sought any extension of time to provide the reply or sought copies of the books of accounts. Mr. Kamal Kumar Harlalka, on behalf of Suspended Board of Director, replied on 30.06.2022 to Resolution Professional's letter in this regard dated 18.06.2022. There was no mention of access denied to accounts or paucity of time provided in his reply. Therefore, the Respondent's claim to such difficulties is only a leave excuse and after thought, hence denied.
25. It is also pertinent to note that upon admission of CIRP, the assets and records of the Corporate Debtor vest in the custody and control of the Resolution Professional in terms of the Code. However, the Resolution Professional does not step into the shoes of the management for the purpose of explaining past transactions. The suspended management remains under a statutory obligation to cooperate and provide explanations and clarifications. The queries raised by the Resolution Professional and the Transaction Auditor were only to seek such explanations with respect to identified transactions. In view of the above, the plea for dismissal of the Application in limine with costs is baseless and rejected.
26. Furthermore, the Respondent contention that the RP formed an opinion solely on the basis of Transaction Audit Report, without independent application of mind by the Resolution Professional. This Tribunal observes that upon receipt of the Transaction Audit Report dated 11.06.2022, the Resolution Professional did not act mechanically or hastily. On the contrary, the Resolution Professional, in order to verify and validate the observations contained therein, sought specific clarifications from the concerned parties, including Respondent No. 4, *vide* letter dated 18.06.2022. In response, Respondent No. 4 furnished its reply *vide* email dated 30.06.2022. The Resolution

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Professional duly considered the said reply, along with the underlying records and the findings of the audit, before forming an independent and reasoned opinion that the transactions in question were carried out with intent to defraud the creditors of the Corporate Debtor.

27. Thus, it is evident that the Resolution Professional followed a due process by (i) examining the Transaction Audit Report, (ii) seeking clarifications from the concerned Respondents and (iii) evaluating the responses received, prior to forming the requisite opinion under Section 66 and filing the present Application. The contention that there was no independent application of mind is therefore factually incorrect and rejected.
28. The Respondent's contention that the observations of the Transaction Auditor were not placed before the CoC, thereby vitiating the present proceedings, is misconceived and denied. There is no requirement under Section 66 of the Code for the Resolution Professional to place his opinion before or obtain approval of the CoC prior to filing such an Application. The formation of opinion under Regulation 35 A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is an independent statutory duty of the Resolution Professional.
29. This Tribunal notes that the Resolution Professional, upon due examination of the records and material available, formed an independent opinion and initiated the present Application. The allegation of pre-determination is therefore baseless and contrary to record.

#### **FINDINGS ON FRAUDULENT TRANSACTIONS**

30. In the Present case it is seen that the First Transaction pertains to the Cash Payment to M/s Purbanchal Road Carrier, during FY 2020-21 of Rs. 26.60 lakhs in cash through continuous withdrawals and payments of Rs. 10,000/- on an almost daily basis during the period from 01.05.2020 to 31.03.2021, as reflected from the ledger of the Corporate Debtor and the corresponding bilty records. The Respondent has failed to furnish any reasonable justification for such transactions, merely stating that the payments were made under pressure from the creditor. Thus, the said transaction of **Rs. 26.60 lakhs** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.
31. The Second Transaction is in relation cash incurred for Land and Site Development, as per ledger of the CD, during 02.01.2021 to 21.08.2021, CD has incurred cash expenses amounting to Rs. 1.58 Cr for alleged land and site development, in the same

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period during which the CD was unable to make payment of similar amount to its erstwhile director (Respondent No. 5) resulting in initiation of CIRP of CD. The Respondent submitted that such Cash expenses were done towards an urgent need which occurred in the factory and after proper approval from management. However, the Respondent had only submitted vouchers amounting to Rs. 2.43 Lakhs against the total expenditure of Rs. 1.58 Crores. Moreover, the vouchers raises suspicion as there is no description of the work carried out by labourer and the basis for determination of the rate for the work carried out. Thus, the said transaction of **Rs. 1.58 Crore** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.

32. The Third Transaction pertains to Transfer of land to Respondent No. 1 / Mr. Amiyo Ishlary, in the year 2012, the CD had purchased 2 properties (8 Bighas, 3 Katha covered by Dag No 75, Patta – 27 and 13 Bighas, covered by Dag No 99, Patta – 42), from the funds of CD for a consideration of Rs. 58.60 Lacs. However, after four years the above properties were transferred to Respondent No. 1 / Amiyo Ishlary, by executing rectification deeds, both dated 26.04.2016. Thereafter, via lease deed dated 03.05.2018, Respondent No. 1 leased one of the lands to CD for a period of 99 years. The Respondent submitted that Rs. 58.60 lacs was advanced to Ms. Amiyo Ishlary which has been already shown in books of account moreover, an amount was given by the company as loan while purchasing the lands viz.,Dag No. 75 and 99 at Sonapur location, Assam.
33. The lands were purchased from the funds of the CD. Thereafter, the same were transferred to Respondent No. 1 / Mr. Amiyo Ishlary, without even a single paisa being paid to the CD. The rectification deeds both dated 26.04.2016 shows that CD is not even made a party to the said transaction. The said transaction is a clear example of the misutilisation and misappropriation of the funds/assets of CD by the Respondent Nos. 1 to 4. Thus, the said transaction of **Rs. 58.60 Lakhs** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.
34. The Fourth Transaction pertains to advances made by the Corporate Debtor, inter alia, as under:
- 34.1 It is observed that the CD had advanced a sum of Rs. 89.74 Lakhs to M/s JSB Cement LLP during FY 2012–13, (when Respondent No. 1 / Mr. Amiyo

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Ishalary and Respondent No. 4 / Mr. Kamal Kumar Harlalka were partners in M/s JSB Cement LLP). The Respondent submitted that payment was done way back in FY 2012-13 and the matter is sub-judice in appropriate court of law. The said transaction were done to misutilised the fund of CD.

- 34.2 It is also observed that the CD in the month of April 2019, had advanced a sum Rs. 33.00 lakhs, to its related party i.e. JSB Foods (14% Shares Held by Directors of CD and 61.7% Shares Held by Respondent No. 4 / Mr. Kamal Kumar Harlalka and Mr. Hemant Harlalka). The Respondent submitted that the advance of Rs. 47.26 was made for a proposed contract for supply of paddy rice to a Government Department along with JSB Food, which did not materialise and the amount remains unpaid due to funds being stuck with the said entity. From the records, it is evident that an opening balance of Rs. 7,67,900/- was outstanding as on 01.04.2019. Thereafter, an advance of Rs. 33.00 lakhs was made during April 2019. Accordingly, the total outstanding amount including interest as on 10.11.2021 stood at Rs. 47,26,490/-.

It is an admitted position that the said amount remains unpaid, which is further corroborated by various correspondences exchanged between the Corporate Debtor and JSB Foods during the period from 05.03.2020 to 10.11.2021, wherein JSB Foods has acknowledged the said outstanding liability. The same is further reflected in the ledger account of JSB Entrade, which shows an opening balance of Rs. 47,26,490/- in the name of JSB Foods, as evidenced from '*Annexure 18*' of this Petition.

However, despite such acknowledgment, the Corporate Debtor has merely engaged in exchange of correspondence and has failed to take any effective steps for recovery of the aforesaid amount. In view of the above, the total outstanding sum of Rs. 47,26,490/- is being considered for the purpose of the present transaction, as the said outstanding is clearly reflected in the ledger account of JSB Entrade and is duly established by the communications exchanged between the parties.

- 34.3 It is also observed that it can be seen from ledger of the CD, that on 12.11.2019, CD advanced interest free loan of Rs. 50,00,000/- to Respondent No. 4 / Mr. Kamal Kumar Harlalka (promoter and erstwhile director of CD). The Respondent submitted that CD had requested him to refund the amount, which

he had committed to repay, but was unable to do so as his funds too are stuck up with certain investments turned into bad form. Out of this amount, only Rs. 5,00,000/- was repaid on 22.11.2019. However, the CD failed to show any Board Resolution by the Respondent Nos. 1 to 4 where-under the CD has been empowered to advance such a sum to its promoter/erstwhile director. The Respondent No. 4 in various correspondences from 21.03.2020 to 25.08.2021 with CD acknowledge the said loan and on the other hand, CD *vide* Board Resolution dated 24.03.2021, resolved not to take any legal actions against Respondent No. 5. Hence, an amount of Rs. 45,00,000/- was due and payable by Respondent No. 4 / Mr. Kamal Kumar Harlalka.

- 34.4 It is also observed that during FY 2016-17, CD had given an interest free loan of Rs. 3 Lacs, to Mrs. Nisha Harlalka (w/o Respondent No. 4 / Kamal Kumar Harlalka). The respondent submitted that Mrs. Nisha Harlalka is out of funds and unable to repay the amount till other company compensate her. It is clear that CD has been handing out interest free loans to its promoters, despite clear acknowledgment by the said party *vide* letter dated 19.02.2018 and no action has been initiated to recover the outstanding amount.
- 34.5 It is also observed that CD during the period 2019-2021, has given a loan amounting to a sum of Rs. 16,00,000/- to one Ms. Debopriya Deb Roy to assist her in pursuing Dental Course with Bangalore Institute of Dental Sciences & Hospital. The Respondent submitted that the advance was given to her in the form of Educational Loan for higher Medical Studies. Further also submitted that it was shown as loan by error in the books of account which should have been shown as CSR expenses done by the company on its own will. Thus, the dual stand taken by the Respondents appears to be untrue and falsified in order to legitimise a transaction which the CD could not have entered.
- 34.6 It is also observed that during FY 2019-2021, a sum of Rs. 20,50,000/- has been paid to one Mrs. Shankari Deb Roy. Out of the aforesaid sum of Rs. 20.50 Lakhs, Rs. 10.50 Lakhs has been charged as salary in FY 2020-21, however, no tax has been deducted towards the same. The Balance Rs. 10 Lakhs is still shown as Loan to Mrs. Shankari Deb Roy. The Respondent submitted that the payment of Rs. 10 lakhs was done on account of salary to be booked for FY- 2021-22. Upon perusal, Mrs. Sankari Debroy had been appointed as Manager Cum

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Assistant for a sum of Rs. 87,500/- per month (i.e. Rs. 10,50,000/- per annum).

But, no salary of Rs 10.50 lakhs was accounted in the books of accounts for FY 2019-20 and Rs. 10.00 lakhs was still showing as Loan to Mrs. Shankari Deb Roy. Thus, Rs. 20.50 lakhs was due and payable by Mrs. Shankari Deb Roy.

34.7 It is also observed that during the period 04.12.2019 to 16.08.2021, CD advanced a sum of Rs. 6.51 Lacs to Ms. Anindita Dey Roy. The Respondent submitted that Rs. 5.27 was advanced to Miss Anindita Dey Roy, she had worked as a trainee in the company to learn the skills about how to manage the operations of a factory. Her monthly salary was fixed at Rs.31,000/- which keeps on accumulating every month with the company and whenever she needs some funds, the same is paid to her. No documents have been provided which would evidence as to when was the said Ms. Anindita Dey Roy was appointed or the position that she was appointed for or the salary that she was entitled to.

34.8 It is also observed that during the period 30.08.2019 to 06.11.2019, CD sold mustard seeds to its related party JSB Foods for an amount of Rs. 9,39,73,110/-. However, an amount of Rs. 4,55,38,110/- is still outstanding. Despite clear acknowledgment by the said party *vide* various correspondences, no action has been initiated to recover the said amount. The entire transaction has been undertaken with a related party of the CD and again huge amount of mustard seed has been sold on credit to the said related party. Respondent No. 1 to 3 took no steps to ensure that the said credit is made good or to prevent the loss that the said transaction was causing to the CD.

Thus, the abovementioned transaction of **Rs. 89.74 lakhs, Rs. 47,26,490/-, Rs. 45.00 lakhs, Rs. 3.00 lakhs, Rs. 16.00 lakhs, Rs. 20.50 lakhs, Rs. 6.51 lakhs and Rs. 4,55,38,110/-** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.

35. The Fifth Transaction pertains to sale and purchase of mustard seeds, as per Ledger of CD, from 20.08.2019 to 26.11.2019, CD purchased mustard seed for a sum of Rs 6.57 Crore, entirely in cash against which no invoices, transportation documents, money receipt and store movement register available. The Respondent No. 4 only shared sample purchase vouchers of purchase made on 19.11.2019, instead of providing all the purchase vouchers evidencing the aforesaid purchase amounting to Rs. 6.57 Crores, even in the said vouchers there are mismatches in the party name and

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signatures. The security at the entrance gate maintains entry and exit records for all commercial vehicles/trucks, however, the register pertaining to FY 2019-20 and FY 2020-21 were not provided for verification of the movement of Mustard Seeds/Paddy/Rice for the purchases and sales made. In the sample transportation documents and e-waybills provided by the suspended board/erstwhile directors, the name of the transporter name are not mentioned, moreover, the weighment slips and the store movement register were not provided. Thus, the said transaction of **Rs. 6.57 Crore** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.

36. The Sixth Transaction pertains to Fictitious Sale and Purchase Transactions, during the FY 2019-20 and FY 2020-21, CD was running business at negative gross margin. Entire purchases for FY 2019-20 were made from related parties of CD. Majority of the sale proceeds in cash of Rice and Paddy were never deposited in Bank rather the same was used primarily for Cash Purchases of Rice and Paddy. On perusal of books of accounts of CD and by reviewing the Financial Statement for the period from F.Y 2019-20, the CD had made Rice sale of Rs. 1.92 Crore in cash and during FY 2019-20 & FY 2020-21, the CD had incurred a loss on sale of Paddy Rice of Rs. 1.05 Crore.
37. The abovementioned transactions seem fictitious since movement of Paddy and Mustard Seed cannot be ascertained as the Vehicle Movement Register and Stock Movement Register were not shared. Further CD has not incurred any loading and unloading charges in the said financial year. It is evident that the CD was incurring heavy losses in the trade of rice paddy, however, continued with the said trade. It is even more surprising that the entire transactions were carried out in cash and that too with related parties (Hemant Industries and Balajee Industries). The Respondents provide a letter dated 20.01.2021 and board resolution dated 25.01.2021, in support of its contention that the Paddy got damaged due to moisture and hence the same was sold at loss. Thus, the said transaction of **Rs. 1.92 Crore and Rs. 1.05 Crore** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.
38. The Seventh Transaction pertains to Revaluation of Closing Stock, CD purchased stock of 411.02 M.T. from April 2020 to Nov 2020, out of which CD sold only 30.45 M.T. from August 2020 to Nov 2020 leaving the stock at the end of Nov, 2020 as 380.57 M.T (being 92.59% of total purchase), despite this CD purchased 45 M.T in the

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- month of January, 2021, leaving the closing stock after said purchase in January 2021 of Oil being 425.57 M.T, out of this 38.31 M.T, was considered damage due to leakage /shortage and was written off the stock of oil amounting to Rs 31.00 Lakhs. However, no documents were shared to corroborate the said claim.
39. Similarly for the period of F.Y. 2020-21, it was observed that CD had incurred losses amounting to Rs 2.81 Crores on Soya Refined Oil due to Leakages / Shortages and revaluation of 387.26 MT from a rate of Rs. 80,445/- per MT to Rs. 15,000/- per MT. the reason given by the Management for such devaluation of oil due to contact with air and moisture however, no report of such huge damage from professional expert was shared. It is also surprising that no insurance claim was lodged and no claim was made to the supplier Mr. Askaran Rakesh Kumar Pincha (o/s as on 10.12.2021 is Rs. 1.90 Crores) for the poor quality of oil. No records of storage of goods were provided by the Respondents and merely a tally record was made available. Considering the above facts and purchase of material being food product continuously without much sale and incurring high loss is very serious and indicates the malafide intention of the management of CD. The Corporate Debtor thus incurred losses amounting to Rs. 3.12 Crore in the oil trading business during FY 2019–2020 and FY 2020–2021. Thus, the said transaction of **Rs. 3.12 Crore** carried out by the Respondent fall within the ambit of fraudulent transactions, as stipulated under Section 66 of IBC.
40. We observe that the Corporate Debtor was well aware with these facts that they are withdrawing huge amount of cash from the Bank Account to ensure that he assets of the CD kept out of reach of creditor, additionally huge amounts of loans given to erstwhile directors and related parties with the intention to default of making payments of the Creditors. And for that reason, the one of the Respondent had opted to file an application for initiation of the CIRP under Section 7 of the IBC. Therefore, we are unable to accept the contention of the Respondent that these transactions were made in the ordinary course of the business. Rather we are of the considered view that these transactions were made with intent to defraud the Creditors of the Corporate Debtor.
41. It is paramount to understand that the directors and parties to the transaction or trading arrangement, whose fraudulent, reckless and negligent actions during financial distress, affects the interest of creditors, have to be made liable to make contributions to the assets of the CD to make good the opportunity to recover that has been snatched from the creditors. In *R v Grantham [1984] QB 675*, it was held that the law does not

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require the accused person(s) to believe that there is no reasonable prospect of ever paying the creditor, rather the test is that such person(s) believed that the debt could not be paid when it became due or shortly thereafter. At this juncture, it would be pertinent to establish that there is no exhaustive list of what constitutes as “Fraudulent” or “Wrongful” Trading under Section 66 of the Code. As the IBC has taken inspiration for these provisions from the UK Insolvency Act, 1986, hence instances of trading that would be caught by the provisions of Section 66 of the code can be derived from some of the decisions of the English Courts. The following acts have been held as “Wrongful Trading” by the English Courts:

- a) Repaying the director loan made to the company while other creditors were not paid;
- b) Repayment of a loan to a family member;
- c) A director paying his own salary while the salary for the employees was not paid;
- d) Buying goods on credit when there is no means to pay for them;
- e) Using customer deposits for cash-flow purposes with no means of supplying goods;
- f) Not keeping proper accounting records
- g) Falsification of company records; and
- h) Any transfer or sale of assets at anything less than a fair and reasonable commercial value

42. The Hon’ble NCLAT in *Shri Baiju Trading and Investment Private Limited v. Mr. Arihant Nenawati and Others [Company Appeal (AT)(Ins.) No. 699 of 2021]* held that Regulation 35A of the CIRP Regulations require the resolution professional to form an opinion on whether the corporate debtor has been subjected to transactions under Section 66 of the IBC and where such opinion has been formed, the resolution professional can make a determination and is subsequently required to apply to the adjudicating authority for appropriate relief. In this same case, there was discussion on what constitutes fraud under Section 66 and in tune with the facts of the case, it was laid down that ‘fraud’ can, inter alia, consist of money lent by a corporate debtor which the corporate debtor has no intent of receiving back. This observation reflects that fraud, in the IBC landscape encapsulates assets voluntary leaving CD with no intent of coming back, such that it is outside the sphere of influence of creditors when the CD enters CIRP. The case also emphasized on a landmark ruling in *Ram Preeti Yadav v.*

*U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311] (“Ram Preeti Yadav Case”)* wherein, the Hon’ble Supreme Court examined the nature of ‘fraud’ and held that beneficiaries of a fraud must be presumed to be a party to the fraud.

43. For ease of reference and clarity, the details of the aforesaid transactions along with the amounts involved and corresponding paragraph references are summarised in the table below:

S. No.	Nature of Transaction	Amount Involved	Reference (Para No.)
1	Cash payment to M/s Purbanchal Road Carrier	Rs. 26,60,000/-	Para 30
2	Cash expenses for Land and Site Development	Rs. 1,58,00,000/-	Para 31
3	Transfer of land without consideration to Respondent No. 1/Mr. Amiyo Ishlary	Rs. 58,60,000/-	Para 32-33
4	Advance to M/s JSB Cement LLP	Rs. 89,74,000/-	Para 34.1
5	Advance to JSB Foods	Rs. 47,26,490/-	Para 34.2
6	Advance to Mr. Kamal Kumar Harlalka	Rs. 45,00,000/-	Para 34.3
7	Loan to Mrs. Nisha Harlalka	Rs. 3,00,000/-	Para 34.4
8	Loan to Ms. Debopriya Deb Roy	Rs. 16,00,000/-	Para 34.5
9	Loan to Mrs. Shankari Deb Roy	Rs. 20,50,000/-	Para 34.6
10	Advance to Ms. Anindita Dey Roy	Rs. 6,51,000/-	Para 34.7
11	Sale of mustard seeds to JSB Foods (Outstanding)	Rs. 4,55,38,110/-	Para 34.8
12	Cash purchase of mustard seeds	Rs. 6,57,00,000/-	Para 35

13	Fictitious sale of rice (cash sales)	Rs. 1,92,00,000/-	Para 36-37
14	Loss on sale of paddy rice	Rs. 1,05,00,000/-	Para 36-37
15	Loss due to stock write-off/revaluation (oil business)	Rs. 3,12,00,000/-	Para 38-39
<b>Total Aggregate Fraudulent Transactions</b>		<b>Rs. 21,92,59,600/-</b>	

44. At this stage, it is relevant to examine the role of Respondent No. 4 in the affairs of the CD, it is an admitted facts on the Records as per Company Master Data available on MCA Portal, Mr. Kamal Kumar Harlalka, ceased to be a director of the Corporate Debtor on 04.01.2013. However, the material placed before this Tribunal clearly demonstrates that, notwithstanding such cessation, the said Respondent continued to actively participate in and exercise control over the affairs of the Corporate Debtor. In this regard, it is pertinent to note that upon receipt of the Transaction Audit Report, the Resolution Professional, *vide* communication dated 18.06.2022, sought clarifications from the suspended Board of Directors. Notably, no response was furnished by the suspended boards of directors. Instead, Respondent No. 4, despite having no formal position in the Corporate Debtor since 2013, submitted a detailed reply dated 30.06.2022 addressing the observations of the Transaction Auditor.
45. The act of Respondent No. 4 in independently responding to the queries raised by the Resolution Professional, in absence of any authority or designation, clearly indicates that he was not merely a passive erstwhile director but was actively engaged in the management and decision-making processes of the Corporate Debtor. Such conduct evidences that Respondent No. 4 continued to exercise de facto control and influence over the affairs of the Corporate Debtor, even after his formal cessation. Further, the consistent involvement of Respondent No. 4 in explaining and justifying various financial transactions, as reflected in the replies and records, reinforces the inference that he remained deeply connected with the operational and financial functioning of the Corporate Debtor.
46. This Tribunal has also perused the order approving the Resolution Plan dated 20.01.2023. It is observed therein that pursuant to the directions of this Tribunal *vide* order dated 09.12.2022, the Resolution Professional convened a meeting of CoC

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between the CoC members and the Resolution Applicant on 09.01.2023 and subsequently filed an affidavit dated 11.01.2023 enclosing the minutes of the said meeting. The relevant extract of the order dated 20.01.2023 is reproduced hereinbelow: “... Thereafter RP asked both the CoC member and the Resolution Applicant to have a discussion on the matter to come into conclusion.

*I. THE TRANSFER OF THE LAND*

*a. Mr. Sachin Kumar Chaudhary, representative of RA, stated that: a. Details with regard to the status of land (Land measuring 8 Bighas, 3 Katha covered by Dag No 75, Patta - 27, Vill-Ambher, Mouza Sonapur, Circle-Sonapur) and the proposed mechanism for transfer of the land were duly discussed in the eleventh meeting of the CoC held on 28.11.2022 and which were duly recorded.*

*b. During the seventh meeting of the CoC held on 26.07.2022 Mr. Kamal Kumar Harlalka being an authorised representative of all the directors of the suspended board raised objection with regard to lease hold right over the land.*

*c.....”*

From the aforesaid extract, it is evident that Mr. Kamal Kumar Harlalka was acting as an authorised representative of the suspended Board of Directors during the CoC meetings which clearly shows that he continued to be actively involved in the affairs of the Corporate Debtor even after commencement of CIRP and exercised de facto control and influence over its management. Accordingly, this Tribunal is of the considered view that the mere cessation of directorship in the official records does not absolve Respondent No. 4 of liability, when the factual matrix demonstrates his continued and active participation in the affairs of the Corporate Debtor.

47. Accordingly, Respondent No. 4 is liable to be treated as a person who was knowingly a party to the conduct of the business of the Corporate Debtor during the relevant period, for the purposes of adjudication under Section 66 of the Insolvency and Bankruptcy Code, 2016.

48. The words used in section 66(1) i.e. “...the Adjudicating Authority may on the application of the resolution professional pass an order that *any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as if may deem fit*, shows that Adjudicating Authority has the power to demand contribution to the assets of the corporate debtor, from the defrauding party.

49. Accordingly, this Tribunal finds the above transactions undertaken by R1 to R5 squarely fall within the ambit of fraudulent transaction under Section 66 of the Insolvency and Bankruptcy Code, 2016 and as per Resolution Plan approved *vide* order dated 20.01.2023, recoveries in this regards will be transferred to the Financial Creditors.
50. Thus, this Tribunal finds that the total amount of **Rs. 21,92,59,600/- (Rupees Twenty-One Crore Ninety-Two Lakh Fifty-Nine Thousand Six Hundred Only)** has been misappropriated or diverted by the Respondents with intent to defraud the Creditors of the Corporate Debtor. Hence, we are of the considered view that the Respondent No. 1 to 5 have carried on the business, with intent to defraud the Creditors of the Corporate Debtor or for fraudulent purpose causing the total loss of **Rs. 21,92,59,600/-** to the Corporate Debtor.
51. It is also observed from the material on record that the immovable properties bearing **Dag No. 75, Patta No. 27 and Dag No. 99, Patta No. 42, situated at Sonapur, Assam**, were originally purchased in the year 2012 out of the funds of the Corporate Debtor for a total consideration of Rs. 58,60,000/-.
52. However, it is further noted that the aforesaid properties were subsequently transferred in favour of Respondent No. 1, Mr. Amiyo Ishlary, by way of **two Rectification Deeds, both dated 26.04.2016**, without any consideration being paid to the Corporate Debtor. Significantly, the Corporate Debtor was not even made a party to the said deeds.
- a. The first Rectification Deed pertains to the original Deed of Sale bearing Deed No. 9517, Sl. No. 13528, executed on 06.10.2012 at Guwahati.
  - b. The second Rectification Deed pertains to the original Deed of Sale bearing Deed No. 9555, Sl. No. 13582, executed on 08.10.2012 at Guwahati.
53. This Tribunal has already held that the aforesaid transactions constitute fraudulent transactions within the meaning of Section 66 of the Code, 2016, being a clear case of misappropriation and diversion of the assets of the Corporate Debtor.

**ORDER**

54. With the above observations, the present application, **I.A. (IBC)/48/GB/2022** is hereby **allowed** and **disposed of**.
55. Accordingly, we direct all the Respondents jointly or severally to make contributions of **Rs. 21,92,59,600/- (Rupees Twenty-One Crore Ninety-Two Lakh Fifty-Nine**

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**Thousand Six Hundred Only**) in terms of the Resolution Plan duly approved by this Tribunal *vide* order dated 20.01.2023, within a period of **60** days from the date of this order. If the amount is not paid within such period, then the same shall be recovered from the properties of the respondents, in accordance with the provision of law. For any delay in payment beyond **60 days** as aforesaid, simple interest at the rate of 12% shall also become payable.

56. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsels.
57. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
58. File be consigned to records

**Sd/-**  
**Yogendra Kumar Singh**  
**Member (Technical)**

**Sd/-**  
**Rammurti Kushawaha**  
**Member (Judicial)**

*Signed this on 30<sup>th</sup> day of April, 2026.*

*Aditya P. (LRA)*