

**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. 10 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, 19<sup>th</sup> B Cross,  
3<sup>rd</sup> Block, Jayanagar,  
Bangalore – 560 011.

....Applicant

**And**

1. Shri Ujwal Kotagiri  
Sanpras Corporate Capital,  
#115/1 & 115/29, 6<sup>th</sup> Floor,  
Sheratontowers, Financial Dist,  
Nanakramguda, Gachibowli,  
Hyderabad – 500 032.
2. Smt Priyadarshini Kanumuru Indira,  
Sanpras Corporate Capital,  
#115/1 & 115/29, 6<sup>th</sup> Floor,  
Sheratontowers, Financial Dist,  
Nanakramguda, Gachibowli,  
Hyderabad – 500 032.
3. Shri Bhavaraju Prasad Venkata Siva,  
Sanpras Corporate Capital,  
#115/1 & 115/29, 6<sup>th</sup> 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. The present 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 IBC<sup>1</sup>. The Respondents are Sri Ujwal Kotagiri, Smt. Priyadarshini Kanumuru Indira and Sri Bhavaraju Prasad Venkata Siva, who are described as Directors of the suspended Board of Directors of the Corporate Debtor.
2. The Applicant states that CIRP<sup>2</sup> against Indira Priyadarshini Hydro Power Private Limited was initiated vide order dated 12.12.2019 and the applicant was appointed as RP vide order dated 03.03.2020.
3. The Applicant submits that, in his capacity as RP performing duties under the Code, he is legally mandated to preserve and protect the assets of the Corporate Debtor. Furthermore, pursuant to Section 25(2)(j) of the IBC, the Applicant is required to file

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<sup>1</sup> Insolvency and Bankruptcy Code, 2016

<sup>2</sup> Corporate Insolvency Resolution Process

applications for the avoidance of transactions specified under the Code.

4. The Applicant states that he appointed 'Mazars' to conduct forensic audit of the Corporate Debtor for the period from inception up to the date of commencement of CIRP. The forensic auditor gave a draft report on 07.01.2021, which is annexed to the application, while the final forensic audit report was stated to be awaited.
5. The Applicant submits that the Corporate Debtor was sanctioned various credit facilities by Punjab National Bank, which is described as the secured creditor holding 100% voting share in the Committee of Creditors. The sanction letter<sup>3</sup> is relied upon by the Applicant, and it is submitted that the sanction was subject to certain terms and conditions.
6. The central allegation in the Application is that, as per the terms and conditions of sanction, the subsidy amount available to the Corporate Debtor was required to be available with the company in the form of cash and bank balances till repayment of the term loan. The Applicant alleges that the Respondents, having received the subsidy amount, did not keep the bank balance as mentioned in the sanction letter.
7. According to the Applicant, the act of the Respondents, as directors in charge of the day-to-day administration of the Corporate Debtor, in not adhering to the terms and conditions of sanction and not keeping the subsidy amount, was done with an

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<sup>3</sup> Page 78-82 of the Application

intention to defraud the creditor and amounts to a fraudulent transaction. The Applicant refers to this as the “Impugned Transaction”.

8. The Applicant states that, after going through the books of account of the Corporate Debtor, he formed the opinion that certain transactions had been carried out with a mala fide intention to defraud the secured creditors of the Corporate Debtor. It is alleged that the Respondents indulged in the Impugned Transaction with an intention to defraud the creditor and unlawfully enrich themselves.
9. The Applicant further alleges that the Respondents, being promoters / persons in charge of the day-to-day administration of the Corporate Debtor, are responsible for the Impugned Transaction, which was done with a view to cause wrongful loss to the secured creditor and the Corporate Debtor. It is also stated that the secured creditor is a public sector bank and that the fraudulent action of the Respondents resulted in loss to the secured creditors.
10. In the prayer, the Applicant seeks a declaration that the Impugned Transaction is fraudulent in terms of Section 49 and Section 66 of the Code. The Applicant also seeks a direction to the Respondents to make contribution to the Corporate Debtor to the tune of Rs. 1,75,42,636/-, together with interest of Rs. 31,34,153/- up to 11.01.2021, and further interest on Rs. 2,06,76,789/- at applicable rates from 11.01.2021 till the date of realisation.

11. Despite due service of notices, Respondent No. 3 failed to enter appearance and remained unrepresented. Accordingly, he was set *ex-parte* vide order dated 06.11.2024.

**Submissions on behalf of Respondent Nos. 1 and 2**

12. 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 application should be deemed admitted merely because it has not been specifically controverted. They contend that the IA has no merits and deserves to be dismissed.
13. The Respondents raise a preliminary objection to the locus standi of the Applicant. According to them, the application has been filed by the Applicant in his own capacity and not as a representative of the Corporate Debtor. They submit that the RP represents the Corporate Debtor in place of the suspended Board of Directors, and that any litigation of the Corporate Debtor must be pursued in the name of the Corporate Debtor; individually, no RP can pursue such litigation.
14. The Respondents further contend that the application is barred by delay and is not maintainable in view of Regulation 35A of the Insolvency Regulations<sup>4</sup>. They submit that the RP was required to form an opinion by the 75<sup>th</sup> day, make a determination by the 115<sup>th</sup> day, and file the application by the 135<sup>th</sup> day of the insolvency commencement date. According to them, the present application was filed more than one year after commencement of

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<sup>4</sup> IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

CIRP, after the insolvency resolution process was completed and after the CoC, in its 16<sup>th</sup> meeting on 13.01.2021, had recommended liquidation. They describe the application as an afterthought and as having been filed without application of mind, without explanation for delay or any application for condonation of delay.

15. The Respondents also contend that, after approval of the Resolution Plan on 02.07.2021, the erstwhile RP became functus officio and had no locus standi to pursue the present application under Section 66(1) of the Code. They rely on the judgment in *Venus Recruiters*<sup>5</sup> to submit that an RP cannot continue indefinitely after approval of a resolution plan and that continuation of an avoidance application as a “Former RP” is beyond the scheme of the Code.
16. On the statutory ingredients, the Respondents submit that the application fails to meet the pre-requisites of Section 49 and Section 66. They contend that Section 49 concerns defrauding creditors by entering into undervalued transactions contemplated under Section 45, for which the relevant period is one year for unrelated parties and two years for related parties.
17. As regards Section 66, they submit that the Applicant must demonstrate that the Respondents carried on the business of the Corporate Debtor with intent to defraud creditors, and that the persons proceeded against were knowingly involved in carrying on

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

such fraudulent business. According to them, the Applicant has failed to state even a single act amounting to “intent to defraud.”

18. On merits, the Respondents state that the Corporate Debtor received subsidy amount of Rs. 1,57,00,000 on 03.08.2013 and placed the entire subsidy amount, together with unused term loan funds, aggregating to Rs. 3,80,00,000, in a Fixed Deposit Account with the sole Financial Creditor on 08.08.2013. According to the Respondents, this satisfied the covenant in the sanction letter. They further state that part of this Fixed Deposit, about Rs. 1,80,00,000, was closed on 19.09.2013, credited back to the escrow account / TRA, and applied towards advance payment to a civil contractor. This payment, according to the Respondents, was duly approved by the sole Financial Creditor in its capacity as Escrow Agent / Trust Bank.
19. The Respondents quote the covenant relied upon by the Applicant as: “Subsidy amount will be available with the Company in the shape of cash and bank balance till the repayment of term loan as the DSCR has been computed with subsidy benefit.” They contend that the Applicant has quoted the sanction condition out of context. Their case is that the subsidy amount was placed in a Fixed Deposit with the Financial Creditor itself, and release of the same for purposes strictly related to the project was within the discretion and control of the lender / Trust Bank. They also submit that there is no averment that the DSCR<sup>6</sup> was adversely impacted by the transaction.
20. In their written submission / convenience note, the Respondents further explain that the subsidy disbursement was linked to

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<sup>6</sup> Debt-Service Coverage Ratio

completion of at least 50% of the project in terms of value of investment, and that the subsidy, upon receipt, was deposited into the Trust and Retention Account (**TRA**) established to route project funds. They submit that the TRA was a non-chequing account, and in the present case the Trust Bank and Lender were the same. Debits from the TRA were permitted by the Trust Bank only after ascertaining that withdrawals were for legitimate purposes; by its nature, the trust bank account could not be operated by the debtor.

21. The Respondents also submit that payments to vendors were made directly by the Trust Bank after due vetting, and that the Corporate Debtor suffered no loss on account of the subsidy after commencement of CIRP. They assert that the subsidy was a source of funds for the project and was not intended for debt servicing. They further contend that the Lender Bank / Trust Bank, which vetted the transaction and authorised the payments, has not alleged any fraud, and that the Applicant or the auditor ought to have consulted the creditor before characterising the transaction as fraudulent.
22. The Respondents also point out that the Applicant's basic amount claimed is Rs. 1,75,42,636, whereas the actual subsidy disbursement was Rs. 1,57,00,000. They further state that the Corporate Debtor had provided a Bank Guarantee of a similar amount to MNRE and placed margin money with the BG issuing bank for 20% of the guarantee value; the BG later expired without MNRE invoking it. According to them, if required, the RP should have recovered the margin money from the BG issuing bank. They

also state that the Corporate Debtor had drawn only Rs. 21.31 crores from the sanctioned loan and that Rs. 2.53 crores remained undrawn in the term loan account.

23. On the above basis, the Respondents contend that the subsidy amount was deposited in the designated escrow account, the Escrow Agent was the sole lender and permitted each withdrawal, and there is no identified transaction showing fraudulent intent. They submit that the Applicant has filed the application by stating half-truths, without explaining how Sections 49 and 66 are applicable, without stating the exact cause of action, and beyond the statutory period under the Code and Regulations. They therefore pray that the application be dismissed with exemplary costs.

### **Written submission of the Applicant**

24. In the written submission filed by the Applicant the additional thrust is that, since the subsidy amount was paid to a contractor '**Rohan Varma Constructions**' in respect of a transaction which the Applicant characterises as fraudulent in IA 27/2021, the impugned transaction in this IA should also be treated as a fraudulent transaction. The Applicant accordingly prays that the Impugned Transaction be declared fraudulent and that the Respondents be directed to effect payment to the secured creditors in line with the CoC decision taken in the 19th meeting held on 04.03.2021.

## **Findings and Decision**

25. We have heard the learned counsel for the parties and have perused the pleadings, documents and written submissions placed on record. The present Application has been filed under Section 49 read with Section 66 of IBC, seeking declaration that the alleged non-maintenance of the subsidy amount in the form of cash and bank balance is fraudulent, and seeking contribution of Rs. 1,75,42,636/- with interest to the Corporate Debtor.
26. The principal allegation of the Applicant is that, under the sanction terms of Punjab National Bank, the subsidy amount available to the Corporate Debtor was required to remain available with the company in the form of cash and bank balance till repayment of the term loan, since the DSCR had been computed with subsidy benefit. According to the Applicant, the Respondents, being suspended directors / persons in charge of day-to-day affairs of the Corporate Debtor, failed to keep the subsidy amount as required under the sanction terms, and thereby committed a fraudulent transaction with intent to defraud the secured creditor.
27. The Respondents, on the other hand, submit that the subsidy amount of Rs. 1,57,00,000/- was received on 03.08.2013 and was placed, along with unused term loan funds, in a Fixed Deposit Account with the sole Financial Creditor on 08.08.2013. They further submit that part of the said fixed deposit, about Rs. 1,80,00,000/-, was closed on 19.09.2013, credited back to the escrow / TRA account, and applied towards advance payment to a civil contractor. According to the Respondents, the payment was

duly approved by the sole Financial Creditor in its capacity as Escrow Agent / Trust Bank, and the TRA was not an account which could be operated unilaterally by the Corporate Debtor.

28. 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*<sup>7</sup>. 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. v. Venus Recruiter Pvt. Ltd*<sup>8</sup>, 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.
29. 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

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<sup>7</sup> Venus Recruiters Private Limited 'V's. Union of Znclia & Ors. W.P.(C) 8705/2019) & CM APPL. 36026/2019

<sup>8</sup> Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd., (2023) 1 HCC (Del) 301

is already before the Adjudicating Authority. The ground for objection to the Application is also not acceptable.

30. 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

31. 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 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.
32. In the present case, the Applicant has not established that the Corporate Debtor made a gift, or transferred an asset for no consideration, or received consideration significantly less than the value provided by the Corporate Debtor. The allegation is essentially that the subsidy amount was not maintained in the manner required under the sanction condition. Such allegation, even if assumed to be correct for the purpose of discussion, does not by itself establish an undervalued transaction under Section 45 or a transaction defrauding creditors under Section 49.
33. Further, the subsidy was admittedly received in 2013 and the fixed deposit was partly closed and utilised in September 2013. CIRP commenced only on 12.12.2019. The transaction is therefore

much prior to the look-back period applicable to undervalued transactions. On this ground also, Section 49 is not attracted. The prayer under Section 49 is not made out.

Section 66: Whether attracted

34. 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.
35. The foundation of the Applicant's case is the sanction condition requiring the subsidy amount to be available with the company in the form of cash and bank balance till repayment of the term loan, since DSCR had been computed with subsidy benefit. The Respondents have specifically pleaded that the subsidy amount of Rs. 1,57,00,000/- was first credited into the TRA and thereafter placed, along with unused term loan, in a Fixed Deposit Account with the sole Financial Creditor. Placing the subsidy amount in fixed deposit with the sole Financial Creditor cannot, by itself, be treated as conduct intended to defraud the said Financial Creditor.
36. The Respondents have further pleaded that part of the fixed deposit was closed on 19.09.2013, credited back to the escrow /

TRA account, and applied towards advance payment to a civil contractor with approval of the sole Financial Creditor acting as Escrow Agent / Trust Bank. The Applicant has not placed on record any bank account statement, TRA record, lender correspondence, or other primary document to show that the release from the fixed deposit / TRA was unauthorised, outside the project, or contrary to the control of the lender / Trust Bank.

37. In this context, it is material that Punjab National Bank was not merely the lender but, according to the Respondents, also the Escrow Agent / Trust Bank. The Respondents have pleaded that the TRA was a non-chequing account and could not be operated unilaterally by the Corporate Debtor. Payments to vendors were made by the Trust Bank after due vetting. The Applicant has not produced any material from Punjab National Bank alleging that the transaction was fraudulent, that the bank had not approved the release, that the escrow / TRA mechanism had been bypassed, or that the DSCR was adversely affected.
38. The Applicant's written submissions seek to connect the present Application with IA No. 27 of 2021 by contending that the subsidy amount was paid to Rohan Varma Constructions and that such payment is itself a fraudulent / fictitious transaction. This submission does not independently establish the ingredients of Section 66 in the present Application. The allegation concerning payment to Rohan Varma Constructions is the subject matter of IA No. 27 of 2021 and has to be examined on its own pleadings and evidence<sup>9</sup>. The present Application cannot succeed or fail

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<sup>9</sup> IA No. 27/2021 about allegation concerning payment to 'Rohan Varma Construction' is being dismissed today

merely because the same flow of funds could also be involved in another application.

39. Even otherwise, the Applicant has not shown that the subsidy amount was siphoned away, misappropriated, or used for a purpose wholly unconnected with the project. The Respondents' case is that the amount was released from the fixed deposit through the escrow / TRA mechanism for project-related payment. In the absence of contrary primary evidence, the Applicant has not discharged the burden of proving that the business of the Corporate Debtor was carried on with intent to defraud creditors.
40. The Applicant has also not pleaded with necessary particulars any fraudulent representation made to the secured creditor. It is not stated what representation was made, when it was made, by whom it was made, how it was false to the knowledge of the person making it, or how Punjab National Bank acted upon it to its prejudice. A general allegation that the Respondents acted with intention to defraud the creditor is not sufficient for invoking Section 66.
41. The amount claimed by the Applicant also remains unexplained. The Applicant seeks contribution of Rs. 1,75,42,636/-, whereas the Respondents contend that the actual subsidy disbursement was Rs. 1,57,00,000/-. The Application does not satisfactorily reconcile this difference or explain how the claimed amount represents the alleged fraudulent transaction. In a proceeding alleging fraud, such computation must be clear and supported by cogent material.

42. Section 66 also requires knowing participation of the persons sought to be made liable. The Respondents have been proceeded against on the ground that they were suspended directors / persons in charge of the day-to-day administration of the Corporate Debtor. However, the Application does not attribute specific acts to each Respondent showing that he or she was knowingly party to carrying on the business of the Corporate Debtor in a fraudulent manner. Liability under Section 66 cannot be imposed merely on the basis of designation.
43. We also find that Section 66(2) is 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 relied upon relates to 2013, whereas CIRP commenced only on 12.12.2019. The ingredients of Section 66(2) are therefore not made out.
44. We therefore hold that the Applicant has failed to establish that the alleged Impugned Transaction is a fraudulent transaction within the meaning of Section 66 of the Code. At the highest, the Applicant has raised a grievance regarding compliance with a sanction condition relating to subsidy amount. Such grievance, without proof of fraudulent intent, fraudulent purpose, misuse of funds, lender prejudice or knowing participation, cannot be converted into a direction for contribution under Section 66. In view of these, the prayer for declaration that the Impugned

Transaction is fraudulent under Sections 49 and 66 of the Code is rejected.

IA No. 10 of 2021 is accordingly dismissed.

**Sd/-**

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

**Sd/-**

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

*VL*