S.No.01

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
24.06.2026 AT 10:30 A.M.

IA(IBC)/9/2021, IA(IBC)/10/2021 & IA(IBC)/27/2021
in CP(IB) No. 110/9/HDB/2019
U/s 9 of IBC

IN THE MATTER OF:
Andritz Hydro Pvt Ltd **…Petitioner**

AND

Indira Priyadarshini Hydro Power Pvt Ltd **…Respondent**

C O R A M:-
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA(IBC)/9/2021
Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

IA(IBC)/10/2021
Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

IA(IBC)/27/2021
Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

Sd/- **Sd/-**
MEMBER (T) **MEMBER (J)**

Apoorva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA (IBC) No. 09 of 2021 in
CP (IB) No. 110/9/HDB/2019

In the mater of

M/S INDIRA PRIYADARSHINI HYDROPOWER PRIVATE LIMITED

Between:

Shri Ravindra Beleyur,
Resolution Professional for
M/s Indira Priyadarshini Hydro Power
Private Limited,
Shreevathsa, 428, 19th B Cross,
3rd Block, Jayanagar,
Bangalore – 560 011.

....Applicant

And

1. Shri Ujwal Kotagiri
   Sanpras Corporate Capital,
   #115/1 & 115/29, 6th Floor,
   Sheratontowers, Financial Dist,
   Nanakramguda, Gachibowli,
   Hyderabad – 500 032.

2. Smt Priyadarshini Kanumuru Indira,
   Sanpras Corporate Capital,
   #115/1 & 115/29, 6th Floor,
   Sheratontowers, Financial Dist,
   Nanakramguda, Gachibowli,
   Hyderabad – 500 032.

3. Shri Bhavaraju Prasad Venkata Siva,
   Sanpras Corporate Capital,
   #115/1 & 115/29, 6th Floor,
   Sheratontowers, Financial Dist,
   Nanakramguda, Gachibowli,
   Hyderabad – 500 032.

4. M/s Ind Barath Energies Limited,
   Sanpras Corporate Capital,
   #115/1 & 115/29, 6th Floor,
   Sheratontowers, Financial Dist,
   Nanakramguda, Gachibowli,
   Hyderabad – 500 032.

5. Shri Raghu Rama Krishna Raju,
S/o Shri Venkatasatyasuryanarayana Raju
Kanumuru,
Promoter Ind Barath,
18, North Avenue, Duplex Flats,
New Delhi – 110 001.

Respondents

Date of order : 24.06.2026

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant : Mr T Ravichandran

For the Respondents : Mr Raja Shekar Rao Salvaji and
Ms KVS Madhumita

ORDER

1. The present application has been filed by Shri Ravindra Beleyur, the then Resolution Professional of Indira Priyadarshini Hydro Power Private Limited, under Section 49 read with Section 66 of IBC[1]. In the written submissions filed by the Applicant, it has been clarified that the relief sought under Section 49 is not pressed. The Applicant, therefore, presses the present application as one under Section 66 of the Code.

2. The Applicant submits that CIRP[2] against the Corporate Debtor commenced on 12.12.2019. The Applicant was appointed as Resolution

[1] Insolvency and Bankruptcy Code, 2016
[2] Corporate Insolvency Resolution Process

Professional by this Tribunal and, in discharge of his duties under the Code, was required to preserve and protect the assets of the Corporate Debtor and to file appropriate applications in respect of avoidable / fraudulent transactions.

3. The Applicant submits that IA No. 9 of 2021, along with IA Nos. 10 and 27 of 2021, was filed on 13.01.2021. The application for liquidation was filed thereafter on 18.01.2021. Subsequently, on 05.02.2021, this Tribunal directed the RP to place the resolution plan before the CoC again for consideration. In the 19th CoC meeting held on 04.03.2021, the resolution plan submitted by Manikaran Power Limited was approved and it was also resolved that the benefits of avoidance transactions would go to the secured creditors and that the RP was authorised to continue the applications. The resolution plan was thereafter approved by this Tribunal on 02.07.2021.

4. The Applicant submits that Respondent Nos. 1 to 3 were suspended directors / persons in charge of the Corporate Debtor, while Respondent Nos. 4 and 5 are related parties within the meaning of Section 5(24) of the Code. According to the Applicant, the Respondents were persons responsible for the conduct of the affairs of the Corporate Debtor and were knowingly involved in the transaction complained of. It is however not specifically set out how Respondent Nos. 4 and 5 are related to Respondent Nos. 1 to 3, except for their alleged roles in relation to the Corporate Debtor / Ind Barath group

5. It is submitted that Punjab National Bank, being the secured creditor having 100% voting share in the CoC, had sanctioned various credit facilities to the Corporate Debtor. The sanction letter[3] provided, inter alia, that the Ind Barath group / its promoters shall not dilute their stake in the project company without written permission of the bank;

[3] Page 81-85 of the Application

that the Ind Barath group / Sri K. Raghu Rama Krishna Raju shall arrange funds to meet any cost overrun and shortfall in resources of the project company in respect of completion of the project; that such funds were to be brought in by way of increase in equity capital / issue of preferential shares / unsecured interest-free loans; and that sponsor support undertaking was to be provided for completion of the project.

6. The Applicant submits that, during CIRP, he came across an arbitration proceeding between Akash Construction and the Corporate Debtor. On obtaining and examining the arbitral award[4], the books of account of the Corporate Debtor and other connected papers, the Applicant found that the Corporate Debtor had issued a work order to Akash Construction for road work and design, engineering, supply and commissioning of ropeway for Rs. 1.50 crores. It is further submitted that there were other contracts for civil and hydro-mechanical works for Rs. 12,39,55,000/- and commissioning of ropeway for Rs. 73 lakhs.

7. According to the Applicant, the project cost for the road / design / ropeway work was only Rs. 1.50 crores. However, the said work was completed at a cost of Rs. 6.60 crores against the contract value of Rs. 1.50 crores. The Applicant relies upon the findings of the Arbitral Tribunal to submit that there was a cost overrun.

8. The Applicant further submits that, on the basis of material evidence, including the forensic audit report, a sum of Rs. 4,42,66,120/- was determined as cost overrun. As per the Applicant the amount paid towards the road work was Rs. 5,92,66,120/-, as against the contracted amount of Rs. 1,50,00,000/-, resulting in cost overrun of Rs. 4,42,66,120/- . The Applicant quantifies the alleged cost overrun at Rs. 4,42,66,120, in the following manner:

[4] Page 86-127 of the Application

Particulars	Amount (Rs)
Total amount paid to Respondent-1 till date	7,12,21,705
Amount paid towards 2nd work order	94,55,585
Amount paid towards 3rd work order	25,00,000
Derived amount paid towards road work	5,92,66,120
Contracted amount for road work	1,50,00,000
Cost overrun on portion of road work	4,42,66,120

9. The Applicant submits that, in terms of the sanction conditions and the sponsor undertaking, it was the responsibility of the promoters / Respondents to bring in funds for meeting the cost overrun. However, the said amount was not brought in by the promoter Respondents. According to the Applicant, instead of bringing in the required funds, the Corporate Debtor utilised bank funds / working capital funds, in utter disregard of the terms and conditions of sanction.

10. The Applicant alleges that the Respondents made fraudulent representations to the secured creditor and, on the basis of such representations, the secured creditor sanctioned the loan. It is submitted that the sum of Rs. 4.42 crores, which ought to have been brought in by the promoter Respondents, was not so brought in, and that the Respondents, with intent to defraud the secured creditor, caused the said amount to be utilised from the funds of the Corporate Debtor. The Applicant has described the same as the "Impugned Transaction".

11. The Applicant, therefore, submits that the Respondents indulged in the impugned transaction with an intention to defraud the secured creditor and to unlawfully enrich themselves, thereby causing wrongful loss to the Corporate Debtor and to the secured creditor. It is submitted that

the ingredients of Section 66 of the Code are satisfied, as the business of the Corporate Debtor was carried on for a fraudulent purpose and the Respondents were knowingly parties to such conduct.

12. On the above basis, the Applicant prays that the Impugned Transaction be declared as a fraudulent transaction under Section 66 of the Code and that the Respondents be directed to make payment / contribution for the benefit of the secured creditors in line with the decision of the CoC taken in its 19th meeting held on 04.03.2021.

Submissions on behalf of Respondent Nos. 1 and 2

13. Respondent Nos. 1 and 2 deny all allegations and averments made by the Applicant as false and baseless, except those specifically admitted. They submit that the Applicant is put to strict proof of all allegations not admitted, and that no part of the Interim Application should be deemed to have been admitted merely because the same has not been specifically controverted. According to the Respondents, the Application is devoid of merits and is liable to be dismissed.

14. Despite due service of notices, Respondent Nos. 3 to 5 failed to enter appearance and remained unrepresented. Accordingly, they were set *ex-parte* vide order dated 06.11.2024.

15. At the outset, the Respondents raise an objection to the locus standi of the Applicant. It is submitted that the Application has been filed by the Applicant in his own capacity and not as a representative of the Corporate Debtor. According to the Respondents, the Resolution Professional is appointed to represent the Corporate Debtor in place of the suspended Board of Directors, and any action has to be in the name of the Corporate Debtor. Individually, no Resolution Professional can pursue any litigation of the Corporate Debtor.

16. The Respondents further submit that the Resolution Plan approved by

the CoC was approved by this Tribunal on 02.07.2021. Once the Resolution Plan stood approved, the erstwhile Resolution Professional became functus officio and had no locus standi to pursue the present Application under Section 66(1) of the Code. It is submitted that there was no clause in the Resolution Plan authorising the erstwhile RP to continue the avoidance application, nor did the order approving the Resolution Plan grant any permission to the erstwhile RP to continue the same. The Respondents rely upon the judgment in *Venus Recruiters*[5] to contend that the RP cannot continue beyond approval of the Resolution Plan and that continuation of avoidance applications by a "Former RP" is contrary to the scheme of the Code.

17. In answer to the Applicant's reliance on the 19th CoC meeting dated 04.03.2021, the Respondents submit that the said resolution, at best, gives the Committee approval to continue the avoidance applications and does not authorise the Applicant personally to continue the proceedings. It is further submitted that, even if the Committee had given such permission, the same would be contrary to the Code, since the Resolution Plan itself must specify who would continue the avoidance applications.

18. The Respondents also contend that the Application is barred by delay and is not maintainable in view of Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. According to them, the RP was required to form an opinion by the 75th day of the insolvency commencement date, make a determination by the 115th day, and apply to the Adjudicating Authority by the 135th day. The present Application was filed more than one year after the Corporate Debtor was admitted into CIRP on 12.12.2019. It is submitted that the Application was filed after the insolvency resolution process had been completed and after the CoC, in its 16th meeting

[5] Venus Recruiters Private Limited 'V's. Union of Znclia & Ors. W.P.(C) 8705/2019) & CM APPL. 36026/2019

dated 13.01.2021, had recommended liquidation. The Respondents therefore contend that the Application was filed as an afterthought and without application of mind, and that no reason for delay or application for condonation of delay has been placed on record.

19. The Respondents further submit that, insofar as avoidance transactions are concerned, the Code prescribes look-back periods of one year for transactions with unrelated parties and two years for transactions with related parties. According to the Respondents, these timelines had long expired before the present Application was preferred. They also submit that the Application does not satisfy the pre-requisites of Section 49 of the Code, which concerns transactions defrauding creditors by entering into undervalued transactions contemplated under Section 45.

20. As regards Section 66 of the Code, the Respondents submit that, to maintain an application thereunder, the Applicant must demonstrate that the business of the Corporate Debtor was carried on with intent to defraud creditors. According to them, the Applicant has not stated even a single act on the part of the Respondents which can be construed as "intent to defraud". It is submitted that a person can be directed to contribute to the assets of the Corporate Debtor only upon proof that such person was knowingly involved in carrying on the business of the Corporate Debtor in a fraudulent manner.

21. The Respondents submit that the primary allegation of the Applicant is that the Respondents failed to bring in funds towards cost overrun of Rs. 4,42,66,120/-, and that such failure amounts to defrauding the secured creditor. The Respondents contend that even assuming, without admitting, that the condition requiring the sponsor to arrange funds for cost overrun was not met, the ingredients of Section 66 would still not be satisfied. According to them, not bringing additional capital does not amount to intent to defraud creditors.

22. The Respondents also submit that Section 66(2) is not attracted. According to them, for Section 66(2) to apply, the director must have known that there was no reasonable prospect of avoiding CIRP. The transactions relied upon by the Applicant pertain to the period 2011 to 2013, whereas the Corporate Debtor was admitted into CIRP only on 12.12.2019. It is therefore submitted that it cannot even remotely be imputed that the Respondents would have known, at the relevant time, that the company would go into CIRP in the distant future.

23. On merits, the Respondents submit that the project was a hydro power project in mountainous conditions, where landslides and floods routinely damage approach roads and infrastructure, requiring refurbishment and, often, fresh construction. According to them, there is barely a hydro power project which does not encounter cost and time overruns. They submit that whatever cost overrun occurred in the project was funded by equity infusion by the promoters of the Corporate Debtor.

24. The Respondents specifically deny the allegation that working capital funds were used for cost overrun. They submit that the bank had never sanctioned any working capital facility to the Corporate Debtor, and therefore the contention that working capital was used for cost overrun is without basis. They further submit that there is no basis for suggesting that the Respondents applied bank borrowings towards overrun.

25. The Respondents submit that the project cost was estimated at Rs. 34.24 crores for a capacity of 4.8 MW. As per the sanction dated 29.12.2011, the agreed funding comprised Rs. 23.84 crores as term loan and Rs. 10.40 crores as equity contribution. Against the stipulated equity contribution of Rs. 10.40 crores, the Respondents contend in their Counter that the promoters infused Rs. 20.84 crores, comprising Rs. 5 crores as equity / common stock, Rs. 9.85 crores as preference

capital, and Rs. 6 crores as debentures subordinated to the term loan. In the Convenience Note, it is submitted that the promoters infused around Rs. 15.90 crores in capital and debentures.

26. The Respondents further submit that the total disbursement obtained under the loan was Rs. 21.31 crores against the sanctioned amount of Rs. 23.84 crores, which was about 89% of the sanctioned loan. Out of this, interest during construction recovered by the lenders was Rs. 10.86 crores, which was more than 50% of the disbursed loan. Therefore, according to the Respondents, the Applicant's contention that the promoters had not infused additional equity is contrary to the facts.

27. The Respondents also rely upon the total investments made in the project as on 08.09.2019, stated to be Rs. 46.50 crores. The breakup given by them includes civil works including roads, penstock, transmission line, construction power, hydro-mechanical equipment, plant and machinery, steel, stores and consumables, interest during construction, and preliminary and pre-operative expenses. As regards source of funds, the Respondents state that the project was funded by promoter contribution of Rs. 20.84 crores, term loans of Rs. 21.31 crores, and project creditors of Rs. 4.35 crores.

28. The Respondents further contend that they were never put on notice of the draft forensic audit report. It is submitted that the Section 66 Application was filed more than one year after admission of the Corporate Debtor into CIRP and about a month and a half before approval of the Resolution Plan. The final forensic audit report was filed about four years after filing of the Application, again without notice to the Respondents. According to the Respondents, the RP never independently formed an opinion or determination that the transaction was fraudulent, and the forensic audit report is based on conjecture without evidence.

29. The Respondents submit that the Applicant has filed the Application by stating half-truths and without explaining how exactly Sections 49 and 66 of the Code are applicable. It is also submitted that the Applicant has not stated the exact cause of action and has failed to plead or prove any specific act amounting to defrauding creditors.

30. On the above grounds, Respondent Nos. 1 and 2 pray that the present Application be dismissed with exemplary costs.

Applicant's Written submission

31. In the written submission, besides reiterating the submissions made in the Application, the Applicant submits that the Respondents' defence that they infused Rs. 20.84 crores as against the stipulated equity contribution of Rs. 10.40 crores is not correct. It is also contended that the equity was not Rs. 5 crores, but only Rs. 5 lakhs. As regards the alleged debentures of Rs. 6 crores, the Applicant relies upon the forensic audit report and submits that most of the said amount was issued by way of debentures transferred to related parties of the company. Therefore, according to the Applicant, the Respondents' assertion that they had brought in more than the required funds is contrary to the record.

32. In answer to the objection of delay and maintainability, the Applicant submits that the avoidance applications were filed on 13.01.2021, before the filing of the liquidation application and before approval of the resolution plan. It is further submitted that the timelines under the Code and Regulations are directory and not mandatory. The Applicant also submits that the judgment in *Venus Recruiters*, relied upon by the Respondents, has been set aside by the Division Bench of the Delhi High Court.

Findings & Decision

33. We have considered the pleadings, documents placed on record and the written submissions filed by the parties. Though the present Application was originally filed under Section 49 read with Section 66 of the Code, the Applicant has, in the written submissions, expressly stated that the relief under Section 49 is not pressed. We therefore confine the consideration of the present Application to Section 66 of the Code.

34. The first objection of the Respondents is that the Applicant, being the erstwhile Resolution Professional, has no locus standi to continue the present proceedings after approval of the Resolution Plan on 02.07.2021. We are unable to accept this objection as an absolute bar to the consideration of the Application. The present Application was filed on 13.01.2021, i.e. during CIRP and before approval of the Resolution Plan. The mere fact that the Resolution Plan was subsequently approved does not, by itself, render an application alleging fraudulent trading infructuous. The judgment of the learned Single Judge in *Venus Recruiters*, relied upon by the Respondents, has been set aside by the Division Bench of the Delhi High Court in *Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd*[6]., wherein it has been held that such proceedings can survive the conclusion of CIRP and can be adjudicated by the Adjudicating Authority. Accordingly, the Application is not liable to be dismissed only on the ground that the Resolution Plan has been approved.

35. As regards the Respondents' objection based on Regulation 35A of the Insolvency Regulations[7], we are of the view that the timelines prescribed therein cannot be treated as mandatory so as to entail automatic dismissal of the Application. The said timelines are intended to ensure

[6] Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd., (2023) 1 HCC (Del) 301
[7] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

early identification and filing of applications concerning suspect transactions, but non-adherence thereto, by itself, does not extinguish the jurisdiction of the Adjudicating Authority to examine a pending application. The Application, therefore, is not liable to be rejected merely on the ground of delay under Regulation 35A.

36. The objection based on the look-back period applicable to preferential or undervalued transactions is not relevant since the Applicant has not pressed the relief under Section 49. The present adjudication is therefore not concerned with declaring any undervalued transaction under Section 45 or any transaction defrauding creditors under Section 49. The issue is limited to whether the ingredients of Section 66 of the Code are made out.

37. Section 66(1) requires a finding that the business of the Corporate Debtor was carried on with intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose. It further requires that the person sought to be made liable was knowingly party to the carrying on of the business in such manner. Therefore, a mere breach of a sanction condition, a project cost overrun, or failure to bring in additional promoter contribution, by itself, would not amount to fraudulent trading under Section 66 unless it is further shown that the business was carried on with the requisite fraudulent intent and that the concerned persons were knowingly parties thereto.

38. The central allegation of the Applicant is that the work awarded to Akash Construction for road work / design / engineering / supply / commissioning of ropeway was for Rs. 1.50 crores, whereas the said work was completed at a cost of Rs. 6.60 crores, resulting in a cost overrun. The Applicant has quantified the alleged cost overrun at Rs. 4,42,66,120/-, by deriving the amount paid towards road work at Rs. 5,92,66,120/- and deducting the contracted amount of Rs. 1,50,00,000/-.

39. Even if the existence of cost overrun is accepted for the purpose of the present discussion, that fact by itself does not satisfy the requirements of Section 66. A cost overrun in a hydro power project may give rise to issues of project management, contractual liability, sponsor support, accounting treatment, or lender compliance. However, Section 66 requires something more, namely, proof that the business of the Corporate Debtor was carried on with intent to defraud creditors or for a fraudulent purpose.

40. The Applicant relies on the sanction conditions and sponsor undertaking to contend that the promoters / Respondents were obliged to bring in funds for meeting any cost overrun and shortfall in resources of the project company. The sanction terms may indicate that the promoters had an obligation to arrange funds for cost overrun. However, even assuming that such obligation existed and was not complied with, non-infusion of additional capital or breach of a sponsor support obligation does not automatically constitute fraudulent trading under Section 66. The Applicant was required to establish the further elements of fraudulent intent and knowing participation.

41. The Applicant has alleged that, instead of bringing in promoter funds, the Corporate Debtor utilised bank funds / working capital funds for meeting the cost overrun. This allegation goes to the root of the case under Section 66. However, the burden to prove such misuse of bank funds or working capital funds lies upon the Applicant. The Respondents have specifically denied the allegation and have contended that the bank had never sanctioned any working capital facility to the Corporate Debtor. In the absence of specific fund-flow material, bank account statements, ledger entries, sanction / disbursement records, or other cogent evidence showing that bank funds were in fact diverted or used to meet the alleged cost overrun in breach of the sanction terms, the allegation remains unproved.

42. The Applicant has also alleged that fraudulent representations were made to the secured creditor and that the loan was sanctioned on the basis of such representations. However, the pleadings do not set out with sufficient particulars what representation was made, when it was made, by whom it was made, to whom it was made, how it was false to the knowledge of the person making it, and how the secured creditor acted upon it. A general allegation that the Respondents made fraudulent representation to the secured creditor cannot, without particulars and supporting evidence, sustain a finding under Section 66.

43. The Respondents have relied upon their own funding figures to contend that the promoters infused funds in excess of the stipulated equity contribution. In the Counter, the Respondents contend that against the stipulated equity contribution of Rs. 10.40 crores, the promoters infused Rs. 20.84 crores, comprising Rs. 5 crores as equity / common stock, Rs. 9.85 crores as preference capital, and Rs. 6 crores as debentures subordinated to the term loan. In the Convenience Note, they have stated that the promoters infused around Rs. 15.90 crores in capital and debentures. The Applicant disputes this and contends that equity was only Rs. 5 lakhs and that most of the Rs. 6 crores debentures were transferred to related parties.

44. The rival contentions on promoter infusion show that there is a dispute on accounting treatment and source / utilisation of funds. However, the Applicant's burden under Section 66 is not discharged merely by disputing the Respondents' funding figures. The Applicant had to establish, by cogent material, that the promoters failed to bring in the required funds and that, because of such failure, bank funds were misused with intent to defraud creditors. The material placed does not satisfactorily establish this causal link.

45. The reliance placed by the Applicant on the forensic audit report also

does not, by itself, complete the requirements of Section 66. A forensic audit report may be a relevant piece of material and may assist the Resolution Professional in forming an opinion or making a determination. However, it cannot substitute proof of the essential ingredients of fraudulent trading. The Respondents have also raised the grievance that they were not put to notice of the draft forensic audit report and that the final forensic audit report was filed much later. Even leaving aside this procedural objection, the report, at the highest, supports the Applicant's case that there was cost overrun and raises questions on promoter infusion / debenture treatment. It does not conclusively establish that the business of the Corporate Debtor was carried on with intent to defraud creditors.

46. Section 66 also requires that the persons sought to be made liable must have been knowingly parties to the carrying on of the business in a fraudulent manner. In the present case, the pleadings do not set out specific acts attributable to each Respondent. Respondent Nos. 1 to 3 are described as suspended directors / persons in charge of the Corporate Debtor, and Respondent Nos. 4 and 5 are described as promoter / related parties of the Corporate Debtor. However, the Application does not specifically plead the role played by each Respondent in the alleged fraudulent representation, the alleged misuse of bank funds, or the alleged non-infusion of promoter funds. Liability under Section 66 cannot be imposed collectively merely on the basis of designation or association with the Corporate Debtor.

47. We also find no basis to apply Section 66(2) in the present case. Section 66(2) applies where, before the insolvency commencement date, a director or partner knew or ought to have known that there was no reasonable prospect of avoiding commencement of CIRP and did not exercise due diligence in minimising potential loss to creditors. The material relied upon by the parties relates to events substantially prior

to the insolvency commencement date, including the sanction of loan facilities in 2011, the execution of project contracts / work orders around 2011-2012, and the arbitral proceedings arising therefrom in 2015. The Corporate Debtor was admitted into CIRP only on 12.12.2019. The Applicant has not pleaded or established that, at the relevant time, the directors knew or ought to have known that there was no reasonable prospect of avoiding CIRP. Accordingly, Section 66(2) is not attracted. The ingredients of Section 66(2), therefore, are not attracted.

48. We therefore hold that, though the Application is not liable to be dismissed merely on the grounds of maintainability, post-plan approval, or non-compliance with Regulation 35A, the Applicant has failed to establish the substantive requirements of Section 66 of the Code. The material on record may indicate a cost overrun and a dispute regarding promoter contribution, but it does not establish that the business of the Corporate Debtor was carried on with intent to defraud creditors or for a fraudulent purpose, nor does it establish that the Respondents were knowingly parties to such fraudulent conduct.

49. In view of the above findings, no direction for contribution under Section 66 can be issued against the Respondents. The prayer to declare the Impugned Transaction as fraudulent and to direct payment / contribution for the benefit of the secured creditors is accordingly rejected.

In the result, IA No. 9 of 2021 is dismissed.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL