

**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)**

ORDER

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/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA (IBC) No. 27 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. M/s Rohan Varma Constructions Pvt Ltd.,
Flat No. 208, Vijayasree Apartments,
Nagarjuna Nagar Colony, Ameerpet,
Hyderabad – 500 073.
2. Shri Ujwal Kotagiri
Sanpras Corporate Capital,
#115/1 & 115/29, 6th Floor,
Sheratontowers, Financial Dist,
Nanakramguda, Gachibowli,
Hyderabad – 500 032.
3. Smt Priyadarshini Kanumuru Indira,
Sanpras Corporate Capital,
#115/1 & 115/29, 6th Floor,
Sheratontowers, Financial Dist,
Nanakramguda, Gachibowli,
Hyderabad – 500 032.
4. Shri Bhavaraju Prasad Venkata Siva,
Sanpras Corporate Capital,
#115/1 & 115/29, 6th Floor,
Sheratontowers, Financial Dist,
Nanakramguda, Gachibowli,
Hyderabad – 500 032.

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. This application has been filed by the Resolution Professional (**RP**) of Indira Priyadarshini Hydro Power Private Limited, the Corporate Debtor (**CD**) under Section 49 read with Section 66 of IBC¹.
2. The Respondents are: Rohan Varma Constructions Private Limited as Respondent No. 1; Sri Ujwal Kotagiri as Respondent No. 2; Smt. Priyadarshini Kanumuru Indira as Respondent No. 3; and Sri Bhavaraju Prasad Venkata Siva as Respondent No. 4. Respondent No. 1 is described as a company engaged in construction activities, while Respondent Nos. 2 to 4 are described as the suspended promoter/directors of the Corporate Debtor and as persons in charge of the day-to-day affairs and management of the Corporate Debtor.
3. The Applicant states that CIRP² was initiated against the Corporate Debtor vide order dated 12.12.2019 and the applicant was appointed as the RP. The Applicant states that, as RP, he was

¹ Insolvency and Bankruptcy Code, 2016

² Corporate Insolvency Resolution Process

required to preserve and protect the assets of the CD and, in terms of Section 25(2)(j) of the Code, to file applications for avoidance of certain transactions.

4. The Applicant states that he appointed 'Mazars' to conduct a forensic audit of the Corporate Debtor for the period from inception up to the date of insolvency commencement. The forensic auditor gave a draft report on 07.01.2021, while the final report of the forensic audit was stated to be awaited. On going through the books of account of the Corporate Debtor, the Applicant states that he formed an opinion that certain transactions had been carried out with a mala fide intention and with an intention to defraud the secured creditors of the Corporate Debtor.
5. The central transaction complained of is a payment of Rs. 1.60 crores made to Respondent No. 1 on 19.09.2013, with the narration "being the amount paid to Rohan Verma Constructions Pvt. Ltd." The Applicant further states that the advance given to Respondent No. 1 was knocked off by passing a journal entry on 30.05.2014 with the narration "being roads and civil works Bill dated 30.05.2014." The relevant journal entries in the books of account of the Corporate Debtor are annexed to the Application as Annexure A5.
6. The Applicant states that the forensic audit draft report also mentioned the payment of Rs. 1.60 crores to Respondent No. 1 and recorded that the advance given to Respondent No. 1 at the time of signing the contract was without any justification. The Applicant seeks leave to rely on the draft forensic audit report and

states that the final audit report would be submitted once received.

7. The Applicant further states that, being suspicious about the transaction, he addressed a letter dated 14.09.2020 to Respondent No. 1, seeking clarifications and requesting supporting documents regarding the work said to have been done and details of resources payable. Respondent No. 1 replied on 08.10.2020, stating inter alia that all records had been lost / misplaced due to lapse of time. The RP then gave another opportunity to Respondent No. 1 by sending a reminder letter, asking it to justify the bills with any other possible evidence from its books of account, but no response was received.
8. The Applicant submits that, while discharging his functions as Resolution Professional, he visited the registered office of the Corporate Debtor on 02.09.2020 and inspected certain box files connected with Respondent No. 1. According to the Applicant, the documents relating to Respondent No. 1 were found placed along with the documents of the CD. It was noticed that bills relating to other works were supported by several documents, whereas similar supporting documents were absent for the alleged work done for the CD. The Applicant states that the absence of supporting documents for the CD's bills, contrasted with the presence of supporting documents for other works, further added to his suspicion.
9. The Applicant states that his suspicion increased because no bill number was mentioned in the entry. On calling for information from the Corporate Debtor, the Corporate Debtor provided a bill

said to have been submitted by Respondent No. 1 for Rs. 1.60 crores. When the Applicant questioned how it could be a running bill of 2014 for a payment made on 19.09.2013, the Corporate Debtor submitted three more bills. The communications in this regard are stated to be collectively annexed as Annexure A10.

10. The Applicant relies upon the lender's engineer's reports³ for the periods September 2013 and June 2014. According to the Applicant, the lender's engineer's report shows that the road work for which bills were raised by Rohan Constructions was completed 100% as on 30.09.2013. The Applicant states that, if the road work had already been completed, it was not understood how payments were made to Respondent No. 1 when Respondent No. 1 was not even "in the picture" at the relevant point of time. It is also stated that the lender's engineer's reports did not mention the name of Respondent No. 1 in any of their reports.
11. The Applicant further states that Respondent No. 2 gave a reply dated 08.01.2021. According to the Applicant, a conjoint reading of the books of account of the Corporate Debtor, lender's engineer's report, journal entries, and explanations offered by Respondent No. 1 and other Respondents would reveal that the sum of Rs. 1.60 crores was paid to Respondent No. 1 only with a view to defraud the secured creditor. This transaction is described as the "Impugned Transaction."
12. The Applicant alleges that the Respondents indulged in the Impugned Transaction with an intention to defraud creditors and

³ Page 133-199 of the Application

to unlawfully enrich themselves. Respondent No. 1 is alleged to be the beneficiary of the transaction, while Respondent Nos. 2 to 4, being directors in charge of the day-to-day administration of the CD, are alleged to be responsible for the Impugned Transaction. The Applicant states that the Impugned Transaction was done with a view to cause wrongful loss to the secured creditor and the CD.

13. The Applicant states that the Respondents are liable to bring back the said money with applicable interest and contribute to the assets of the Corporate Debtor,
14. In the prayer, the Applicant seeks a declaration that the payments made by the Corporate Debtor to Respondent No. 1 are illegal and that the Impugned Transaction is fraudulent in terms of Section 49 and Section 66 of the Code. The Applicant further seeks a direction to the Respondents to make contribution to the Corporate Debtor to the tune of Rs. 1.60 crores, together with interest of Rs. 2,87,22,642 up to 11.01.2021, and further interest on Rs. 4,47,22,642 at applicable rates from 11.01.2021 till the date of realisation.
15. Despite due service of notices, Respondent Nos. 1 & 4 failed to enter appearance and remained unrepresented. Accordingly, they were set *ex-parte* vide order dated 06.11.2024.

Submissions on behalf of Respondent Nos. 2 and 3

16. The Respondents 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 Application

should be treated as 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.

17. The Respondents raise a preliminary objection to the locus standi of the Applicant. They submit that the Application has been filed by the Applicant in his individual capacity and not as a representative of the Corporate Debtor. According to them, the Resolution Professional represents the Corporate Debtor in place of the suspended Board of Directors, and any litigation of the Corporate Debtor has to be pursued in the name of the Corporate Debtor. They further submit that, after approval of the Resolution Plan on 02.07.2021, the erstwhile RP became functus officio and could not continue the present Application under Section 66(1) of the Code.
18. The Respondents also contend that the Application is barred by delay and is not maintainable in view of Regulation 35A of the Insolvency Regulations⁴. They submit that the RP was required to form an opinion by the 75th day, make a determination by the 115th day, and file an application by the 135th day of the insolvency commencement date. According to the Respondents, the present Application was filed much beyond the prescribed timelines, after the insolvency resolution process had been completed and after the CoC had recommended liquidation. They contend that the Application was filed as an afterthought, without

⁴ IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

application of mind and without any explanation or application for condonation of delay.

19. As regards Section 49, the Respondents submit that the provision concerns defrauding creditors by entering into undervalued transactions contemplated under Section 45 of the Code, and that the relevant period is one year for unrelated parties and two years for related parties. According to them, the Application is beyond the limitation prescribed by statute. As regards Section 66, they submit that the Applicant must demonstrate that the business of the Corporate Debtor was carried on with intent to defraud creditors and that the persons proceeded against were knowingly involved in such fraudulent conduct. The Respondents contend that the Applicant has not pleaded or established even a single act which can be construed as intent to defraud.
20. On facts, the Respondents submit that the previous contractor, Akash Construction, was terminated on 31.07.2013. Thereafter, to continue the work, the Corporate Debtor appointed Respondent No. 1 as contractor. According to the Respondents, the earlier constructed road had been badly damaged due to floods and landslides, and Respondent No. 1 was therefore contracted to construct approach roads. An advance of Rs. 1.60 crores was paid to Respondent No. 1 on 19.09.2013 with the express consent of the Financial Creditor, who was also the Escrow Agent / Trust Bank.
21. The Respondents submit that the payment was made through the escrow / TRA mechanism and not by any unilateral act of the

Corporate Debtor. According to them, the TRA⁵ was a non-chequing account and could not be operated by the debtor. Debits from the TRA were permitted by the Trust Bank only after satisfying itself that the withdrawals were for legitimate purposes, and in case of doubt, the lender's consent was obtained. In the present case, both the Trust Bank and the Lender were the same. Payments were made by the Trust Bank directly to vendors after satisfying itself regarding the bills.

22. The Respondents further submit that the amount advanced to Respondent No. 1 was later adjusted / set off on 30.05.2014 against the bill dated 30.05.2014 for road and civil works in the journal entries. They deny the Applicant's allegation that the advance was "knocked off" in any suspicious manner and state that the expense related to roads and civil works and was accordingly reflected. They maintain that the transaction was a legitimate payment made in the ordinary course of business at the relevant project stage, with the knowledge and consent of the Financial Creditor.
23. The Respondents state that the Lender's Engineer regularly inspected the work progress and submitted progress reports to the Lender Bank. They submit that the Lender's Engineer's reports support the Respondents' case regarding repeated reconstruction of roads due to the weather conditions prevailing in the Himalayan mountain ranges. According to the Respondents, mountain roads suffer erosion, require repeated relaying until they settle down,

⁵ Trust Retention Account

and in the project the ropeway could not be commissioned as planned, making repairing and redoing of roads imperative.

24. The Respondents contend that before payment was made there was two-stage diligence by the lenders: first, before funds were transferred to the Trust Retention Account, and second, at the time of direct payment to the beneficiary. This diligence was carried out by the independent engineer employed by the lenders and reporting only to the lenders. The Respondents submit that, when the advance was made and the works were carried out with the express consent of the Lender Bank and under the supervision of the Lender's Engineer, the Applicant could not have concluded that non-mention or incorrect mention of the contractor's name amounted to a fraudulent transaction.
25. The Respondents further submit that the forensic auditor had no basis to make a value judgment on the justification for the expense. They contend that the transaction was made in normal business; the request for release of funds was made by duly authorised persons with stipulated backup information; and the release was made by the Escrow Agent to an identified contractor for a legitimate purpose. According to them, no misrepresentation was made either at the time of payment or at the time of recording the expense.
26. The Respondents also state that the forensic audit was conducted in 2021, after the project had become stranded and after enormous damage had occurred due to mountain conditions, successive landslides, prolonged suspension of activities, and staff attrition, resulting in loss of records. They submit that the

forensic auditor made speculative observations and that the Applicant adopted the same without application of mind. They also contend that neither the Applicant nor the auditor contacted the Trust Bank / Lender Bank, under whose supervision the work was done and who had all the relevant information.

27. The Respondents submit that the Applicant has not substantiated any assertion of malfeasance and has not stated the exact cause of action or how Sections 49 and 66 of the Code are attracted. According to them, the Application is based on half-truths, conjecture and speculation, and the allegation of fraud is unsupported by substantive evidence. On these grounds, the Respondents pray that IA 27 of 2021 be dismissed with exemplary costs.

Findings and Order

28. We have heard the learned counsel for the parties and have perused the pleadings and documents placed on record. The present Application has been filed under Section 49 read with Section 66 of the Insolvency and Bankruptcy Code, 2016, seeking declaration that the payment of Rs. 1.60 crores made by the Corporate Debtor to Respondent No. 1 is illegal / fraudulent and seeking contribution of the said amount with interest to the Corporate Debtor.
29. The principal allegation of the Applicant is that a sum of Rs. 1.60 crores was paid to Respondent No. 1 on 19.09.2013 with the narration “being the amount paid to Rohan Verma Constructions Pvt. Ltd.” and that the said advance was subsequently adjusted by journal entry dated 30.05.2014 with the narration “being roads

and civil works Bill dated 30.05.2014.” The Applicant contends that the transaction was suspicious because the advance was allegedly without justification, supporting documents were not available, the bill was stated to be of 2014 although payment was made in 2013, and the lender’s engineer’s report did not mention Respondent No. 1.

30. The Respondents, on the other hand, contend that Akash Construction, the previous contractor, was terminated on 31.07.2013 and that Respondent No. 1 was appointed to continue the work, particularly for construction / reconstruction of approach roads which had been damaged due to floods and landslides. It is further contended that the payment of Rs. 1.60 crores was made with the express consent of the Financial Creditor, who was also the Escrow Agent / Trust Bank, through the escrow / TRA mechanism, and that the amount was thereafter adjusted against the bill for road and civil works. The Respondent has also raised the issues of locus of the Applicant in filing the present application and also the that of limitation.

Findings & Decision

31. At the outset, the Respondents have objected that after approval of the Resolution Plan on 02.07.2021, the erstwhile RP became functus officio and could not continue the present Application. Reliance has been placed on the decision of the learned Single Judge of the Delhi High Court in *Venus Recruiters*⁶. We are not inclined to accept the Respondent’s arguments on this ground. The Division Bench of the Delhi High Court in *Tata Steel BSL Ltd.*

⁶ Venus Recruiters Private Limited 'V's. Union of Znclia & Ors. W.P.(C) 8705/2019) & CM APPL. 36026/2019

*v. Venus Recruiter Pvt. Ltd*⁷, has set aside the judgment of the learned Single Judge and has held that avoidance applications can survive the conclusion of CIRP and can be adjudicated by the Adjudicating Authority. The RP may be functus officio so far as conduct of CIRP is concerned, but that does not automatically result in abatement of an application concerning avoidable / fraudulent transactions filed during CIRP or arising out of the CIRP process.

32. Similarly, the objection based on Regulation 35A does not, by itself, defeat the Application. The timelines in Regulation 35A are intended to ensure expedition in identification and filing of applications relating to suspect transactions. However, the said timelines are directory and cannot be read as creating an automatic bar to adjudication, particularly where the Application is already before the Adjudicating Authority. The ground for objection to the Application is also not acceptable.
33. Accordingly, the preliminary objections as to locus after plan approval and non-compliance with Regulation 35A are rejected. We proceed to examine the Application on merits.

Section 49: Whether attracted

34. Section 49 is attracted where an undervalued transaction, as contemplated under Section 45, has been entered into deliberately for keeping assets of the Corporate Debtor beyond the reach of creditors or for adversely affecting the interests of such persons in relation to the claim. Thus, Section 49 cannot be invoked merely

⁷ Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd., (2023) 1 HCC (Del) 301

because a payment is alleged to be suspicious or insufficiently supported by documents. The Applicant must first establish the foundational ingredients of an undervalued transaction.

35. In the present case, the transaction complained of is a payment / advance of Rs. 1.60 crores made to Respondent No. 1, stated by the Respondents to be towards road and civil works. The Applicant has not established that the Corporate Debtor made a gift, or transferred an asset for no consideration, or received consideration significantly lower than the value provided by the Corporate Debtor so as to satisfy the test of an undervalued transaction. Further, the transaction relates to the years 2013 and 2014, whereas CIRP commenced only on 12.12.2019. The transaction is therefore much prior to the look-back period contemplated for undervalued transactions. The prayer under Section 49 is therefore not made out.

Section 66: Whether attracted

36. 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 persons sought to be made liable were knowingly parties to the carrying on of the business in such manner. Fraudulent trading under Section 66 cannot be inferred merely from suspicion, irregular documentation, or post facto doubts about commercial justification. The Applicant must establish the fraudulent purpose and knowing participation of the persons proceeded against.

37. The Applicant's case is founded on the following circumstances: payment of Rs. 1.60 crores to Respondent No. 1 on 19.09.2013; adjustment by journal entry dated 30.05.2014; alleged absence of supporting documents; reply of Respondent No. 1 that records were lost / misplaced due to lapse of time; non-mention of Respondent No. 1 in the lender's engineer's report; and the observation in the draft forensic audit report that the advance was without justification.
38. These circumstances may justify scrutiny of the transaction, but they do not, by themselves, establish that the business of the Corporate Debtor was carried on with intent to defraud creditors. The burden to prove fraud is on the Applicant. The Applicant was required to place cogent material to show that Respondent No. 1 did not perform any work, that the payment was sham or without consideration, that Respondent Nos. 2 to 4 knowingly caused such payment to be made for a fraudulent purpose, and that the secured creditor was thereby defrauded.
39. The Respondents have given a specific explanation that Akash Construction, the previous contractor, was terminated on 31.07.2013 and that Respondent No. 1 was appointed to continue the road works. They have further contended that the earlier road had been damaged due to floods and landslides and that approach roads in Himalayan / mountainous conditions required repeated reconstruction. This explanation is not inherently implausible in the context of a hydro power project located in mountainous terrain.

40. More importantly, the Respondents have pleaded that the payment was made through the escrow / TRA mechanism with the express consent of the Financial Creditor, who was also the Escrow Agent / Trust Bank. It is the Respondents' case that the TRA was a non-chequing account, could not be operated unilaterally by the Corporate Debtor, and that payments were made directly by the Trust Bank to vendors after verification. The Applicant has not placed on record any complaint, objection, correspondence or statement from the Financial Creditor / Trust Bank alleging that the payment of Rs. 1.60 crores was unauthorised, fraudulent, outside the escrow mechanism, or contrary to the lender's approval.
41. The Applicant relies on the lender's engineer's report to say that the road work was completed 100% as on 30.09.2013 and that Respondent No. 1 was not mentioned in the said reports. However, the non-mention of Respondent No. 1 in the lender's engineer's report, by itself, cannot establish fraud. The Respondents contend that the lender's engineer's reports themselves support repeated reconstruction / repair of roads due to weather and site conditions. In the absence of a clear finding in the lender's engineer's report that no work was done by Respondent No. 1 or that no payment was payable to Respondent No. 1, the said report cannot be treated as conclusive proof of fraudulent trading.
42. The fact that Respondent No. 1 stated that records were lost / misplaced due to lapse of time also does not, by itself, establish a fraudulent transaction. The payment is of 2013 and the clarification was sought in 2020. The absence of complete records

after passage of several years may weaken the Respondents' evidentiary position, but it cannot automatically discharge the Applicant's burden under Section 66.

43. The forensic audit report is a relevant material for the RP to form a prima facie view and to bring an application before the Adjudicating Authority. However, the report cannot substitute proof of the statutory ingredients of Section 66. The Respondents have specifically contended that the forensic auditor did not contact the Trust Bank / Lender Bank, under whose supervision the payment was made and who, according to the Respondents, had all relevant information. The Applicant has not shown that the secured creditor or Trust Bank was examined or that their records supported the allegation of fraud.
44. In a proceeding under Section 66, a general allegation that the transaction was entered into "with an intention to defraud" is not sufficient. There must be specific pleading and proof of the fraudulent conduct, the role of each person sought to be made liable, and the manner in which such person was knowingly party to carrying on the business of the Corporate Debtor in a fraudulent manner. In the present case, Respondent No. 1 is alleged to be the beneficiary and Respondent Nos. 2 to 4 are alleged to be directors in charge of the affairs of the Corporate Debtor. However, the Application does not establish, with necessary particulars and evidence, the specific acts of each Respondent which would satisfy the requirement of knowing participation under Section 66.

45. We also find that the transaction complained of is a discrete payment to a contractor. Section 66 is concerned with carrying on the business of the Corporate Debtor with intent to defraud creditors or for a fraudulent purpose. The Applicant has not established that the business of the Corporate Debtor was carried on in such fraudulent manner. At best, the Applicant has raised doubts regarding one payment made in 2013 and its subsequent accounting treatment in 2014. Such doubt or suspicion, without cogent supporting evidence, cannot be converted into a finding of fraudulent trading.
46. Section 66(2) is also not attracted. The Application does not plead that, before the insolvency commencement date, any director knew or ought to have known that there was no reasonable prospect of avoiding commencement of CIRP and failed to exercise due diligence in minimising potential loss to creditors. The transaction relates to 2013-2014, whereas CIRP commenced on 12.12.2019. The ingredients of Section 66(2) are therefore not made out.
47. We therefore hold that the Applicant has failed to establish that the payment of Rs. 1.60 crores to Respondent No. 1 was a fraudulent transaction within the meaning of Section 66 of the Code. The Applicant has also failed to establish that Respondents 2 to 4 were knowingly parties to carrying on the business of the Corporate Debtor with intent to defraud creditors.
48. In view of the above findings, the prayer for declaration that the payment made by the Corporate Debtor to Respondent No. 1 is illegal and fraudulent under Sections 49 and 66 of the Code is

rejected. Consequently, the prayer seeking direction to the Respondents to contribute Rs. 1.60 crores, together with interest, to the Corporate Debtor also cannot be granted.

IA No. 27 of 2021 is accordingly dismissed.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

VL