

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **04.06.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : State Bank of India
Vs
Hotel Milestonnez India Pvt Ltd

MAIN PETITION NUMBER : CP(IB)/243(CHE)/2021

(IA/MA) APPLICATION NUMBERS

IA(IBC)/93(CHE)/2023; IA(IBC)/1541/(CHE)/2024

ORDER

IA(IBC)/93(CHE)/2023

Present: Ms. V.Jayashree, Ld. Counsel for the Applicant / RP / Liquidator
Mr. K.Chandrasekaran, Ld. Counsel for State Bank of India.

Vide separate order pronounced in the open Court, the application is dismissed.

IA(IBC)/1541/(CHE)/2024

Present: Ms. V.Jayashree, Ld. Counsel for the Applicant / RP / Liquidator
Mr. K.Chandrasekaran, Ld. Counsel for State Bank of India.

Vide separate order pronounced in the open Court, the application is dismissed.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

Date: 04.06.2026

**N IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

**IA(IBC)/93/CHE/2023
In
CP(IBC)/243(CHE)/2021**

(filed under Sections 66 of Insolvency and Bankruptcy Code, 2016)

*In the matter of Scheme of
Hotel Milestonnez India Private Limited*

Amier Hamsa Ali Abbas Rawther
Resolution Professional of Hotel Milestonnez India Private Limited
IP - PO 1727/2019 - 2020/ 12620 No R094,
SBIOA Unity Enclave, Mambakkam P.O,
Near Sivan Temple, Chennai-600127
Phone No: 9930846070
mail: amierhamsa@gmail.com

... Applicant / Liquidator

-VS-

1. Shri. M Rajamanickam,
No.19 / 6, Gandhi Nagar Main Road,
Virugambakkam,
Chennai - 600 092
mrcanteen247@gmail.com

... Respondent No. 1

2. Shri. R Ramachandran,
No.19/6, Gandhi Nagar Main Road,
Virugambakkam,
Chennai - 600 092
ramachandran6577@gmail.com

... Respondent No. 2

3. Shri. Narayanan TV

No. 312, Khaleel Shiraj Plaza,
Fountain Plaza, Pantheon Road,
Egmore, Chennai - 600 008.
tvnarayanan@hotmail.com

... Respondent No. 3

Order pronounced on **4th June, 2026**

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Liquidator : Jayanthi K Shah, Advocate
Amier Hamsa Ali Abbas Rawther,
Liquidator in person
For Respondent No. 1 & 2 : Vigneshwar Elango, Alladi Rahul,
Manjunath Karthikeyan. Advocates
For Respondent No. 3 : B. Sarath Babu

ORDER

1. This is an application filed by the Liquidator (Erstwhile Resolution Professional) of Hotel Milestonnez India Private Limited i.e., the Corporate Debtor under Section 66 of the Insolvency and the Bankruptcy Code, 2016 (hereinafter, IBC, 2016), seeking the following reliefs,

- a. Direct Respondent No. 1 and 2 either jointly or severally to roll back/reverse the amount of Rs.383.38 lakhs received from the Corporate Debtor.*

- b. Direct Respondent 3 to roll back/ reverse the amount of Rs.20.30 lakhs received from the Corporate Debtor to the Resolution Professional.*
- c. To declare all such transactions as null and void and reverse the effect of the transactions.*
- d. Pass any other order orders that this Hon'ble Tribunal may deem fit and proper*

2. BRIEF FACTS OF THE CASE

2.1. It is stated that the State Bank of India filed a petition under Section 7 of IBC, 2016, seeking to initiate Corporate insolvency Resolution Process (CIRP) against the Corporate Debtor Hotel Milestonnez India Private Limited (hereinafter referred to as 'Corporate Debtor'). The petition was admitted by this Tribunal vide order dated 19.04.2022 in CP/18/243/2021 and the Applicant herein was appointed as the Interim Resolution Professional.

2.2. The Applicant took over the management of affairs of the Corporate Debtor as a going concern and caused public announcement to be issued on 22.04.2022 under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for filing claims by the creditors of the Corporate Debtor in the specified forms. Thereafter, the CoC was constituted with State Bank of India, as the Sole Secured Financial

Creditor. The CoC vide resolution dated 20.05.2022 decided that the Applicant shall continue as the Resolution Professional.

2.3. It is stated that as per Section 66 (1) of IBC, 2016, if 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 Tribunal may on the application of the RP pass an order that any persons who were knowingly parties to the carrying on the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

2.4. It is stated that the CoC resolved on 25.07.2022 to conduct a transaction audit of the Corporate Debtor by SPP & Company, Chennai. The report was evaluated by the Resolution Professional and finalized on 31.10.2022. Certain avoidance transactions under Section 66 were reported.

2.5. It is stated that the delay in completing the identification of avoidance transactions of the Corporate Debtor beyond the timelines prescribed in the Regulations was due to the delay in submitting various documents including provisional financial statements, tally backup, account statements, invoices, vouchers etc. by the suspended directors of the Corporate Debtor. The suspended directors adopted the approach of sharing documents required by the transaction auditor and the resolution professional selectively and shared few faulty documents to misguide the process, which caused delay in evaluating

the transactions of the Corporate Debtor. It is stated that few documents are pending to be shared by them despite continuous follow up. In view of the above, an application under Section 19 (2) has been preferred against them.

2.6. It is stated that the CoC deliberated on the draft Transaction Audit Report and resolved in the 7th CoC meeting held on 31.10.2022 to file the avoidance application for the identified transactions before the Tribunal under the provisions of Section 66 of IBC 2016.

Section 66 of IBC, 2016

2.7. It is stated that, as per the Transaction Audit Report, the landed properties for an amount of Rs.31.23 lakhs belonging to the Erstwhile Director R Ramachandran was shown as Fixed Assets of the Corporate Debtor since 2011. After 01.04.2021, the entire value of the land was adjusted against the loan account of the director. Consequently, the payable amount to the director reduced. Personal assets were shown as the Company Fixed Assets to falsify the books of accounts and strengthen the Balance Sheet of the Corporate Debtor. The fixed asset account of the Corporate Debtor for FY 2019-20, 2020-21 and 2021-22 is extracted as under:

(Amount in Rs.)

Year	19-20	20-21	21-22
Property at Ayyapanthangal	2,76,540	2,76,540	Nil
Property – Vellore	14,72,410	14,72,410	Nil
Property Elagiri	11,70,520	11,70,520	Nil
Property Tiruvallur	2,04,400	2,04,400	Nil
Total	31,23,870	31,23,870	

2.8. It is stated that on verification of the title deeds of the aforesaid properties, it was found that the same are in the name of the ex-director R Ramachandran. No valuation was carried out before the transfer of such lands and there are no MCA compliance documents available with the CD for such adjustments. It is observed that an amount of Rs.31.23 lakhs falls in the purview of Section 66 (1) of the code which amounts to Fraudulent Transaction.

2.9. It is stated that cash payments were made to Smt. Rosi Puspha and Smt. Rama who were not having any business relationship with the Corporate Debtor. All these entries were routed through the account of Mr. Pannur Babu. It is stated that the payment of Rs.15.50 lakhs to the parties who had no business relationship with the Company has been considered as fraudulent under Section 66 of IBC, 2016. The details of the transaction are extracted as under:

Date	Particulars	Amount	Nature of transaction
25-Jul-19	Axis Bank A/c 910020024086820	5,00,000	Payment to Rasi Pushpa
24-Mar-20	ICICI Bank - A/c.080405002220	2,00,000	Payment to Pannur Babu /Rama
27-Mar-20	ICICI Bank - A/c.080405002220	3,00,000	Payment to Pannur Babu /Rama
28-Mar-20	ICICI Bank - A/c.080405002220	2,00,000	Payment to Pannur Babu /Rama
29-Mar-20	ICICI Bank - A/c.080405002220	2,00,000	Payment to Pannur Babu /Rama

Date	Particulars	Amount	Nature of transaction
31-Mar-20	ICICI Bank - A/c.080405002220	1,00,000	Payment to Pannur Babu /Rama
04-Jul-20	Cash	50,000	Interest on loan for the month of Apr - 20
	Total	15,50,000	

2.10. It is stated that, cash payments of Rs.5.00 lakhs each were made to Mohan and Suji S. who were not having any business relationship with the Corporate Debtor. The amount was debited in the ledger "Chairman Mr. M Rajamanickam" in the year 2019-2020. It is stated that this payment of Rs.10 lakhs to the above-named parties who had no business relationship with the Company has been considered as fraudulent under Section 66 of IBC, 2016. The details of the transaction are extracted as under:

(Amount in Rs.)

Date	Particulars	Debit	Nature of transaction	Narration
17-Jul-19	Axis Bank A/c. 910020024086820	5,00,000	Payment - Bank	Cheque issued to Mr. Mohan
19-Jul-19	Axis Bank A/c. 910020024086820	5,00,000	Payment - Bank	Paid to Mr. Suji S/Karur Vysya Bank
	Total	10,00,000		

2.11. It is stated that advances were paid to Ramanathan during the earlier years and no efforts were made by the Corporate Debtor to recover the amount from him. Instead, the outstanding balances were transferred to the Profit and Loss Account Expenses Account of the Corporate Debtor. No documents were submitted for verification of the entry. It is stated that the advance payment of Rs.4.10 lakhs extended to the above named person who had no business relationship with the Company and no efforts taken for recovery, has been considered as fraudulent under Section 66 of IBC, 2016. The details of the transaction is as under:

(Amount in Rs. lakhs)

Name of the Party	Amount Advanced	Adjusted to Repairs & Maintenance
Mr. Ramanathan	4.10	01.04.2021
Total	4.10	

2.12. It is stated that, receivables from various parties amounting to Rs. 39.06 lakhs were written off to bad debt and charged to the Profit

and Loss account of the Corporate Debtor during the year April 2021 and March 2022. No efforts were made to recover the receivables from the respective parties. The list includes receivables which are less than three years old which were also written off. It is stated that the amount of Rs.39.06 lakhs written off to bad debts (P & L Account) of the Corporate Debtor without making any effort to recover the same has been considered as fraudulent transactions under Section 66.

2.13. It is stated that, an agreement was entered into between R. Ramachandran (Lessor) and Rajeshwari Rashmi Ravi Sankar (Lessee) for lease of land and building located in Sunguvarchatram, Kanchipuram District - 602106 for running a restaurant in the Hotel Premises of the Corporate Debtor. Period of lease was for 12 years beginning from 1.12.2013 to 30.11.2025. The lessor as per the agreement was R. Ramachandran and not the Corporate Debtor. Based on the agreement the lessee paid a security deposit of Rs. 150 lakhs. The lease advance received from the lessee was recorded in the books of the Corporate Debtor for Rs. 140 lakhs only, instead of the actual receipt of Rs.150 lakhs mentioned in the lease agreement. No documents related to accounting of the advance amount received were produced for verification to ensure that the funds were received in the bank account of the Corporate Debtor. The entry reflects falsification of the books of the Company. Ramachandran, the erstwhile Director executed the documents in his personal capacity, even though he had no power to execute the lease agreement since the property is in the name of the Corporate Debtor. However, payable entry was created in

the books of the Company for the funds received by Ramachandran and ultimately the financial burden was placed on the Corporate Debtor. It is stated that this transaction has been classified as fraudulent under Section 66 of IBC, 2016.

2.14. It is stated that the lessee agreed to pay Rs. 50,000/- as monthly rent for the restaurant leased out to her with a revision of 16% every 3 years and 50% of electricity charges for the utilisation of parking area, water consumption, and common area. It is stated that the rental income is recorded in the books of accounts of the Corporate Debtor. Since the lease agreement was between Ramachandran and Rajeswari, the rental income might have been received in Mr. Ramachandran account. Rent was not received by the Corporate Debtor for the space rented out for the restaurant. It is stated the rental income not received by the Corporate Debtor and diverted elsewhere amounting to approximately Rs.42.68 lakhs has been classified as Fraudulent Transaction under Sec 66 of the Insolvency and Bankruptcy Code 2016. The rental income has been calculated below based on the agreement:

01-12- 2013 to 31-03- 2014	01-04- 2014 to 31-03- 2015	01-04- 2015 to 31-03- 2016	01-04- 2016 to 31-03- 2017	01-04- 2017 to 31-03- 2018	01-04- 2018 to 31-03- 2019	01-04- 2019 to 31-03- 2020	01-04- 2020 to 31-03- 2021	01-04- 2021 to 31-03- 2022	Total Income to be receivable
2,00,000	6,00,000	6,00,000	6,32,000	6,96,000	7,33,120	2,69,120	2,69,120	2,69,120	42,68,480

2.15. It is stated that receivables from the following parties amounting to Rs. 90.80 lakhs were transferred to P & L Account, 'Repairs to the

Building' on 05.04.2021 and made the outstanding balances in the respective parties' accounts to NIL. There is no basis for the transaction and no supporting documents in the form of agreement, invoices, follow-up correspondences etc., have been provided for validation. Further, no efforts were made to recover the receivables from them. It is stated that the amount of Rs.90.80 lakhs transferred to the expenses account without making any effort to collect the same has been considered as fraudulent transactions under Section 66 of IBC, 2016. The details are as under:

(Rs. in lakhs)

Name of the Party	Amount	Transferred on
Shri. Palaniswamy	11.10	05.04.2021
M/s S S Electricals	38.16	05.04.2021
M/s VMD Decors	35.54	05.04.2021
Shri. Jayaraman	6.00	05.04.2021
Total	90.80	

2.16. It is stated that cash payments aggregating to Rs.20.30 lakhs were made to TV Narayanan (Respondent No.3) and marked in the books of accounts of the Corporate Debtor as professional fees and taxes. However, there was no engagement letter issued to him by the Corporate Debtor to undertake such professional services. The Company has another Statutory Auditor M/s Macharia & Associates, Chennai for carrying out the Statutory Audit and Tax Audit of the Corporate Debtor including for the financial year ended 31.03.2022. T.V. Narayanan was paid for the expense relating to MR Canteen

amounting to Rs.4.10 lakhs. Expense of related party has been paid through the Corporate Debtor account. TV Narayanan had issued non-GST invoices for the payment received from the Corporate Debtor for the services rendered. However, there is no justification for the amount mentioned in the invoices. It is stated that the payments to TV Narayanan has been be considered as Potential Fraudulent transaction under Sec 66 of IBC, 2016..

2.17. It is stated that the final Report was prepared after obtaining replies from the erstwhile management of the Corporate Debtor and ascertaining the actual matrix based on the reply. The reply received from them is also incorporated in the report.

2.18. It is stated that the transactions detailed above have put the beneficiaries in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code.

3. REPLY OF RESPONDENT NO. 3

3.1. It is stated that Respondent No. 3 is a GST practitioner for the past 30 years. The Applicant has wilfully approached this Tribunal by suppressing the material facts that are necessary to prove the debt alleged to be owed to them. He denies the allegations and averments contained therein.

3.2. It is stated that there were no cash payments of Rs. 20.30 Lakhs received from the Corporate Debtor in FY 2021-22. The Transaction Audit Report says that the payments were made from Union Bank of India. This contradicts the allegation of cash transfer due to dichotomy between "Cash Payment" and "Bank Payment" for the "Reasons best known" to the Applicant. The payments were received by cheques from the Corporate Debtor for which the necessary receipts/bills/explanation were provided to the Corporate Debtor. These payments were made for obtaining the start-up industry exemption from the Income tax Department and cancellation of demand for the Assessment Year 2014-15, 2017-18, 2018-19 and 2019-20 along with GSTN restoration which was cancelled by the GST Department.

3.3. It is stated that the Respondent received the engagement letter from the Corporate Debtor, and confirmation of quotation for the professional service charges to be rendered for obtaining the exemption as a "STARTUP INDUSTRY" under section 801D of the Income-tax Act, 1961 as provided by the Government of India. The Respondent also submitted a copy of the Quotation dated 18.09.2022, approved letter with Professional Fees Fixation dated 19.09.2022, professional services bill and other documents pertaining to the Income Tax proceedings and Startup Industry claims.

3.4. It is stated that GST Appeal was filed before the Deputy Commissioner (ST) (FAC) appeal, Chennai II in GST Form No:

GSTAPL01 for Restoration of GST Certificate cancelled for Non-Payment by the Company. First Hearing dated 13/01/2022 was attended. Second Hearing dated 08/02/2022 was also attended. Third Hearing on 24/03/2022 was also attended. The DC was ready to restore the cancelled GSTN on Payment of the outstanding dues of Rs. 24 lakhs (Approx.) The Final Hearing was posted on 23/06/2022. But, it was informed by the IRP that he has taken over the management as per the order dated 19/04/2022. This was also communicated to the Deputy Commissioner (ST) (FAC) GST, Appeal Chennai II. They informed that 3rd Respondent will no longer represent the case. Insolvency resolution professional has been appointed and requested for the copy of the Appointment order dated 19/04/2022 (Hard Copy). The breakdown of the fees charged by Respondent No. 3 is extracted as under:

a)	Revision Petition u/s.154 for the Assessment year 2014-15 for Startup Industry Deduction (u/s. 80ID of the Income tax, 1961)	Rs. 2,50,000
b)	Revision Petition filed and refund receipt – for 2017/18 Assessment Year	Rs. 1,00,000
c)	Revision Petition filed and refund receipt – for 2018/19 Assessment Year	Rs. 1,00,000
d)	Deduction u/s. 80ID for Startup Industry and Section 154 Revision Petition & obtaining of refund etc.	Rs. 2,50,000
	Total	Rs.7,00,000

3.5. The 3rd respondent submitted that, for the above service, Professional fees of Rs. 7,50,000/- include the following:

I. Appeal Petition filing fees.

II. Getting the approval order from Assistant Commissioner (GST), Sriperumbudur Assessment Circle.

III. Obtaining the legal advice from lawyers and senior consultants in everything the Ground of Appeals and Other Statements.

IV. The Personal attendance fees for 4 hearings with Deputy Commissioner (Appeals) but visited more than 12 times in the course of the case proceedings.

V. The conveyance expenses to Sriperumbudur Assessment Circle, (which is situated near Poonamallee 20 kms away from Greaves Road Main Office), corporate debtor (situated Sunguvarchatram - 22 Kms away from Egmore) and travelling expenses to lawyer's offices etc...

VI. The Professional Fees of Rs. 8,50,000 originally claimed but it was reduced to Rs. 1,00,000/- by the Corporate debtor in its approval letter during December 2021

VII. The day to day consultancy services on the VAT Outstanding issues of the liquor bar functioning and toy gold demand cases were handled in Sriperumbudur assessment circle, was not charged separately by me, to the company.

3.6. It is stated that the fee charged was very reasonable for a professional with 30 years' experience and it was duly approved by the chairman of the Corporate Debtor, well before the liquidation and resolution process. The Professional Fee was claimed for the specific purpose of Obtaining the Deduction U/s. 80ID of the Income-tax Act,

1961. The services of the Respondent were engaged to restore the cancelled GST Registration Certificate of the Corporate Debtor and to resume the business activity of a MSME Industry in terms of circulars under Rule No: 108(1) and the services were received to revive the business activity.

3.7. It is stated that certain GST payments were routed through 3rd Respondent on the request of the Corporate Debtor, to the Government treasury and receipts were obtained. The details of the bills paid are extracted as under:

1. Receipt No: (Bill No: 985)

CPIN - 21103300210293 dt. 18/10/2021 - 8434

CPIN - 21103300279064 dt. 19/10/2021 - 59,170

CPIN - 21103300284617 dt. 19/10/2021 - 71,748 Rs. 2,10,774/-

2. Receipt No: (Bill No: 899)

CPIN - 22023300234775 dt. 17/02/2022 - 2,00,000 Rs. 2,00,000/-

M. NARAYANAN, M.COM.,
INCOME TAX PRACTITIONERS
ITP No. 10/93-94/ T.N IV
41-413 EASTERN ROAD,

Total GST Paid - Rs. 4,10,774/-

3.8. Since the online payment facility was not provided by the banks of M/s. M.R. Canteen, based on the request of the chairman of Corporate Debtor, these payments were made and receipts were obtained, which are enclosed herewith. A sum of Rs. 2,56,81,144/- was the outstanding balance credit due to M.R. Canteen as on 31/03/2022, as per page no: 50/point no:52 of the Audit Report.

3.9. It is stated that this is a normal acceptance norm in taxation area to avoid late fees, penalty, reminders and notices from the GST Department, where quick tax payments are made by e-mode. The GST Department has accepted all the payments under CGST Act, SGST Act including Surcharge and issued appropriate receipts, which can be verified in the GST Portal.

3.10. It is stated under Section 66(2) of IBC, 2016 the director of the Corporate Debtor or the partner of the Corporate Debtor should be held responsible for any action initiated by the banker or other statutory authorities. In this present case, Respondent No. 3, not being a director, partner or statutory auditor of the Corporate Debtor is arrayed as a party which is illegal and contrary to the IB Code, 2016. The Respondent has rendered professional services to take up the initiatives of the Government of India schemes like "Start Up Industry" to the Corporate Debtor.

3.11. It is stated that the Final Balance of Rs. 2,79,923/- shown as paid in Debit side is to be recovered. However, the audited balance sheet as on 31.03.2022, shows a final balance of Rs. 1,00,000/- in sundry creditors - others column. Further, certain correct and unrelated entries are posted in the ledger extract which need the verification from the basic vouchers/journal vouchers:

S.no	Transaction Date	Amount	Error
1)	17/04/2021	Rs. 1,00,000/-	Not related to 3 rd respondent voucher and bank statements needed for scrutiny. Wrong Entry.
2)	07/12/2021	Rs. 3,50,000/-	Wrong Entry. No such payments made from the corporate debtors bank a/c. Bank statement / vouchers needed for Inspection.

Handwritten signature

3.12. Further, below ledger extent needs verification as there is mismatch in the fees and tax account:

Fees & Taxes A/c

As per Appendix II (of the Notice)	As per Tally Breakup and financial statements
Rs. 16,19,303/-	Rs. 17,99,226

Wrong entries to be found out only on the basis of the books of accounts and audited balance sheet, which may be produced for inspection.

- iv. Page No; 65,66,67,68,69,70,72 – not readable – blurred copies – despite the request for hard copies by the NCLT.

4. **Rejoinder filed by the Applicant**

4.1. It is stated that during the period 2021-2022 Respondent No. 3 was engaged for tax consultancy. Another Statutory Auditor M/s Macharla & Associates, Chennai, was engaged who carried out the

audit and income tax filing of the Corporate Debtor for the year 2021-2022 for an annual fee of Rs.1,50,000 plus GST. Since the fee amount for the period 2021-2022 was not paid by the corporate debtor, the statutory auditor of the corporate debtor submitted the proof of claim before the liquidator. The engagement letter, which was not available with corporate debtor and that was subsequently submitted by the respondent is only for Rs.7,00,000. However, the respondent had issued four invoices with an aggregate value of Rs.18,60,000.

4.2. It is stated that the quotation was submitted by the respondent in his personal name as T V Narayan and the non-tax invoices were issued by a partnership firm called "Accounttax". T V Narayan collected the money in his personal name and credited the funds to his account from the money transfer from the CD's account through cheques. The amount released by the corporate debtor was credited to his personal account rather than crediting it to the firm's account.

4.3. The details are given below:

Date	Cheque No.	Amount (Rs.)
18.10.2021	2025322	7,00,000
21.10.2021	2025324	2,00,000
30.11.2021	2025335	2,10,000
24.03.2022	2026421	7,50,000
Total		18,60,000

4.4. It is stated that T V Narayan has issued the non-tax invoices from Account tax – a partnership firm as a GST Consultant, which were not available with Corporate Debtor at the time of verifying the records. They suspected that the non-tax bills submitted by him on behalf of the firm and prepared manually are bogus bills. It is stated that the Adjudicating Authority may direct the respondent to produce the tax computation and tax return documents for the Assessment Year 2022-2023.

4.5. It is stated that the respondent collected an amount of Rs.7,00,000 for getting a refund of Rs.8,90,240 (credited to the CD's account on 23.03.2022) from the Income Tax Department. It is also stated that without reinstating the cancelled GSTIN of the CD, the respondent had collected Rs.7,50,000. Since the GSTIN of the CD is not reinstated the amount of fees collected by the respondent for reinstating the GSTIN is to be paid back.

5. Memo filed by the Applicant

5.1. It is stated that since the liquidation process is getting over an agenda was taken in the 9th SCC meeting whether the PUFÉ applications are to be pursued or not. It is stated that the 9th SCC meeting was conducted by the Liquidator on 01.08.2024 and the SBI, the Financial Creditor of the Corporate Debtor agreed to pursue the application to its logical conclusion.

5.2. In these circumstances an application was listed on 26.08.2024 on which the Tribunal directed the Liquidator to convene the SCC meeting within 10 days to take a call on the continuance or closure of the cases since the recovery of the aggregate amount is greater than the claim admitted by the liquidator. In compliance with the order of the Tribunal, 10th SCC meeting was conducted on 05-09-2024 and the SCC resolved to pursue the matter. The relevant portion of the minutes is extracted below:

“The Chairman informed the members that the two applications submitted under Sections 43 and 66 of the I & B Code, 2016, concerning Avoidance Transactions for Hotel Milestonnez India Private Limited, were deliberated by the Hon’ble Adjudicating Authority on August 26, 2024. The Hon’ble Tribunal directed the Liquidator to organize a meeting within ten days from the date of the order and report the Stakeholders’ Consultation Committee’s decision to the Hon’ble Tribunal. The Chairman informed SCC to take a call on the continuance or closure of the said cases since the recovery of the aggregate amount is greater than the claim admitted by the liquidator. Mrs. Sindu B, Assistant General Manager, State Bank of India, and the Sole Secured Financial Creditor holding a 97.17% voting share (predistribution) confirmed in the meeting that the Bank intends to continue the proceedings before the Hon’ble NCLT. The Chairman apprised the SCC that the liquidator had settled SBI’s accepted claim of Rs. 20.25 Crores in two payments. The first payment of Rs. 11.25 Crores, which included TDS of Rs. 11.25 lakhs, was distributed from the proceeds of the SARFAESI sale of land owned by the

Personal Guarantors to the Corporate Debtor. The second payment of Rs. 8.78 Crores (net of liquidator's fees) was made on August 3, 2024, from the sale proceeds of the Corporate Debtor as a going concern. Despite this, the State Bank of India has decided to continue pursuing both cases to their logical end at the Hon'ble NCLT."

6. Written Arguments filed by Respondent No. 1 & 2

6.1. It is stated that the Applicant failed to satisfy the statutory preconditions required for invoking the extraordinary jurisdiction under Section 66 of IBC, 2016. Section 66 being a penal provision, can be invoked only on strict pleading and proof of fraudulent intent or dishonest conduct. Bald allegations, audit observations, or retrospective scrutiny of business decisions cannot form the basis for fastening liability under this provision.

6.2. It is stated that the Applicant failed to specify whether the impugned transactions are sought to be reversed under Section 66(1) or Section 66(2) of the IBC, 2016. This Tribunal has held in *Varadachari Kumar, Liquidator of M/s. Akshaya Imaging Systems Private Limited v. Sreenivasan Harikrishnan and another, IA/1327/IB/2020 in CP/431/IB/CB/2018*, that the requirements for invoking Sections 66(1) and 66(2) are distinct, requiring clear pleadings.

6.3. It is stated that a perusal of the Application would demonstrate that there is no specific pleading attributing fraudulent intent or *mens*

rea on the part of the Respondents. The entire case is built on assumptions and inferences drawn.

6.4. It is stated that mere financial difficulties of the Corporate Debtor or bad commercial decision taken by the Directors do not amount to fraudulent intent or wrongful trading. Merely because the Corporate Debtor has been admitted into CIRP, the same cannot be the ground to invoke Section 66 of the Code. The test is to see if the Directors had the intent of defrauding the creditors.

6.5. It is stated that the sole creditor in the present case has been paid in full during the liquidation process out of the liquidation estate and there still remains amounts in the liquidation estate to be distributed to the shareholders. Assuming but without admitting that the transactions are fraudulent and this Tribunal directs the respondents to contribute to the liquidation estate, the same would be distributed only to the shareholders, who contributed to the liquidation estate, making this whole exercise futile.

6.6. It is stated that the Applicant placed undue reliance on the Transaction Audit Report. The said report is only recommendatory and cannot, by itself, constitute proof of fraud or wrongful trading. The Applicant failed to independently establish, through pleadings or evidence, that the transactions complained of were entered into with intent to defraud creditors, as held in the case of *Anuj Jain IRP for*

Jaypee Infratech Limited Vs. Axis Bank Limited reported in (2020) 8 SCC 401.

6.7. It is stated that the allegations relating to accounting entries, reflection of properties, adjustments, and inter se transactions are the matters of accounting treatment and commercial decision, even assuming but without admitting, that there were irregularities in accounting, the same cannot be elevated to fraudulent trading in the absence of proof of dishonest intent or wrongful gain.

6.8. It is stated that the allegations relating to payments made to certain parties and writing off of receivables or advances are vague and unsupported by material particulars. Writing off bad debts or advances is a recognised commercial practice, especially in business, and cannot be characterised as fraud and be brought under the ambit of section 66. The payments made to third party vendors are the expenses representing the maintenance expenses, office expenses and repairs of the Hotel.

6.9. It is stated that the allegations concerning lease deposits, rental income, and alleged diversion of funds are based purely on conjecture. No bank statements or contemporaneous documents have been produced to establish actual siphoning or misappropriation by the Respondents. The said property stands in the name of Respondent No. 2 and not an asset of the Corporate Debtor.

6.10. It is stated that the Lessee had approached this Tribunal against the decision of the liquidator rejecting her claim and this Tribunal while dismissing the application in IA/42/2024 vide order dated 26.08.2024 observed that the payments were made to the Managing Director and not to the Corporate Debtor. On the basis of this observation alone, it is sufficient to prove that the transaction sought to be brought under Section 66 is erroneous.

6.11. It is stated that the Applicant failed to demonstrate any wrongful gain to the Respondents or corresponding loss to the Corporate Debtor arising out of the said transactions

6.12. It is stated that the essential requirement for invoking Section 66(2), namely identification of the point in time when insolvency became unavoidable and knowledge thereof on the part of the Respondents, has not been pleaded. In the absence of such pleadings, the allegation of failure to exercise due diligence is unsustainable and liable to be rejected. The present Application is nothing but a fishing and roving enquiry, seeking to convert business decisions and accounting practices into the allegations of fraud, which is impermissible in law.

6.13. .With respect to the relief sought under Section 66 of the Code, it is submitted that the Applicant has not produced any evidence or pleadings as required under the section to show that the alleged transactions have been carried out with an intent to defraud the

creditors of the company or for any fraudulent purpose thereby has failed to fulfil the essential ingredients required under section 66 (1) or (2) to maintain the present applicant. In such a case, the relief sought by the Applicant under Section 66 is prima facie not maintainable.

6.14. Even as per the averments in the application, the sum of Rs 31.2 lakhs was adjusted towards the loan account of the respondents and loan payable to the respondents was reduced to the extent of the above sum. A portion of the loan was waived off without taking any money from the corporate debtor. There is no fraud or loss of value to the Corporate Debtor in this transaction.

6.15. It is stated that Mr Pannur Babu was an angel investor to the CD and used to provide hand loans which facilitated the conduct of day to day operations of the CD.

6.16. It is stated that these transactions were the interest free hand loans provided for the cash purchase of provisions, vegetables, and other day to day business activities. Hospitality industry is a niche one with several components and specific industry practices, which were never considered by the Applicant. Both transaction 3 and 2 could have been explained if the Applicant had simply written to the concerned persons and sought an explanation, instead of arriving at baseless conclusion of fraud without inquiring about the material facts.

6.17. It is stated that this payment was for maintenance and civil related works for the CD's Hotel. The improvements from services

rendered by him can be seen in the hotel premises. There was a dispute with Ramanathan on the invoice rate, but the tasks performed by him for the advances are evident. It is surprising that the applicant has ignored something so apparent before casting aspersions.

6.18. It is stated that writing off bad Debts is a common business practice when such Debt cannot be recovered. Mere commercial decisions do not indicate fraud or establish the intent to defraud anyone. The NCLT Mumbai in RTIL Limited vs Nitin Kasliwal (M.A No. 05/2019 in C.P/ No. 382/I&BP/MB/2018) has observed that a commercial decision of the management being arguably bad cannot be considered fraud.

6.19. It is stated that the land parcel on which the Hotel is located belongs to Respondent 2. The respondent leased a portion to Mrs Rashmi Ravi Shankar. The monies from such lease were deposited into his account since he is the owner of the leased property. Monies from the lease advance were used by the Respondents for purchasing a land parcel in SIPCOT in the name of the Corporate Debtor which were proposed to be used for the repayment of loans and for operational business expenses of the Corporate Debtor. The Respondents utilised the funds for the benefit of the Corporate Debtor. The land parcel was never in the Corporate Debtor's name and payments were made to the Director and not to the company which is evident from the order dated 26.08.2024 in IA/42/2024 passed by this Tribunal.

6.20. It is stated that all the sums were advances for contract work services with corporate debtor relating to hotel building. SS Electricals was an electrical contractor which undertook installation of electrical lines and its maintenance. These transactions fail to evince the intention of the Corporate Debtor to defraud creditors.

6.21. It is stated that Narayanan was a financial and tax advisor for the Corporate Debtor. The payments were made for the same and clearly stated in the books and recorded.

7. FINDINGS OF THE TRIBUNAL

7.1. We have heard the Ld. Counsels for the parties and perused the records.

7.2. The Corporate Debtor was admitted to Corporate Insolvency Resolution Process vide order dated 19.04.2022 passed by this Tribunal in CP/18/243/2021. In the CoC meeting held on 25.07.2022, it was resolved that a transaction audit of the Corporate Debtor be conducted and, accordingly, M/s. SPP & Company was appointed as the Transaction Auditor. The Transaction Audit Report came to be submitted on 04.11.2022.

7.3. Subsequently, liquidation proceedings against the Corporate Debtor, were initiated vide order dated 15.02.2023 passed by this Tribunal in IA(IBC)/1425(CHE)/2022 in CP(IBC)/243(CHE)/2021 and the Applicant was appointed as the Liquidator.

7.4. The Liquidator filed the applications under Section 66 of IBC, 2016. Before considering the issues the application separately, reference is made to Section 66 of IBC, 2016, which is extracted as under:

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 sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

7.5. A careful reading of Section 66 of IBC, 2016 would manifest the fact that it deals with two transactions; a) Section 66(1) of IBC, 2016 deals with ‘Fraudulent Trading’ and b) Section 66(2) of IBC, 2016 deals with ‘Wrongful Trading’. Section 66(1) of IBC, 2016 imposes liability on ‘any person’ who were knowingly parties to the carrying on the business with a dishonest intention to defraud the creditors, to make contribution to the assets of the Corporate Debtor.

7.6. Thus, essentially for a transaction to qualify under Section 66(1) of IBC, 2016, the following conditions should be satisfied;

- a. Liability can be fixed upon ‘**any person**’
- b. The said person should **knowingly carry** on the business of the Corporate Debtor with a **dishonest intention** to defraud the creditors or for any fraudulent purpose;

7.7. On analysing Section 66(2) of IBC, 2016 it is seen that it deals with ‘Wrongful Trading’. For a transaction to qualify under Section 66(2), the following conditions must be satisfied;

- a. Liability can be fixed upon only ‘**Director**’ or ‘**Partner**’;
- b. They knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings;

- c. They did not take due diligence with a view to minimizing the potential loss to the company's creditors;

7.8. Thus, there seems to be a stark contrast in relation to Section 66(1) and 66(2) of IBC, 2016. It is needless to say that even the scope of sub – section (1) and (2) of Section 66 of IBC, 2016 are different. The Applicant in this present case has sought for relief under both the Section 66(1) and 66(2) of IBC, 2016.

7.9. It is relevant to refer to the judgment of the Hon'ble NCLAT in the case of *Regen Powertech Pvt. Ltd. –Vs- Wind Construction Pvt. Ltd. in Company Appeal (AT)(Ins) No.349 of 2022*, wherein it was held as under;

33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the Company would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling "Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from

that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'.

36. In the instant Case 'on hand', the 'Appellant' / 'Applicant' before the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) had filed IA(IBC)/489(CHE)/2021 in IBA/1099/2019 under Section 66 (1) of the Insolvency and Bankruptcy Code, 2016. In this Page 20 of 22 Company Appeal (AT)(CH)(Ins) No.349/2022 connection, this 'Tribunal' significantly points out that in respect of an 'Application' (Filed under Section 66 of the Insolvency and Bankruptcy Code, 2016) 'Fraudulent Trading' / 'Wrongful Trading', by the 'Applicant' / 'Resolution Professional' is concerned, 'Tangible Materials' / 'Relevant Facts' are to be pleaded in an 'Unambiguous and Unequivocal Terms', by supplying the necessary details / facts as the case may be.

7.10. In view of the decision of the Hon'ble NCLAT in ***Regen Powertech Pvt. Ltd, supra***, fraudulent trading under Section 66(1) requires high degree of proof to satisfy the conscience of the Tribunal. This Tribunal, therefore, would analyse the material facts placed on record against the essential conditions of Section 66(1) and 66(2) of IBC, 2016.

Write off of Fixed Assets worth Rs. 31.23 lakhs

7.11. The Applicant submitted that, as on 31.03.2021, the fixed assets of the Corporate Debtor comprising of immovable property at Ayyapathanga, Vellore, Elagiri and Thiruvallur jointly stood at Rs. 31,23,870/-. The loan due and payable to the Respondent No. 2, being suspended director of the Corporate Debtor was written off against the aforementioned fixed assets balance in FY 2021-2022 and consequently, as on 31.03.2022, the value of fixed assets in the books of the Corporate Debtor stood at NIL. In response, Respondents No. 1 and 2 have submitted that the loans due to the Respondent No. 2 were waived and adjusted against the value of the fixed assets. It is the Respondent's contention that since there was no monetary outflow from the Corporate Debtor, there was no fraud or loss of value.

7.12. On perusal of the Transaction Audit Report, it is seen that, for FY 2020-2021, the outstanding loan balance payable to Respondent No. 2 stood at Rs. 1,94,60,811/-, whereas during FY 2021-2022, the said balance reduced to Rs. 1,63,36,941/-. The value thereby reduced corresponds exactly to the value of the fixed asset written off i.e., Rs. 31,23,870/-. In FY 2021-2022, the fixed asset balance in the books of the Corporate Debtor became NIL.

7.13. The Transaction Auditor has observed that the Applicant had produced title deeds reflecting that the property stood in the name of Respondent No. 2. It is alleged that the fixed assets in question have

always belonged Respondent No. 2 but was falsely reported in the books of the Corporate Debtor since 2011 as the assets of the Corporate Debtor. However, no documents have been provided to substantiate the allegation that the property never belonged to the Corporate Debtor and was falsely reported in its financial statements.

7.14. In the instant case the Report does not disclose the date of the title deeds. In the absence of the same, it cannot be inferred that the property always stood in the name of the Respondent No. 2. Since the adjustment and transfer was admittedly taken place in FY 2021–2022 and the Insolvency Commencement Date was 15.04.2022, it is possible that the title deeds furnished before the Transaction Auditor were the documents executed after the transfer of the property pursuant to the write-off arrangement. **Hence, the inference that the property was continuously held in the name of the Respondent No. 2 since 2011 and was falsely represented in the books of the Corporate Debtor is unsupported by any cogent material.**

7.15. This Tribunal takes note of the observation made by the Transaction Auditor in para 26 of his Report, that no valuation of the fixed assets written off has been carried out before the transfer of land to the directors took place. It is seen that the book value of the fixed assets transferred to Respondent No. 2 has been completely written off with the narration in the ledger being, *“Being property in the name directors now transferred”*. A summary of write off as per the Transaction Audit Report is extracted as under:

Date	Particulars	Amount	Narration
1-Apr-21	Property at Ayyapanthangal	2,76,540	Being property in the name directors now transferred
1-Apr-21	Property - Vellore	14,72,410	Being property in the name directors now transferred
30-Apr-21	Property Elagiri	11,70,520	Being property in the name directors now transferred
30-Apr-21	Property Tiruvallur	2,04,400	Being property in the name directors now transferred

7.16. While the fixed asset appears to have been adjusted at its book value against the outstanding loan, the Respondents have not disclosed whether the fair market value of the property was determined and whether any differential amount between the book value and fair value was accounted in the Profit and Loss Account of the Corporate Debtor. Consequently, it remains unclear whether the transaction was undertaken at arm's length or not. Even if the transfer of the property and the write off the loan had taken at a price below the fair value, the same would have been within the ambit of undervalued transaction under Section 45 of IBC, 2016. However, the submissions made, and the documents filed in the present application pertain to reliefs under Section 66 of IBC, 2016.

7.17. Although the material placed on record raises suspicion regarding the propriety of the transaction and the accounting treatment adopted thereon, it falls short of the standard of proof to establish fraudulent intent at the behest of Respondent No. 1 and 2. A liability due to a related party may be settled by way of transfer or adjustment of assets, provided the transaction is duly authorized, properly recorded, and carried out at a fair and ascertainable value. Therefore, the adjustment of fixed assets against the outstanding

director loans, by itself, albeit without meeting the generally accepted accounting principles, cannot be construed as fraudulent under Section 66(1) of IBC, 2016.

Payment of Funds to Unrelated Parties

7.18. The Applicant alleged that the funds of the Corporate Debtor amounting to Rs. 15.50 lakhs were paid to unrelated third parties, namely Rosi Pushpa and Rama, through Pannur Babu. In response, the Respondents have submitted that the payments were made towards repayment of loans earlier advanced by Pannur Babu as an angel investor.

7.19. The Transaction Auditor has produced a consolidated ledger pertaining to the account of Pannur Babu. On perusal of the Report, it is seen that the opening balance in the ledger as on 01.04.2019 stood at Rs. 5,86,658/-. Thereafter, in FY 2019-2020, receipts from third parties, namely Mary Margareeta and S. Rekha, were recorded as receipts from Pannur Babu himself. Similarly, payments made to Rosi Pushpa and Rama have been debited to the same ledger account. The narrations to these accounting entries, therefore, indicate that the ledger account of Pannur Babu was used as a common account to record the receipts and payments connected to various persons. The ledger statement of Mr. Pannu Babu is extracted as under:

Nature of transaction	Year	Vch Type	Debit in Rs.	Credit in Rs.
Opening balance	19-20		5,86,658	
Payment- cash	21-22	Payment	5,000	
Receipt - sales	19-20	Journal	78,020	
Receipt - sales	19-20	Receipt	11,050	5,15,967
Receipt - sales	21-22	Journal	975	
Sri Sakthi Saravana Food Sales	20-21	Journal	1,822	
Sri Sakthi Saravana Food Sales	21-22	Journal	14,642	
Transfer	21-22	Journal	4,70,000	4,70,000
Receipt from party	19-20	Receipt	-	10,00,000
Payment to Rosi Pushpa	19-20	Payment	5,00,000	
Receipt from Mary Margareeta	19-20	Receipt	-	11,00,000
Receipt from S Rekha	19-20	Receipt	-	13,00,000
Payment to Pannur Babu / Rama	19-20	Payment	10,00,000	
Interest on loan for the month of Apr - 20	20-21	Payment	50,000	
Payment to party	21-22	Payment	1,00,000	
Grand Total			28,18,167	43,85,967
Closing Balance				15,67,800

7.20. The Applicant has alleged that payments of Rs. 5 lakhs each were made to Mohan and Suji through cheques dated 17.07.2019 and 19.07.2019 and a corresponding debit was made in the ledger of Respondent No. 1. The Respondents have explained that Respondent No. 1 had advanced interest-free loans to the Corporate Debtor and the aforesaid cheques were issued towards repayments thereof.

7.21. It is seen from the ledger account of Respondent No. 2 produced in the Transaction Audit Report that the corresponding debits are not separately reflected.

7.22. In both the aforesaid cases, the entries made in the respective ledger accounts and the corresponding narration reflect deficient accounting practices. However, the poorly maintained accounts of the Corporate Debtor and absence of separate ledger accounts for each

parties are not enough to establish fraudulent intent at the behest of Respondent No. 1 and 2. **Although, while the accounting treatment adopted by the Corporate Debtor lacks clarity, the material on record is insufficient to hold that the transactions were fraudulent or wrongful within the meaning of Section 66 of IBC, 2016.**

Write-off of Receivable Balance

7.23. The Applicant has alleged that an advance amounting to Rs. 4,10,000/- payable by Ramanathan was written off against the Profit and Loss Account of the Corporate Debtor. The Respondents have submitted that the amounts were advanced towards maintenance and civil work services rendered by the party.

7.24. The Applicant has alleged that receivables amounting to Rs. 90.80 lakhs due from various parties were transferred to the Profit and Loss Account under the head “Repairs to Building” on 05.04.2021, thereby reducing the outstanding balances in the respective accounts to NIL. The Respondents submitted that the amounts represented advances paid towards contract and construction-related works connected with the hotel building of the Corporate Debtor.

7.25. From the Transaction Audit Report, it is seen that the advances extended to Ramanathan, Palanisamy Building Contractor, SS Electricals, VMD Decros and Jayaraman were adjusted against “Repairs to Building” expenses.

7.26. In the course of ordinary business, when amounts are extended as an advance towards any services for the improvement of business, they are initially recorded as an asset or receivable in the books of accounts, reflecting the company's right to receive the corresponding value in the form of services. It is not uncommon for such advances, initially reflected as receivables, to be subsequently adjusted against expenditure upon completion or reconciliation of work executed. Once the services are rendered and reconciled, the advance asset account is written off and reclassified based on the nature and duration of the benefit derived. If the services rendered by the party yield a long-term benefit, the advance is recorded as capital expenditure, resulting in the value of the underlying asset increasing in the books, and the same is subsequently depreciated over its useful life in accordance with applicable accounting standards. In case the benefits are short-term in nature, the expenditure is recorded as revenue expenditure and the asset is written off against the Profit and Loss Account. The decision whether an expense is to be treated as capital or revenue is not governed by a universal rule but is dependent on the nature of the industry and the business of the Company and is a matter of internal accounting policy. For instance, the same expenditure may qualify as capital in one industry treated as revenue in another, depending on the extent and duration of benefit it yields to the business.

7.27. This Tribunal is not concerned with the accuracy of the classification of the expenses incurred on repairs of the buildings as capital or revenue expenses. The explanation offered by the

Respondents that the advances were paid towards improvement works in the hotel premises and were subsequently adjusted against expenditure appears reasonable. We find that the preponderance of probability lies in favour of the Respondent No. 1 and 2. An advance adjusted against expenditure incurred for services rendered cannot be construed as a fraudulent transaction or wrongful transaction under Section 66 of IBC, 2016.

Bad Debts Written Off

7.28. The Applicant alleged that bad debts amounting to Rs. 39.06 lakhs were written off against the Profit and Loss Account of the Corporate Debtor during the FY 2021-2022, without taking adequate recovery measures, including in respect of certain receivables which were less than three years old. The Respondents have submitted that the decision to write off bad debts was a commercial decision taken in the ordinary course of business and the bad commercial decision does not by itself establish fraud or intent to defraud creditors.

7.29. The Transaction Audit Report does not provide any additional reasoning why the write off is fraudulent or wrongful under Section 66 of IBC, 2016, except that no efforts have been made for the recovery of the debts.

7.30. This Tribunal considers the decision of the Hon'ble Supreme Court in *Salim Akbarali Nanji vs Union of India and Ors [(2006) 5 SCC 302]* wherein it was held that write off is merely an internal

accounting procedure adopted by the Company. The relevant part of judgement is as follows:

“17. The submission proceeds on the assumption that the bad debts written off cannot be recovered. In fact and in law it is not so. Despite writing off the debt is still recoverable by the Bank. The affidavit filed by the Bank also discloses the steps which are being taken to realize the due from the debtor. Some amounts have been recovered over the year though the figure does not appear very impressive. Even so, steps are being taken to recover the dues whenever possible and Respondent(s) No. 6 bank has furnished particulars of the various proceedings pending for recovery of such debt. The write off is only an internal accounting procedure to clean up the balance sheet, and it does not affect the right of the creditor to proceed against the borrower to realize his dues. Moreover, it does give some benefit to the Bank under the Income-Tax Law because after write off tax is payable only on the amount recovered as and when recovery is made...”

7.31. The decision of the Hon’ble Supreme Court in **Salim Akbarali Nanji (Supra)** has also been followed by NCLT, Mumbai in the case of **Venkatesan Sankaranarayanan, RP of RTIL Limited vs. Nitin Shambhu Kumar Kasliwal and Ors** (M.A. 05 of 2019 in C. P. No. 382/I&B/MB/2018) wherein it was held that advances written off cannot be termed as fraudulent transactions.

7.32. In view of the findings made above, this Tribunal is of the view that write off of the bad debts is a matter of internal accounting policy which does not necessarily indicate the abandonment of efforts to recover the debts. The issue at hand is not the prudence of the write-offs but whether the write off was made with an intent to deceive the creditors or without exercise of due diligence to minimise loss to creditors. Hence, the ingredients of fraudulent or wrongful trading have not been made out.

Lease Agreement

7.33. The Applicant has alleged that Respondent No. 2, in his personal capacity, entered into a lease agreement with Mrs. Rajeshwari Rashmi Ravi Sankar for operating a restaurant in the hotel premises of the Corporate Debtor from 01.12.2013 to 30.11.2025. It is further alleged that though the lease agreement recorded a security deposit of Rs. 150 lakhs, only Rs. 140 lakhs were recorded in the books of the Corporate Debtor. The Applicant also alleged that rental income of approximately Rs. 42.68 lakhs was not brought into the books of the Corporate Debtor. In response, the Respondents have submitted that the leased property stood in the personal name of Respondent No. 2 and not in the name of the Corporate Debtor. The lease consideration was therefore received in the personal account of Respondent No. 2 and utilized for the benefit of the Corporate Debtor. Reliance has also been placed on the order dated 26.08.2024 passed by this Tribunal in

IA/42/2024, wherein it was observed that the land parcel never stood in the name of the Corporate Debtor.

7.34. The Transaction Audit Report records that Suriya Hotels had an outstanding payable balance of Rs. 13,61,533/- as on 31.03.2021, which was adjusted against the opening lease advance of Rs. 1,40,00,000/-, thereby reducing the outstanding lease advance to Rs. 1,26,38,467/-.

7.35. Reference is also made to the order dated 24.08.2024 relied upon by the Respondents, wherein it was recorded that the lessee had paid the security deposit of Rs. 1.50 Crores to Respondent No. 2 personally and that the same was not reflected in the books of the Corporate Debtor. It was further observed that recovery proceedings was initiated against Respondent No. 2 personally and, consequently, the claim before the Resolution Professional was rejected.

7.36. In the present case, the Respondents have admitted that the leased property belongs to Respondent No. 2. The Transaction Audit Report also records that the lease advance was reflected in the books of the Corporate Debtor. The Respondents have submitted that the funds were utilized for the benefit of the Corporate Debtor. Since the property did not belong to the Corporate Debtor, the income received from the leased-out property could at best have been treated as loans or capital contributions brought in or loans extended by Respondent No. 2. Either way, the effect on the financial statements of the Corporate Debtor would be confined to the liabilities side of the

Balance Sheet. Moreover, in the order dated 24.08.2024, it has been explicitly recorded that no entries were made in the books of the Corporate Debtor.

7.37. Nevertheless, while the entries reflect lack of accounting transparency and improper financial disclosure, they do not establish that the transactions were carried out with intent to defraud creditors or for any fraudulent purpose within the meaning of Section 66 of the IBC, 2016.

Allegations against Respondent No. 3

7.38. The Applicant alleged that cash payments aggregating to Rs. 20.30 lakhs were made to Respondent No. 3, Mr. T.V. Narayanan, towards professional fees and taxes. It is alleged that the said payments are unsupported by invoices and constitute fraudulent transactions under Section 66 of the IBC, 2016. In response, Respondent No. 3 has submitted that the amounts were paid towards professional services rendered in connection with Income Tax and GST proceedings of the Corporate Debtor,

7.39. The Applicant further alleged that expenses pertaining to a related party concern, namely M.R. Canteen, amounting to Rs. 4.10 lakhs were paid through Respondent No. 3 from the account of the Corporate Debtor. In response, Respondent No. 3 has submitted that the payments were not made towards personal or unrelated expenses,

but towards discharge of statutory liabilities payable to Government authorities.

7.40. The Transaction Auditor observed that Respondent No. 3 had issued non-GST invoices for payments received from the Corporate Debtor and there was inadequate supporting documentation to justify certain amounts reflected in the invoices. On this basis, the Auditor has opined that the payments may be treated as potential fraudulent transactions under Section 66 of the IBC, 2016.

7.41. On perusal of the documents placed on record, it is seen that Respondent No. 3 has produced a quotation letter dated 16.09.2021 issued by him to the management of the Corporate Debtor, as well as the corresponding acceptance letter issued by the Corporate Debtor confirming his engagement for professional services.

7.42. Respondent No. 3 has also produced documents evidencing services rendered towards filing revision petitions for obtaining start-up industry deductions under Section 80-IAC/80-ID of the Income-tax Act, 196, restoration of GST registration, and representation in GST appellate proceedings.

7.43. With respect to disbursement of Rs. 4.10 lakhs for the payment of expenses pertaining to MR Canteen, it is seen that Respondent No. 3 merely facilitated the payments in the course of rendering professional services for which he had been engaged.

7.44. The Respondent has also submitted that an amount of Rs. 4,50,000/- has been erroneously reflected in the books of the Corporate Debtor.

7.45. The material placed on record demonstrates that Respondent No. 3 had in fact rendered professional services relating to taxation and GST matters of the Corporate Debtor pursuant to a formal engagement by the management of the Corporate Debtor. The Applicant has also not produced any material to show that the amounts paid to Respondent No. 3 were fictitious, excessive to the extent of constituting siphoning of funds, or diverted for personal benefit unrelated to the affairs of the Corporate Debtor.

7.46. Accordingly, this Tribunal is of the considered view that the ingredients necessary to attract Section 66(1) of the Insolvency and Bankruptcy Code, 2016 have not been established against Respondent No. 3. Hence, the allegations of fraudulent trading in respect of payments made to Respondent No. 3 are rejected.

7.47. In the lights of the above transactions and findings, the application **IA(IBC)/93(CHE)/2023** is **dismissed** with no orders as to cost.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)