IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301

IA/543(AHM)2021 in CP(IB) 143 of 2017

Under Section 66 r.w 60(5) IBC

IN THE MATTER OF:

Ravi Kapoor liquidator of Accord Industries Ltd ....**Applicant**

V/s

Harish Kashinanth Jadhav & Ors ....**Respondents**

Order delivered on: 20/07/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT- I, AHMEDABAD

IA No. 543 (AHM) 2021
in
CP (IB) No. 143 of 2017

(An application under Section 66 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 and Section 213 of the Companies Act, 2013 seeking necessary directions against the Respondents)

RAVI KAPOOR
Liquidator of Accord Industries limited 402, Shaival Plaza, Gujarat College Road, Ellisbridge, Ahmedabad - 380 006

...Applicant

VERSUS

1. **MR. HARISH KASHINATH JADHAV**
Suspended Director of
Accord Industries Limited
E-44, Shankarbaug Society, Tarsali,
Vadodara, Gujarat-390 009

...Respondent No.1

2. **MR. MEHUL GIRISHBHAI DESAI**
Suspended Director of
Accord Industries Limited
C/106, Devdarshan Apartment,
New Ranip, near Anand Party Plot,
Ahmedabad, gujarat-382 470

...Respondent No.2

3. **MR. SANDIP NARAYAN CHAUDHARI**
Suspended Director of
Accord Industries Limited
24, Chandralok Society,

Near Cadila Lab, Ghodasar,
Ahmedabad, Gujarat-380 050

...Respondent No.3

4. **MR. CHANDRASHEKHAR BALKRISHNA PANCHAL**
EX-DIRECTOR OF ACCORD INDUSTRIES LTD.
14, UNIQUE PARK SOCIETY,
OPP. ISRO, SATELLITE
AHMEDABAD, GUJARAT-380 015

... Respondent no. 4

5. **MR. SUNIL MISHRA**
EX-DIRECOTR OF ACCORD INDUSTRIES LTD.
PLOT NO-1074, SECTOR-2/D,
GANDHINAGAR, GUJARAT - 382 002

... Respondent no. 5

6. **ARCHON ENGICON LIMITED**
A Company Incorporated under the
Companies Act, 1956, having its regd. Office at;
A/1 Shivam Sundaram Complexabove Adc
Bank Opp Haresh Dudhiya Gurukul road
Memnagar Ahmedabad Gujarat

AND ALSO AT:
Plot No. 1, 2, 3, & 5, Navkar Industrial
Estate, NR. G.E.B. Sub Station, Santej
Khatraj Road, Santej Gujarat 382721

... Respondent no. 6

Order pronounced on: 20.07.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E

For the Applicant : Mr. Harshil Patel, Advocate

For the Respondents : Mr. Sahil Jayesh Rao. Advocate (for R-2 to R-4)
: Mr. Dheeraj Garg, Advocate for R-5

ORDER
Per Bench

1. The present application is being filed by the Liquidator of Accord Industries Limited ("Corporate Debtor") under Section 66 read with Section 60 (5) of Insolvency & Bankruptcy Code, 2016 ("Code") and Section 213 of the Companies Act, 2013 ("Act") seeking declaration of several transactions entered by/with the Corporate Debtor with the Respondents herein prior to the commencement of the Corporate Insolvency Resolution Process of CD as fraudulent and accordingly null and void in the eyes of law. The Applicant is also seeking directions from this Adjudicating Authority against the erstwhile directors of the Corporate Debtors who were knowingly parties to carrying on the business in a fraudulent manner, directing them to contribute to the assets of the Corporate Debtor, necessary to compensate its losses caused their fraudulent transactions.

2. The Applicant/Liquidator has placed the facts through the I.A. and documents in the following manner: -

2.1 The Applicant submits that he was appointed as Liquidator of the Corporate Debtor under Section 34(1) of the Code vide order dated 19.06.2020 (received on 26.06.2020) passed in IA No. 210 of 2020.

2.2 It is stated that the list of stakeholders was filed in terms of Regulation 31(2) of the IBBI (Liquidation Process) Regulations, 2016. In the first Stakeholders' Consultation Committee meeting held on 14.08.2020, the members resolved to appoint a forensic auditor to examine the affairs of the Corporate Debtor, pursuant to which M/s R. Choudhary & Associates was appointed.

2.3 The Forensic Auditor submitted its Report dated 03.04.2021 along with an Addendum dated 10.07.2021, identifying various transactions allegedly not undertaken in the ordinary course of business and indicating diversion of funds and wrongful gains to certain beneficiaries.

2.4 The Forensic Audit Report was placed before the Stakeholders' Consultation Committee in its meeting held on 16.06.2021. Upon deliberation, the Committee resolved that appropriate proceedings be initiated under the Code and also recommended seeking extension of the liquidation period.

2.5 Pursuant thereto, the Applicant filed IA No. 435 of 2021 under Regulation 44(2) of the Liquidation Process Regulations seeking extension of the liquidation period, which remained pending for adjudication.

2.6 The Applicant further submits that Respondent Nos. 1 to 6 are promoters, present or former directors, shareholders, or an associate company of the Corporate Debtor and are related parties. The remaining entities were initially impleaded as non-related parties on account of their business dealings with the Corporate Debtor, as detailed in the Application which provided in the table below: -

RELATED PARTIES:

Sr. No.	NAME OF THE PARTY	RELATION
1.	Harish Kashinath Jadhav	Suspended Director of the Corporate Debtor;
2.	Mehul Girishbhai Desai	Suspended Director of the Corporate Debtor;
3.	Sandip Narayan	Suspended Director of the Corporate Debtor;
4.	Chandrashekhar Balkrishna Panchal	Ex-Director of the Corporate Debtor;
5.	Sunil Mishra	Ex-Director of the Corporate Debtor;
6.	Archon Engicon Limited	Associated Company;

PARTIES HAVING LONG BUSINESS RELATIONSHIP WITH CORPORATE DEBTOR/DIRECTORS/RELATED ENTITIES:

S.No.	NAME OF PARTIES	REMARK
7.	Ambica Alloys and Stells India Limited	Non-related party
8.	Diamond Power Transformers Limited	Non-related party
9.	Kalpataru Power Transmission Limited	Non-related party
10.	Besto Tradelink Limited	Non-related party
11.	Alstom T&D India Limited	Non-related party
12.	Diamond Power Infrastructure Limited	Non-related party
13.	Prime Ispat Limited	Non-related party
14.	Prakash Re-Rollers Private Limited	Non-related party

Copy of the master data of the Corporate Debtor along with all other Respondents incorporate under the Companies Act, retrieved from www.mca.gov.in are collectively annexed and marked as Annexure-G.

2.7 The Applicant submits that certain transactions with other parties could not be conclusively examined due to non-availability of records and information from the suspended management. Accordingly, liberty has been reserved to initiate appropriate proceedings upon identification of such transactions.

2.8 It is submitted that, upon examination of the Forensic Audit Report, the Applicant found several transactions which prima facie were not in the ordinary course of business and appeared to have been undertaken to divert the assets and funds of the Corporate Debtor to the detriment of its creditors.

2.9 Based on the findings of the Forensic Audit Report, the Applicant has alleged that the impugned transactions attract the provisions of Section 66 of the Code. The transactions have accordingly been classified under separate categories for consideration which are as under: -

FRAUDULENT TRANSACTIONS IDENTIFIED UNDER SECTION 66 OF THE IBC, 2016.

A. DISPOSAL OF STOCK IN CASH OR WITHOUT ANY CONSIDERATION;

2.10 It is alleged that while the stock value reflected in the Stock and Book Statement dated 30.10.2015 was Rs.34,26,95,392/-, the physical verification conducted on 05.01.2016 revealed stock worth only Rs.3.79 Crores, with stock of Rs.8.14 Crores stated to be lying at third-party premises.

2.11 The Applicant contends that the unexplained reduction of stock amounting to Rs.22,33,95,393 (Rs.34,26,95,392 (- Rs. 3,79,00,000 (-) Rs 8,14,00,000), during period between 30.10.2015 (i.e. date of last stock statement) to 05.01.2016 (i.e. date of physical verification by stock auditor coupled with the absence of corresponding bank receipts, indicates that the stock was either disposed of for cash or transferred without consideration.

2.12 It is further alleged that stock valued at Rs.8.14 Crores, claimed to be lying with third parties, was not produced for physical verification, thereby raising doubts regarding its existence and genuineness.

2.13 Hence based on the aforesaid observation of the forensic auditor: -

a) Substantial difference of value of stock of Rs. 22,33,95,393/-; and

b) Denial of the stock auditor to physically verify the stock amounting to Rs.8,14,00,000/-;

Aggregating to Rs.30,47,95,393/- is considered to be siphoned off and considered as transaction falling under Section 66 of the Code.

B. MISREPORTING DEBTORS & CREDITORS IN STOCK & BOOK DEBT STATEMENTS SUBMITTED TO BANK:

I. Excess calculation of Drawing Power Limit by not deducting Advance taken from Customer from the Value of Stock;

2.14 That It is alleged that, while computing the drawing power in the Stock and Book Debt Statement dated 30.10.2015, the Corporate Debtor failed to deduct customer advances of Rs.3,01,75,625/-, thereby inflating the drawing power availed from the lending bank.

II. Misreporting of Sundry Debtors to claim Higher Drawing Power Limit;

2.15 The Applicant further alleges that sundry debtors outstanding for more than 120 days were incorrectly shown as outstanding for less than 120 days in the Book Debt Statement, resulting in an inflated drawing power limit.

2.16 It is submitted that the Book Debt Statements dated 25.03.2015 and 30.06.2015 reflected substantially identical debtor positions, except in respect of three debtors, indicating that overdue receivables amounting to Rs.14.17 Crores were misclassified to secure higher drawing power.

2.17 On the aforesaid basis, the Applicant contends that the Corporate Debtor deliberately misreported the ageing of sundry debtors in the statements furnished to the banks, thereby obtaining enhanced drawing power by making false financial disclosures.

III. Misreporting of Sundry Debtors in Book Debt Statement;

2.18 It is further alleged that comparison of the Stock and Book Debt Statements dated 30.06.2015 and 30.10.2015 revealed misreporting of sundry debtors and creditors, resulting in incorrect disclosure of receivables furnished to the lending banks.

2.19 The Applicant submits that while debtors outstanding for more than 150 days were reflected at Rs. 7,06,54,868/- in the statement dated 30.10.2015, the corresponding figure in the statement dated 30.06.2015 was shown as only Rs.78,95,154/-.

2.20 On the aforesaid basis, the Applicant contends that receivables were understated by approximately Rs.6.26,27,59,714/- 8 Crores in the earlier statement, thereby misrepresenting the financial position of the Corporate Debtor for availing enhanced drawing power from the banks

IV. Misreporting of Balance of M/s Gujarat Energy Transmission Corporation (KHERALU);

2.21 The Applicant further alleges that the balance of M/s Gujarat Energy Transmission Corporation (GETCO), Kheralu, as reflected in the Stock and Book Debt Statements, materially differed from the corresponding ledger balances maintained in the books of the Corporate Debtor as summarized below:

Particulars	As per Stock Statement	As per Books of Account Ledger	Difference
Balance as on 31.03.2015	180.64	208.10	(24.49)
Balance as on 30.06.2015	180.64	63.93	116.71

2.22 It is further alleged that receipts aggregating to Rs.296.95 Lakhs received from GETCO during February to April 2015 were credited to the Corporate Debtor's ICICI Bank current account instead of the designated Cash Credit Account with Indian Overseas Bank, contrary to the sanction terms.

2.23 On the basis of the aforesaid discrepancies, the Applicant contends that the Respondents furnished incorrect particulars of debtors and creditors to the lending banks, thereby making false representations to obtain higher drawing power limits.

2.24 It is, therefore, submitted that the aforesaid acts constitute false representations to creditors within the meaning of Section 73 of the Code and warrant appropriate directions under Section 213 of the Companies Act, 2013 and other applicable provisions of law

2.25 In view of the foregoing allegations, the Applicant submits that the false representations made for securing enhanced drawing power attract the provisions of Section 73 of the Code and justify appropriate directions under Section 213 of the Companies Act, 2013, including contribution by the Respondents to the assets of the Corporate Debtor, in accordance with law.

C. TRANSACTIONS WITH RELATED PARTIES:

I. Archon Engicon Limited *(Respondent No. 6)*;

2.26 The Applicant alleges that, upon examination of the Cash Credit Account No. 19502000002443, the Corporate Debtor paid Rs.37.62 Crores to Respondent No.6, M/s Archon Engicon Limited, while receiving only Rs.22.52 Crores during the relevant period, despite maintaining a debit balance with the said entity.

Particular	Payment	Receipt
FY 13-14	15,31,98,219.00	2,26,00,000.00
FY 14-15	22,30,01,902.00	20,05,70,379.00
FY 15-16	-	20,41,000.00
Total	**37,62,00,121.00**	**22,52,11,379.00**

2.27 The Applicant alleges that, on the basis of the aforesaid transactions, a sum of Rs.15,09,88,745/- was diverted to the sister concern, Respondent No. 6, M/s Archon Engicon Limited, in violation of the terms and conditions of the Sanction Advice dated 25.09.2013.

2.28 It is further alleged that, as per the Book Debt and Stock Statement dated 30.10.2015, book debts of Rs.1,267.12 Lakhs, constituting about 65% of the total book debt of Rs.1,934.07 Lakhs, pertained to Respondent No. 6. The Applicant contends that inclusion of such sister concern receivables for computing drawing power was contrary to the sanction terms.

D. TRANSACTIONS WITH OTHER PARTIES:

I. <u>Ambica Alloys and Steels India Limited</u>

2.29 The Applicant submits that, as per the Book Debt and Stock Statements dated 25.03.2015 and 30.06.2015, receivables of Rs.340.35 Lakhs from Respondent No. 7, M/s Ambica Alloys and Steels India Limited, were reduced to Nil.

2.30 It is further alleged that analysis of the Corporate Debtor's Cash Credit Account 19502000002443 revealed no receipt from the said Respondent during the intervening period, notwithstanding the reduction of the outstanding receivables to Nil.

Particulars	**Amount (Rs. In Lakhs)**
Receivables as on 25.03.2015	340.35
Receipt in-between this period	0.00
Receivables as on 30.06.2015	

2.31 The Applicant contends that, despite no corresponding receipt in the Cash Credit Account after 25.03.2015, the receivables from M/s Ambica Alloys and Steels India Limited were shown as Nil as on 30.06.2015, giving rise to an apprehension that the amount was either improperly written off or recovered otherwise than through the designated account.

II. <u>Diamond Power Transformers Limited (Under Liquidation)</u>

2.32 The Applicant further submits that, as per the Book Debt and Stock Statements dated 25.03.2015 and 30.06.2015, receivables of Rs.340.35 Lakhs from

Diamond Power Transformers Limited (under liquidation) were similarly reduced to Nil.

2.33 It is further alleged that no corresponding receipt from Diamond Power Transformers Limited was reflected in the Corporate Debtor's Cash Credit Account 19502000002443 during the relevant period, notwithstanding the reduction of the outstanding receivables to Nil.

Particulars	**Amount (Rs. In Lakhs)**
Receivables as on 25.03.2015	340.35
Receipt in-between this period	0.00
Receivables as on 30.06.2015	0.00

2.34 The Applicant contends that, despite no corresponding receipt in the Cash Credit Account after 25.03.2015, the receivables from Diamond Power Transformers Limited were shown as Nil as on 30.06.2015, giving rise to an apprehension that the amount was either improperly written off or recovered otherwise than through the designated account.

III. <u>Kalpataru Power Transmission Limited</u>

2.35 The Applicant further submits that, as per the Book Debt and Stock Statements dated 01.04.2013 and 30.06.2014, receivables of Rs.587.86 Lakhs from Kalpataru Power Transmission Limited were reduced to Nil.

2.36 It is further alleged that analysis of the Corporate Debtor's Cash Credit Account 19502000002443 disclosed receipts of only Rs.80.08 Lakhs from the said entity during the relevant period, leaving a substantial portion of the receivables unexplained.

2.37 The Applicant, therefore, contends that the differential amount of Rs.507.78 Lakhs (Rs.587.86 Lakhs - 80.08 Lakhs), was either improperly written off as bad debt or recovered otherwise than through the Cash Credit Account.

IV. <u>Besto Tradelink Limited</u>

2.38 The Applicant further submits that, as per the Book Debt and Stock Statements dated 25.03.2015 and 30.06.2015, receivables of Rs.400.42 Lakhs from Besto Tradelink Limited were reduced to Nil.

2.39 It is further alleged that no corresponding receipt from Besto Tradelink Limited was reflected in the Corporate Debtor's Cash Credit Account 19502000002443 during the relevant period, notwithstanding the reduction of the outstanding receivables to Nil.

Particulars	**Amount (Rs. In Lakhs)**
Receivables as on 25.03.2015	400.42
Receipt in-between this period	0.00
Receivables as on 30.06.2015	0.00

2.40 The Applicant contends that, despite no corresponding receipt in the Cash Credit Account after 25.03.2015, the receivables from Besto Tradelink Limited were shown as Nil as on 30.06.2015, giving rise to an apprehension that the amount was either improperly written off or recovered otherwise than through the designated account.

V. Alstom T&D India Limited (Now GE T&D Limited)

2.41 The Applicant further submits that, as per the Book Debt and Stock Statements dated 30.06.2015 and 30.10.2015, receivables from Alstom T&D India Limited (now GE T&D India Limited) decreased from Rs.192.58 Lakhs to Rs.81.50 Lakhs.

2.42 It is further alleged that analysis of the Corporate Debtor's Cash Credit Account 19502000002443 disclosed no receipts from the said entity after 31.12.2014, despite the reduction in the outstanding receivables.

Particulars	**Amount (Rs. In Lakhs)**
Receivables as on 25.03.2015	192.58
Receipt in-between this period	0.00
Receivables as on 30.10.2015	81.50

2.43 The Applicant, therefore, contends that the differential amount of Rs.111.08 Lakhs was either improperly written off as bad debt or recovered otherwise than through the Cash Credit Account.

VI. Diamond Power Infrastructure Limited

2.44 The Applicant further submits that, as per the Book Debt and Stock Statements dated 30.06.2014 and 30.10.2015, receivables from Diamond Power Infrastructure Limited decreased from Rs.913.34 Lakhs to Rs.364.63 Lakhs.

2.45 It is further alleged that analysis of the Corporate Debtor's Cash Credit Account 19502000002443 reflected only Rs.0.11 Lakhs received from the said entity after 30.06.2014, notwithstanding the substantial reduction in the outstanding receivables.

Particulars	Amount (Rs. In Lakhs)
Receivables as on 30.06.2014	913.34
Receipt in-between this period	0.11
Receivables as on 25.03.2015	554.81
Receipt in-between this period	0.00
Receivables as on 25.03.2015	422.92
Receipt in-between this period	0.00
Receivables as on 30.06.2015	364.63

2.46 The Applicant contends that, despite negligible receipts in the Cash Credit Account after 30.06.2014, the receivables from Diamond Power Infrastructure Limited were substantially reduced, giving rise to an apprehension that the differential amount of Rs.548.71 Lakhs was either improperly written off or recovered otherwise than through the designated account.

VII. Prime Ispat Limited

2.47 The Applicant further submits that, although no amount was shown as payable to Prime Ispat Limited in the Book Debt and Stock Statement dated 30.10.2015, a payment of Rs.22 Lakhs was made to the said entity on 23.03.2016 from the Corporate Debtor's Cash Credit Account.

2.48 49. On the aforesaid basis, the Applicant alleges that the payment of Rs.22 Lakhs to Prime Ispat Limited constituted diversion of funds and amounts to a transaction of fraudulent or wrongful trading under Section 66 of the Code.

VIII. <u>Prakash Re-Rollers Private Limited</u>

2.49 The Applicant further submits that, as per the Book Debt and Stock Statements dated 30.06.2015 and 30.10.2015, receivables of Rs.6.59 Lakhs from Prakash Re-Rollers Private Limited were reduced to Nil.

2.50 It is further alleged that analysis of the Corporate Debtor's Cash Credit Account disclosed no receipt from the said entity during the relevant period, notwithstanding the reduction of the outstanding receivables to Nil.

Particulars	**Amount (Rs. In Lakhs)**
Receivables as on 30.06.2015	6.59
Receipt in-between this period	0.00
Receivables as on 30.10.2015	0.00

2.51 The Applicant contends that, in the absence of any corresponding receipt, the aforesaid amount was either improperly written off as bad debt or recovered otherwise than through the designated Cash Credit Account.

2.52 **SUMMARY OF FRADULENT TRANSACTIONS:**

Sr. No.	Particulars	Amount (Rs in Lakhs)
A.	**DISPOSAL OF STOCK IN CASH OR WITHOUT ANY CONSIDERATION;**	3048.00
B.	**MISREPORTING DEBTORS & CREDITORS IN STOCK & BOOK DEBT STATEMENTS SUBMITTED TO BANK:** I. Excess calculation of Drawing Power Limit by not deducting Advance taken from Customer from the Value of Stock; II. Misreporting of Sundry Debtors to claim Higher Drawing Power Limit; III. Misreporting of Sundry Debtors in Book Debt Statement; 627.59 IV. Misreporting of Balance of M/s Gujarat Energy Transmission (KHERALU);	301.75 1417.36 627.59 116.71
C.	**TRANSACTIONS WITH RELATED PARTIES:** I. Archon Engicon Limited;	1509.88
D.	**TRANSACTIONS WITH OTHER PARTIES:** I. Ambica Alloys and Steels India Limited; II. Diamond Power Transformers Limited (Under Liquidation); III. Kalpataru Power Transmission Limited; IV. BestoTradelink Limited; V. Alstom T&D India Limited, Veloda; VI. Diamond Power Infrastructure Limited (Under CIRP); VII. Prime Ispat Limited; VIII. Prakash Re-Rollers Private	1509.88 340.35 340.35 507.78 400.42 111.08 548.71 22.00 6.59

	Limited;	
Total		**9298.57**

2.53 In view of the foregoing allegations, the Applicant seeks appropriate reliefs under Sections 66 and 67 of the Insolvency and Bankruptcy Code, 2016, including declaration of the impugned transactions as fraudulent and void, contribution by the persons responsible to the assets of the Corporate Debtor, and such other consequential directions as deemed fit in accordance with law.

3. That on issuance of the notice, the **Respondent No.9** (Kalpataru Power Transmission Limited) appeared though it's Counsel and filed a reply on 23.06.2026, vide inward diary No. D-2277. The relevant portion of the said reply is reproduced as under: -

3.1 It is stated that the captioned IA is not maintainable against Respondent No. 9 and hence, the same is required to be dismissed outright. It is stated that the captioned IA has been filed against Respondent No. 9 under Section 66 of the Insolvency and Bankruptcy Code, 2016 ("IB Code") which provides for fraudulent trading. It is stated that however, a perusal of the captioned IA shows that in the entire IA, the Applicant has not even alleged any fraudulent trading by Respondent No. 9 with Accord Industries Limited

("Corporate Debtor"). It is submitted that in the entire captioned IA, the only allegation made against Respondent No. 9 is contained in paragraph 38 of the captioned IA It is submitted that the present Application is not maintainable against Respondent No. 9 under Section 66 of the Insolvency and Bankruptcy Code, 2016, as no specific allegation of fraudulent trading has been made against it. The only allegation pertains to the reduction of receivables from Rs.587.86 Lakhs to Nil despite receipt of Rs.80.08 Lakhs. According to the Respondent, such allegation is merely based on assumptions without any material establishing fraudulent trading.

3.2 Without prejudice to the above, Respondent No. 9 submits that the Applicant has failed to plead or prove the essential particulars of fraud as required in law. It is contended that neither the manner of the alleged fraud nor supporting documentary evidence has been furnished. The allegations are stated to be vague, conjectural and unsupported by cogent material. The Respondent, therefore, prays for dismissal of the Application with costs.

3.3 It is further submitted that the Application is founded upon the alleged Book Debt and Stock Statements dated 01.04.2013 and 30.06.2014 and the Forensic Audit Report dated 03.04.2021. However, copies of the

Book Debt and Stock Statements relied upon by the Applicant have not been placed on record or supplied to Respondent No. 9. It is, therefore, contended that the Respondent has been deprived of an effective opportunity to meet the allegations.

3.4 Respondent No. 9 further contends that the Forensic Audit Report does not record any finding or conclusion of fraud against it. It is submitted that even Clause 5.4.3 of the Report does not attribute any fraudulent transaction to Respondent No. 9. Consequently, it is argued that the proceedings initiated under Section 66 of the Code are without any factual foundation and amount to an abuse of process.

3.5 It is also submitted that the Forensic Audit Report itself records that it was prepared on the basis of limited information and unavailable records. According to the Respondent, the Auditor has expressly acknowledged that no conclusive opinion could be formed due to lack of complete evidence. It is, therefore, contended that the Report cannot, by itself, constitute the basis for alleging fraudulent trading against Respondent No. 9.

3.6 Respondent No. 9 further submits that the present proceedings have been initiated after an inordinate delay of nearly eight years from the relevant transactions. It is contended that neither the Financial Creditors nor the Resolution Professional had raised any objection during the intervening period. The Application is, therefore, stated to be barred by delay and laches and liable to be dismissed on that ground alone.

3.7 Without prejudice to the above objections, Respondent No. 9 disputes the Applicant's claim on merits by submitting that no commercial invoice had been raised upon it prior to 01.04.2013. It is stated that the first invoice was issued only on 07.04.2013. Accordingly, the alleged receivable of Rs.587.86 Lakhs as on 01.04.2013 is denied, and the Applicant is put to strict proof thereof.

3.8 It is further submitted that Respondent No. 9 had regular commercial transactions with the Corporate Debtor between 01.04.2013 and 13.05.2014 aggregating to about Rs.36.58 Crores. During the said period, substantial payments were made either directly or through banking arrangements, while the remaining amounts stood adjusted. According to the Respondent, these material facts have been suppressed by the Applicant.

3.9 Respondent No. 9 specifically states that it directly remitted an aggregate sum of Rs.5.14 Crores to the Corporate Debtor through recognised banking channels on different dates. The details of such remittances have been furnished along with supporting bank records. It is submitted that these payments have not been disputed by any contemporaneous record.

3.10 It is further contended that the Applicant and the Forensic Auditor have considered only one payment of Rs.80.08 Lakhs while ignoring the remaining direct payments aggregating to Rs.5.14 Crores. According to the Respondent, such selective consideration has resulted in an erroneous and misleading conclusion. Copies of the relevant bank statements have been placed on record in support of the said contention.

3.11 Respondent No. 9 further submits that, apart from the direct remittances, an additional amount of about Rs.30.94 Crores was discharged through bill discounting facilities and other banking arrangements. It is contended that these payments were made in the ordinary course of business towards liabilities owed to the Corporate Debtor. The omission to consider these transactions renders the allegations unsustainable.

3.12 It is also submitted that the Respondent had supplied materials to the Corporate Debtor and that the corresponding amounts, along with debit and credit notes, were duly adjusted in the regular course of business. According to the Respondent, after accounting for such adjustments and payments, no amount remained outstanding. It is contended that the

Applicant has failed to disclose these transactions before this Adjudicating Authority.

3.13 In view of the aforesaid submissions, Respondent No. 9 denies that any amount is due and payable to the Corporate Debtor or that it has entered into any fraudulent transaction. It is submitted that the allegations are contrary to the documentary record and unsupported by evidence. Accordingly, Respondent No. 9 prays for dismissal of the Application with exemplary costs.

3.14 Lastly, Respondent No. 9 reiterates that the Reply has been filed on the basis of the records presently available with it. It is submitted that, if any additional records pertaining to the transactions become available, liberty may be granted to place the same on record by filing an additional affidavit or other appropriate pleadings during the course of the proceedings.

4. The **Respondent No. 12** (Diamond Power Infrastructure Limited) has also filed reply on 10.10.2021 vide inward diary No. D-1696. The Respondent No. 12 inter-alia contended through in the following manner: -

4.1 Respondent No. 12 submits that the alleged transactions pre-date the commencement of its Corporate Insolvency Resolution Process. It is contended that DPIL is presently undergoing CIRP and is protected by the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016. Accordingly, the present Application is stated to be not maintainable against Respondent No. 12.

4.2 It is further submitted that the allegations relate to transactions of 2014-2015, when the affairs of DPIL were managed by its erstwhile directors. The suspended management, being responsible for the impugned transactions, are stated to be necessary parties. The Application is, therefore, alleged to suffer from non-joinder of necessary parties.

4.3 Respondent No. 12 further contends that the obligation of due diligence under the Explanation to Section 66 of the Code pertains to the persons managing the affairs of the Corporate Debtor. As the alleged transactions occurred prior to commencement of CIRP, the present Resolution Professional is stated to have no role therein. Hence, the proceedings against Respondent No. 12 are claimed to be not maintainable.

4.4 It is further submitted that the Application is vague, devoid of material particulars and does not disclose any cause of action against Respondent No. 12. The Applicant is stated to have failed to establish the jurisdiction of this Adjudicating Authority or substantiate the allegations with supporting material.

The Respondent has, therefore, denied all averments and put the Applicant to strict proof thereof.

4.5 Lastly, Respondent No. 12 submits that the present Reply is filed without prejudice to its rights and contentions. It reserves liberty to file a supplementary affidavit or produce additional documents, if required, during the course of the proceedings. All other contentions are expressly kept open.

5. Further, an Affidavit in Reply by the Respondent No. 10 (Besto Trade Link Limited) has also been filed on 25.11.2021. The contents of the Reply are reproduced as follows: -

5.1 Respondent No. 10 submits that the Applicant has alleged the impugned transactions to be fraudulent on the basis of the Forensic Audit Report, outstanding amounts and the nature of the transactions. It is, however, pointed out that Respondent No. 10 has not been treated as a related party of the Corporate Debtor.

5.2 It is further submitted that the allegation against Respondent No. 10 is confined to the reduction of receivables from Rs.400.42 Lakhs as on 25.03.2015 to Nil as on 30.06.2015, without any corresponding receipt in the bank account. According to the

Respondent, the allegation is merely based on an apprehension of wrongful write-off or cash repayment.

5.3 Respondent No. 10 contends that neither the Applicant nor the Forensic Auditor has produced any documentary evidence establishing transactions with the Corporate Debtor or substantiating the alleged outstanding receivables of Rs.400.42 Lakhs.

5.4 It is further submitted that the allegation of fraudulent trading is founded only upon assumptions and the Chartered Accountant's certificate relied upon by the Applicant. According to the Respondent, no factual particulars or supporting documents have been produced to substantiate such allegation.

5.5 Respondent No. 10 denies having entered into any business transaction or dealing with the Corporate Debtor or its suspended directors. In support thereof, reliance is placed upon a Chartered Accountant's certificate certifying that no such transactions existed between the parties.

5.6 Lastly, Respondent No. 10 contends that the Application under Section 66 of the Insolvency and Bankruptcy Code, 2016 has been filed without any material connecting it with the alleged fraudulent transactions. It is, therefore, prayed that the Application against Respondent No. 10 be dismissed.

6. Vide an order dated 27.09.2023 it was recorded that

> *"None for the respondents nos. 1 to 8 & 11.*
>
> *Vide order dated 14.06.2022, it was recorded that respondent nos. 9,10,12 &13 have filed their reply and other respondents do not have filed the reply, hence, their right to file reply is already closed. Further, no one has put an appearance on behalf of the respondent nos. 1 to 8 & 11 till date in the matter.*
>
> *Learned Counsel for the applicant submitted that none has appeared for the respondent nos. 1 to 8 & 11 who were duly served by the applicant and service report along with the affidavit has already been filed. Let one page of chart showing delivery of the notice upon the respondents be placed on record."*

7. Thereafter, vide an order dated 20.12.2023, it is further recorded that: -

> *Learned Counsel for the applicant submits that in compliance with the previous order, Learned Counsel has filed a purshish with a chart of the service reports of respondent Nos. 1 to 14, which reflects that respondents were duly served by way of registered post in the year 2021. Today, only respondent Nos. 12 and 13 have appeared.*
>
> *On the last date of hearing, Mr. Jay Kansara appeared on behalf of respondent No. 9. No other respondents are appearing in this matter. Therefore, respondent Nos. 1 to 8, 11, and 14 are proceeded ex parte.*

8. Vide an order dated 09.04.2024 it is further recorded that: -

> *"None has appeared on behalf of the Respondents No. 13 in the matter. The rest of the respondents are already proceeded ex-parte.*
>
> *Learned Counsel for the applicant / liquidator submits that the respondent Nos.1 to 6 are related parties and respondent Nos. 7 to 14 are unrelated third parties.*

Learned Counsel for the applicant / liquidator seeks time to go through the judgment of Hon'ble Supreme Court dated 19.05.2023 rendered in M.A. No. 1302 of 2023 in SLP (Crl.) Diary No.6732 of 2023 titled as ***Gluckrich Capital Pvt. Ltd Vs The State of West Bengal & Ors*** *and apprise this Tribunal, as how this application is still maintainable against the Respondent Nos. 7 to 14 unrelated third parties.*

Learned Counsel for the applicant / liquidator also seeks time to file an appropriate affidavit qua the relief clause V(d). Learned Counsel for the applicant / liquidator is directed to place on record the precedent of Hon'ble NCLAT/Supreme Court qua the order of dissolution of the corporate debtor, even in the event of without winding up of the complete affairs of the Corporate Debtor.

9. Thereafter, in compliance with the order dated 09.04.2024 an Additional Affidavit has been filed by the Liquidator on 13.06.2024, vide inward diary No.D-4606. The relevant portion of the same is reproduced as under:

A. APPLICABILITY OF GLUCKRICH CAPITAL PVT LTD V. STATE OF WEST OF ORS., [M.A. NO. 1302 OF 2023 IN SLP (CRL.) DIARY NO. 6732 2023]

i. It is stated that the present Application was filed on 01.08.2021, i.e., prior to ratio laid down by the Hon'ble Supreme Court in the matter of Gluckrich Capital Pvt Ltd v. State of West Bankgal & Ors. Furthermore, I say that the present Applicant is filed against Respondent No. 1 to 6 who are related parties to the Corporate Debtor and also against Respondent No. 7 to 14 who are non related parties involved in fraudulent transactions with the Corporate Debtor.

ii. Accordingly, it is submitted that the Applicant has no objections in light of the ratio laid down by the Hon'ble Supreme Court, and thus appropriate orders may be passed by this Hon'ble Tribunal qua Respondent Nos. 7 to 14 who are non-related parties involved in fraudulent transactions with the Corporate Debtor.

B. CLARIFICATION QUA RELIEF SOUGHT UNDER CLAUSE NO. V(d) OF THE PRESENT APPLICATION:

iii. It is stated that with reference to Prayer Clause V (d) of the present Application, as already mentioned therein, it is clarified that this Hon'ble Tribunal may be please to forward refer the present IA to the Central Government to inquire, investigate, and initiate appropriate proceedings and take further steps against the respondents in terms of Section 73 of the Code as well as Section 213 of the Companies Act, 2013.

iv. It is stated that the aforesaid relief sought is in terms of the ratio laid down by the Hon'ble NCLAT, Delhi in the matter of **Lagadapati Ramesh v. Ramnanathan Bhuvneshwari** (CA (AT) (Ins) No. 574 of 2019), as well as in the matter of **Union of India through SFIO v. Maharashtra Tourism Development Corporation & Anr.** (CA (AT) (Ins.) No. 964 of 2019).

C. PRECEDENT OF QUA ORDERS OF DISSOLUTION OF THE CORPORATE DEBTOR, EVEN IN THE EVENT OF WITHOUT WINDING UP OF THE COMPLETE

AFFAIRS OF THE CORPORATE DEBTOR:

v. That Regulation 44A of the IBBI (Liquidation Process) Regulations, 2016 provides for treatment of avoidance transactions and states as follows:

"The liquidator shall on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter II or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.

vi. That as per directions of this Hon'ble Tribunal vide Order dated 09.04.2024, the Applicant hereby begs to place on record the following relevant judgements qua Regulation 44A of the IBBI (Liquidation Process) Regulations, 2016:

Sr. No.	Case Details	Relevant Para
1.	Atul Jain Resolution Professional of CG Para 3. and Power Solutions Ltd. dated 10.11.2023 (IA No. 342 of 2023) NCLT Mumbai	Para 3, and thereafter under Order: Point 2 to 4
2.	TV Balasubramanian Liquidator of Sholingur Textiles Ltd dated 25.01.2024 (IA No. 18 of	Para 1,12 and 14.

	2024) NCLT Chennai.	
3	Reshma Mittal Liquidator of Harsh Specialty Coating Pvt. Ltd. dated 07.11.2023, (IA No. 3598 of 2023) NCLT Delhi;	Internal Page 6-Point 3 & 4; and Para 6
4.	Sarnamoy Plastic Sack Manufacturing Pvt. Ltd. dated 28.04.2023, (IA No. 631 of 2022) NCLT Kolkata;	Para 13 and 16.

10. Ld. Counsel for the Applicant/Liquidator seeks time to take steps for deletion of names of Third-Party Respondent Nos. 7 to 14, which is allowed by this Adjudicating Authority.

11. Thereafter, the Applicant/Liquidator has filed an IA/1214(AHM) 2024 in IA/543(AHM) 2021 under Regulation 60(5) of IBC, 2016 for seeking amendment/deletion of Respondent Nos. 7 to 14 from IA/543(AHM) 2021, with the following prayers:

a) allow the present Application;

b) pass appropriate orders thereby allowing amendment / deletion of Third-Party Respondent No. 7 to 14, from Interlocutory Application No. 543 of 2021 filed under Section 66 of the Code and take on record the amended Interlocutory Application No. 543 of 2021, annexed herewith;

c) pass any other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case

Vide an order dated 05.08.2024 records that

> *"Ld. Counsel for R-9 is present and accepts notice. He has no objection qua the deletion of the name of R-9 from IA/543(AHM)2021 which is also one of the Respondents whose deletion has been sought. The Applicant has also annexed the copy of the proposed amended application after deletion of Respondent Nos. 7 to 14 from IA/543(AHM)2021.*
>
> *Heard. Perused the records.*
>
> *Accordingly, IA/1214(AHM)2024 stands allowed and disposed of. Let the amended IA be filed within a period of 7 days with a copy to the opposite side.*

12. Further, vide an order dated 10.09.2024 it is recorded that; -

> *"In compliance of last order dated 05.08.2024 necessary amendment has been carried out in the cause title by deleting the names of 3rd parties R-7 to R-14 as well as filed purshis to place on record the amended cause title as well as necessary amendment in the IA by deleting Respondents vide Inward Diary No. 6389 dated 14.08.2024, the same is taken on record.*
>
> *Learned counsel for the Applicant/Liquidator seeks time to file written synopsis with convenience chart mentioning the facts, considering the reply, rejoinder, issues involved, and point of law therein, citation, if any, in support of their submissions not more than three pages within a week.*

13. In compliance with the order dated 10.09.2024 summary of synopsis has been filed on 15.10.2024 vide inward diary No. D-7843. The same is taken on record.

14. Further, in compliance with the last order dated 02.12.2024, Ld. Counsel for the Applicant has filed compilation of the judgments on the issues of transaction wise judgments on 07.01.2025 vide inward diary No. D-115. The same is also taken on record.

15. Ld. Counsel for the **Respondent No. 5** appeared on 25.06.2025 and stated that he was not aware of the ex-parte proceedings and requested adjournment to take appropriate steps in order to join the proceedings in accordance with law.

16. The **Respondent No.5** filed an Affidavit in Reply (Affidavit is dated 29.07.2025 but filed on DMS Portal on 01.04.2026). The same is reproduced as under: -

16.1 Respondent No. 5 submits that the Corporate Debtor has been under liquidation since **19.06.2020** and contends that the present Application, filed on 01.08.2021, is devoid of independent material and has been instituted merely as a formality. It is alleged that the Liquidator has failed to undertake any independent evaluation before initiating the present proceedings.

16.2 It is further submitted that the Forensic Auditor was appointed solely pursuant to the recommendation of the Stakeholders' Consultation Committee and that the Applicant has mechanically relied upon the Forensic Audit Report without independently forming an opinion or determining the existence of fraudulent or wrongful trading before filing the Application under Section 66 of the Code.

16.3 Respondent No. 5 further contends that the proceedings have been initiated at the instance of the financial creditors without the exercise of independent judgment by the Liquidator. It is also submitted that the Applicant has failed to specify whether the allegations fall under Section 66(1) relating to fraudulent trading or Section 66(2) concerning wrongful trading, both of which operate in distinct fields.

16.4 In support of the aforesaid contention, reliance is placed upon the decision of the NCLT, Chennai Bench in Ashish Rathi v. Rajiv Rai & Ors., wherein it was held that an application under Section 66 must contain specific pleadings identifying the impugned transactions and cogent material establishing fraudulent intent, and cannot rest solely upon the findings of a forensic audit.

16.5 It is further submitted that the present Application deserves to be rejected for want of an independent determination by the Liquidator and for having been filed at a belated stage solely on the basis of the Forensic Audit Report. Respondent No. 5 also points out that the Report itself contains express disclaimers acknowledging its limited scope, reliance upon available records and the absence of any conclusive findings.

16.6 Respondent No. 5 further relies upon the decision of the NCLT, Mumbai Bench in *Anuj Bajpai v. Surendra Loda*, to contend that a forensic audit report, in the absence of independent evidence establishing the ingredients of Section 66 of the Code, cannot by itself constitute the basis for fastening liability for fraudulent trading.

16.7 Respondent No. 5 submits that he was appointed as a Non-Executive Independent Director on 01.05.2014 and resigned on 11.06.2016. It is contended that he neither participated in the day-to-day management of the Corporate Debtor nor received any remuneration. He also states that he was never authorised to operate bank accounts or submit stock or debtor statements to the lenders.

16.8 It is further submitted that Respondent No. 5 had no responsibility for maintaining the books of account, preparing financial statements, or signing records relating to stock, debtors or creditors. Accordingly, any alleged disposal of stock or misrepresentation of financial information is stated to be wholly outside the scope of his duties and responsibilities.

16.9 Respondent No. 5 places reliance upon Section 149(12) of the Companies Act, 2013 and the decision of the Hon'ble Supreme Court in K.K. Ahuja v. V.K. Vora & Anr. to contend that a non-executive independent director can be held liable only where the impugned acts are attributable to his knowledge, consent, connivance or failure to act diligently, none of which is alleged against him.

16.10 Reliance is further placed upon the decision of the Hon'ble Supreme Court in Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. & Ors., wherein it was observed that liability under Section 66(1) can arise only against persons who were knowingly parties to carrying on the business of the Corporate Debtor with intent to defraud its creditors. It is submitted that no such allegation is made against Respondent No. 5.

16.11 Respondent No. 5 further submits that he had advanced a loan of Rs.1,42,57,808/- to the Corporate Debtor on 24.11.2014 towards its temporary working capital requirements, which remains unpaid. It is contended that, far from deriving any wrongful gain, he himself is a creditor who has suffered financial loss on account of the Corporate Debtor.

16.12 It is further contended that the Application fails to specify whether the allegations against Respondent No. 5 relate to fraudulent trading under Section 66(1) or wrongful trading under Section 66(2). According to the Respondent, the pleadings are based on assumptions and expressions such as "might", without any specific allegation of fraudulent intent or supporting material.

16.13 Respondent No. 5 submits that the essential ingredient of intent to defraud creditors, which is fundamental for invoking Section 66(1) of the Code, has neither been pleaded nor established. It is further contended that, in the absence of any allegation of dishonest intention or knowledge on his part, the proceedings against him are not maintainable.

16.14 Respondent No. 5 submits that the essential ingredient for invoking Section 66(1) of the Code is an intention to defraud the creditors of the Corporate Debtor. It is contended that neither the Application nor the accompanying documents contain any specific averment or material demonstrating such fraudulent intent on the part of Respondent No. 5. Reliance is also placed upon Section 447 of the Companies Act, 2013, which requires intent to deceive as a constituent element of fraud.

16.15 It is further submitted that judicial precedents, including Regen Powertech Pvt. Ltd. v. Wind Construction Pvt. Ltd. and Ms. Shirley Mathew v. Shri Mahesh & Ors., recognise that fraudulent trading under Section 66 requires a high degree of proof supported by cogent documentary evidence. According to the Respondent, the Applicant has failed to establish the requisite fraudulent intent or satisfy the statutory ingredients of Section 66.

16.16 Respondent No. 5 further contends that the alleged transactions pertain to the financial years 2015-2016, prior to the enactment and commencement of the Insolvency and Bankruptcy Code, 2016. It is, therefore, submitted that the requirement under Section 66(2) regarding knowledge of the prospect of commencement of CIRP cannot be attributed to the directors during the relevant period.

16.17 It is further submitted that Respondent No. 5 neither received any remuneration nor participated in the day-to-day management of the Corporate Debtor. The Respondent was neither entrusted with maintenance of books of account nor authorised to execute banking documents, debtor statements or stock statements. It is, therefore, contended that no material establishes his involvement in the alleged transactions.

16.18 Respondent No. 5 submits that the Application and the Forensic Audit Report rely only upon accounting entries without producing any independent documentary evidence linking him to fraudulent or wrongful trading. It is further contended that no document bearing his signature or authorisation has been placed on record. Accordingly, the proceedings are stated to be unsupported by any material evidence.

16.19 It is further contended that the write-off of receivables is merely an accounting exercise undertaken in accordance with accepted accounting principles and does not extinguish the legal right to recover the debt. Reliance is placed upon the decisions in Salim Akbarali Nanji v. Union of India and Venkatesan Sankaranarayanan v. Nitin Shambhukumar Kasliwal, wherein it was held that such write-offs, by themselves, do not constitute fraudulent conduct.

16.20 Lastly, Respondent No. 5 submits that any discrepancy in the computation of drawing power or reporting to lending banks is governed by banking norms and cannot, by itself, attract Section 66 of the Code. It is contended that no material demonstrates that Respondent No. 5 knowingly participated in any fraudulent business or intended to defraud the creditors. Accordingly, dismissal of the Application against Respondent No. 5 is prayed for.

17. Thereafter, the Liquidator has filed a rejoinder to the Reply of Respondent No.5. on 29.10.2025. The relevant portion of the same are reproduced as under: -

17.1 The Liquidator submits that Section 66(1) of the Insolvency and Bankruptcy Code, 2016 expressly empowers the Resolution Professional or Liquidator to invoke the provision if, during the CIRP or liquidation process, it is found that the business of the Corporate Debtor was carried on with intent to defraud its creditors. Accordingly, the objection regarding the Liquidator's locus standi is denied.

17.2 It is further submitted that the above position is reinforced by IBBI Notification No. IBBI/2021-22/GN/REG079 dated 30.09.2021, whereby Regulation 15(2)(e) of the IBBI (Liquidation Process) Regulations, 2016 was amended to specifically include reporting of applications relating to avoidance transactions under Part II of the Code. The Liquidator, therefore, asserts his competence to maintain the present Application.

17.3 The Liquidator contends that the Forensic Audit Report dated 03.04.2021 and the Addendum Report dated 10.07.2021 disclosed transactions aggregating to Rs.92.98 Crores, which were prima facie fraudulent or wrongful. Since these findings emerged during liquidation, the present Application, filed on 01.08.2021, is stated to be within a reasonable period after discovery of the alleged fraud.

17.4 Replying to the allegation of absence of independent opinion, the Liquidator submits that he scrutinised the Forensic Audit Report together with the underlying records before initiating the present proceedings. It is further stated that certain transactions referred to in the audit report, including those concerning Volt Infra Services Pvt. Ltd. and Shrinath Traders, were consciously excluded after independent evaluation, demonstrating due application of mind.

17.5 The Liquidator disputes the contention that Respondent No. 5 is entitled to immunity under Section 149(12) of the Companies Act, 2013. It is submitted that such protection is unavailable where the director had knowledge of, consented to, or connived in the impugned transactions. Accordingly, the applicability of the statutory protection is denied.

17.6 It is further submitted that Respondent No. 5 served as an Additional Director from 01.05.2014 to 30.09.2015 and thereafter as a Director from 30.09.2015 to 11.06.2016. The Liquidator also alleges that Respondent No. 5 was a Whole-time Director of Archon Engicon Limited, a related party allegedly involved in the impugned transactions, and therefore disputes his claim of being merely an independent or non- executive director.

17.7 Lastly, the Liquidator reiterates that the preliminary objections and merits-based contentions raised by Respondent No. 5 are contrary to the documentary record and settled legal principles. It is asserted that, after independent examination of the Forensic Audit Report and Addendum, the Liquidator formed a reasoned opinion that transactions aggregating to **Rs.92.98 Crores** were prima facie fraudulent or wrongful and warranted action under **Section 66** of the Code.

18. Further, Written Submission on behalf of the Respondent No. 5/Sunil Mishra has been filed on 06.01.2026, vide inward diary No. D-8793. The relevant portion of the same are reproduced as under: -

18.1 Respondent No. 5 submits that the powers of the Liquidator are governed by Section 35 of the Insolvency and Bankruptcy Code, 2016, which, according to him, authorises investigation only into avoidance transactions. It is, therefore, contended that the Liquidator lacks the statutory authority to maintain proceedings under Section 66 of the Code.

18.2 It is further submitted that, on the liquidation commencement date (19.06.2020) and on the date of filing of the present Application (01.08.2021), Regulation 15(2)(e) of the IBBI (Liquidation Process) Regulations referred only to applications under Chapter III of Part II of the Code. Since Section 66 falls under Chapter VI, the present Application is stated to be not maintainable.

18.3 Respondent No. 5 contends that the present Application has been filed mechanically and after considerable delay without any independent opinion being formed by the Liquidator. It is alleged that the appointment of the Forensic Auditor and the filing of the Application were undertaken solely at the instance of the financial creditors.

18.4 It is further submitted that the Liquidator merely adopted the findings of the Forensic Audit Report and placed the same before the Stakeholders' Consultation Committee, which advised filing of the present proceedings. According to the Respondent, the Liquidator failed to independently determine whether the allegations attracted Section 66(1) or Section 66(2) of the Code.

18.5 Respondent No. 5 places reliance upon the decision of the NCLT, Chennai Bench in Ashish Rathi v. Rajiv Rai & Ors. to contend that proceedings under Section 66 require specific pleadings identifying the impugned transactions and the statutory provision applicable thereto. It is submitted that the present Application fails to satisfy these requirements.

18.6 It is further contended that the present Application deserves rejection for want of an independent determination by the Liquidator and for having been instituted at the instance of the financial creditors after commencement of liquidation. According to the Respondent, such proceedings do not satisfy the statutory scheme contemplated under the Code.

18.7 Respondent No. 5, therefore, reiterates that the Liquidator lacked the requisite statutory authority and failed to exercise an independent application of mind before filing the present Application. It is accordingly submitted that the proceedings are not maintainable and are liable to be dismissed.

18.8 Respondent No. 5 submits that the Forensic Audit Report and its Addendum constitute the sole basis of the present proceedings. It is contended that both reports contain express disclaimers regarding their scope, reliance on sample verification and inherent limitations. According to the Respondent, the Liquidator failed to exercise the independent judgment contemplated therein.

18.9 It is further submitted that the statutory requirement of proving an intention to defraud creditors under Section 66(1) has not been satisfied. The Respondent contends that the allegations are founded upon assumptions and probabilities rather than cogent evidence establishing fraudulent intent. Reliance is placed upon Section 447 of the Companies Act, 2013 and the judicial precedents cited.

18.10 Respondent No. 5 further submits that no material has been produced to establish that he knowingly participated in the alleged transactions or failed to exercise due diligence. According to the Respondent, he neither managed the affairs of the Corporate Debtor nor maintained its books of account or banking records. The essential ingredients of Section 66 are, therefore, stated to be absent.

18.11 It is further contended that Respondent No. 5 functioned only as a non-executive/professional director and is entitled to the protection available under Section 149(12) of the Companies Act, 2013. It is submitted that no evidence has been produced to establish his specific knowledge, consent or connivance in the alleged transactions. The contrary assertion made by the Liquidator is accordingly denied.

18.12 Respondent No. 5 also submits that he had advanced Rs.1,42,57,808/- to the Corporate Debtor, which remains unpaid. According to the Respondent, his status as a financial contributor is inconsistent with the allegation that he intended to defraud the creditors. This circumstance is relied upon to negate any inference of fraudulent intent.

18.13 Without prejudice to the above, Respondent No. 5 contends that the allegations relating to disposal of stock, computation of drawing power, routing of receipts, related party transactions and debt write-offs disclose, at the highest, accounting or regulatory irregularities. It is submitted that such acts do not, by themselves, constitute fraudulent or wrongful trading under Section 66.

18.14 It is further submitted that no documentary evidence connects Respondent No. 5 with preparation of financial statements, bank submissions, debtor statements or the alleged diversion of funds. The Respondent asserts that the Application contains no material establishing his active participation or knowledge of the impugned transactions. Accordingly, personal liability is specifically denied.

18.15 In conclusion, Respondent No. 5 contends that the present Application rests upon incomplete financial data and an audit report containing significant limitations. It is submitted that the statutory ingredients of **Section 66** have not been established against him and that, in view of the legal and factual objections raised, the Application deserves to be dismissed insofar as it concerns Respondent No. 5.

19. The Applicant has filed a Revised Synopsis / Written Arguments on 09.01.2026 vide inward diary No.D-186. The relevant portion of the same are reproduced as under: -

19.1 The Applicant submits that the objection regarding the Liquidator's locus is misconceived. It is contended that Section 66 expressly applies during both the Corporate Insolvency Resolution Process and the liquidation process. Consequently, the Liquidator is stated to be competent to institute the present Application.

19.2 It is further submitted that the amendment to Regulation 15(2)(e) of the IBBI (Liquidation Process) Regulations, 2016, notified on 30.09.2021, reinforces the Liquidator's authority to pursue applications under Part II of the Code. The Applicant contends that the statutory framework recognises such proceedings.

19.3 The Applicant denies any delay in initiating the present proceedings. It is submitted that the forensic audit concluded only during April-July 2021, whereafter the present Application was filed promptly. The Applicant also asserts that an independent opinion was formed before initiating the proceedings.

19.4 It is further submitted that the transactions concerning Volt Infra Services Pvt. Ltd. and Shrinath Traders, though referred to in the Forensic Audit Report, were consciously excluded after independent scrutiny. According to the Applicant, only transactions aggregating to Rs.92.98 Crores were found prima facie fraudulent and included in the present Application.

19.5 The Applicant contends that the Forensic Audit discloses unexplained depletion of stock immediately preceding classification of the Corporate Debtor's account as NPA. It is submitted that stock valued at about Rs.30.48 Crores remained either unaccounted for or unverifiable, without corresponding receipts in the banking channels. Such conduct is alleged to constitute fraudulent trading under Section 66.

19.6 It is further alleged that the Corporate Debtor deliberately misreported stock and book debts by suppressing customer advances, falsifying debtor ageing and understating overdue receivables, thereby inflating the drawing power available under the cash credit facility. The Applicant submits that such acts amounted to misrepresentation before the lending bank.

19.7 The Applicant further alleges diversion of funds to Archon Engicon Limited, a related party, through inclusion of ineligible book debts for computation of drawing power and transfer of funds resulting in a net diversion of approximately Rs.15.10 Crores. These transactions are alleged to evidence fraudulent intent and conflict of interest.

19.8 It is further submitted that the Forensic Audit identified substantial receivables from several entities which were either reduced or written off without recovery, legal proceedings or satisfactory explanation. According to the Applicant, such unexplained disappearance of receivables forms part of a systematic pattern of fraudulent transactions.

19.9 The Applicant contends that the cumulative effect of the aforesaid transactions demonstrates deliberate diversion of funds, falsification of records and depletion of the assets of the Corporate Debtor. It is submitted that the conduct attracts both Sections 66(1) and 66(2) of the Insolvency and Bankruptcy Code, 2016.

19.10 The Applicant disputes Respondent No. 5's claim of being merely an independent or non-executive director. It is submitted that the statutory records establish his appointment as an Executive/Promoter Director with effect from 30.09.2015, during the period when the Corporate Debtor's financial position rapidly deteriorated.

19.11 It is further submitted that Respondent No. 5, as an Executive Director, was involved in the management of the Corporate Debtor, including supervision of financial affairs, submission of stock and book debt statements and oversight of related-party transactions. Consequently, the protection under Section 149(12) of the Companies Act, 2013 is stated to be unavailable.

19.12 The Applicant further alleges that Respondent No. 5 simultaneously held managerial positions in Archon Engicon Limited, which allegedly benefited from the impugned transactions. According to the Applicant, the dual role establishes conflict of interest, participation and knowledge of the alleged fraudulent conduct.

19.13 It is submitted that fraudulent intent under Section 66 can be inferred from the surrounding circumstances and documentary evidence. The Applicant relies upon the alleged pattern of misreporting, diversion of funds, routing of receipts outside the designated account and unexplained write-offs to establish such intent.

19.14 The Applicant further submits that this Adjudicating Authority is empowered under Section 213 of the Companies Act, 2013 to direct investigation where circumstances disclose fraud. Reliance is placed upon judicial precedents recognising the exercise of such jurisdiction in appropriate cases.

19.15 Lastly, the Applicant relies upon various judicial precedents, including (i) Sunil Tangri v. Ashu Gupta; (ii) Ram Bhaj Jain v. Tarun Batra; (iii) Vijendra Kumar

Jain v. Nitin Ramchandra Jadhav; (iv) Prasant Chandra Rath v. Surya Kanta Satapathy; (v) Shri Baiju Trading & Investment Pvt. Ltd. v. Arihant Nenawati; (vi) Mr. Lagadapati Ramesh v. Ramanathan Bhuvaneshwari, in support of the maintainability of the Application and the reliefs sought.

20. Thereafter, the Respondent Nos. 2 to 4 have filed their reply on 24.02.2026 vide inward diary No. D-1711. The relevant portion of the same are reproduced as under: -

20.1 Respondent Nos. 2 to 4 submit that the Application does not disclose the essential ingredients of Section 66 of the Insolvency and Bankruptcy Code, 2016. According to them, the allegations merely concern continuation of business and banking facilities and do not establish any intent to defraud creditors or avoid commencement of CIRP.

20.2 In support of the aforesaid contention, reliance is placed upon the decision in Regen Powertech Pvt. Ltd. v. Wind Construction Pvt. Ltd. & Ors., wherein it was held that fraudulent trading requires a high degree of proof supported by cogent evidence of fraudulent intent. The Respondents contend that no such material has been produced.

20.3 It is further submitted that no show-cause notice or opportunity of hearing was afforded to the Respondents either during the forensic audit or before filing the present Application. According to the Respondents, neither the Forensic Audit Report nor its findings were communicated to them before initiation of these proceedings.

20.4 The Respondents further contend that the alleged transactions fall outside the period during which Respondent No. 2 served as Director of the Corporate Debtor. Accordingly, it is submitted that no liability under Section 66 can be attributed to him in respect of transactions preceding his appointment.

20.5 It is further submitted that the Forensic Audit Report itself records substantial limitations owing to the non-availability of audited financial statements, accounting records and bank documents. According to the Respondents, the audit findings cannot be treated as conclusive in the absence of complete financial information.

20.6 The Respondents deny the allegations contained in Paragraphs 4 to 9 of the Application and submit that the transactions were bona fide commercial transactions. It is contended that even if any irregularity is assumed, the same would not, by itself, constitute fraudulent trading under Section 66 of the Code.

20.7 It is further submitted that the decision to initiate the present proceedings was taken by the Stakeholders' Consultation Committee without seeking any explanation from the Respondents. According to them, the proceedings were commenced unilaterally and in violation of the principles of natural justice.

20.8 The Respondents contend that the allegations relating to stock shortages and stock statements are based on an incorrect comparison of figures pertaining to different dates. It is submitted that differences could arise on account of credit sales or receipts through other bank accounts which were not examined by the Liquidator.

20.9 It is further submitted that the Stock Audit Report itself records that nothing adverse was noticed during the relevant period. The Respondents contend that this finding is inconsistent with the allegation of fraudulent diversion or disposal of stock without consideration.

20.10 The Respondents deny the allegations concerning computation of drawing power, ageing of debtors and suppression of receivables. According to them, these matters relate to banking practices and, even if assumed to be irregular, do not establish fraudulent intent as required under Section 66.

20.11 It is further submitted that the allegations relating to ledger differences and transactions with Archon Engicon Limited are based upon unaudited and incomplete books of account. The Respondents contend that mere non-recovery of receivables or pending liquidation proceedings cannot, by themselves, establish fraudulent trading.

20.12 Lastly, the Respondents submit that the Application contains only general and omnibus allegations without attributing any specific role to each Respondent in the impugned transactions. It is, therefore, contended that the statutory requirements of Section 66 have not been satisfied and the Application deserves to be dismissed against them.

21. The **Respondent No. 2-4** has also filed their **Written Submission** on 10.04.2026 vide inward diary No. D-3160. The same is taken on record.

22. The Applicant has filed a summary of all fraudulent transactions, revised written arguments and transaction wise Index of Judgments on 04.05.2026. Respondent No.5 has filed revised written submission and a compilation of case laws on 05.05.2026.

23. We have heard the Ld. Counsel for the Applicant, Ld. Counsel for the Respondents R-2 to R-4 and R-5 and carefully perused the records.

24. This Application was filed the liquidator of Accord Industries Limited, the Corporate Debtor seeking declaration of identified transactions of Rs9298.57 lakhs as fraudulent transactions and direction to respective respondent beneficiaries to contribute to the assets of the Corporate Debtor. The Application initially had 14 respondents. On an application filed by the Liquidator, this Adjudicating Authority, vide order of 05.08.2024 allowed deletion of Respondent Nos. 7 to 14 being unrelated parties considering the decision of the Hon'ble Supreme Court in the case of ***Gluckrich Capital Pvt. Ltd Vs The State of West Bengal & Ors.***

25. Although Respondent Nos.7 to 14 were subsequently deleted from the array of parties, a brief reference to their pleadings has been retained only to the limited extent necessary for appreciating the background of the transactions under consideration.

26. The Liquidator has identified the following transactions as fraudulent in nature:

- Disposal of stock in cash or without any consideration: Rs 30.48 crores.
- Misreporting of Debtors and Creditors in Stock and Book Debt Statements submitted to Bank: Rs 6,27,59,714.
- Misreporting of balance of M/s GETCO
- Transactions with related parties; and
- Transactions with other parties.

27. Before, we analyse and decide on the prayers of the Applicant, we consider it appropriate to refer to the provisions of section 66 of the Code and the legal precedents on the issue.

28. Section 66 of the Insolvency and Bankruptcy Code, 2016 is reproduced hereunder: -

Sec. 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 the 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.

1[(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.*

29. It is pertinent to note that Section 66 of the Code empowers this Authority to pass appropriate orders where it is established that the business of the Corporate Debtor has been carried on with an intent to defraud creditors or for any fraudulent purpose, or where the directors knew or ought to have known that there was no reasonable prospect of avoiding insolvency and failed to exercise due diligence.

30. Section 66(1) of the IBC, 2016 imposes liability for fraudulent trading only when business is carried on with intent to defraud creditors or for any fraudulent purpose. The Hon'ble NCLAT in ***Renuka Devi Rangaswamy IRP v.***

Mr. Madhusudan Khemka, (2023) ibclaw.in 384 NCLAT (Chennai Bench) has held that mere irregularities or poor accounting do not meet this high threshold of proven fraudulent intent. Similarly, in ***Regen Powetech Pvt. Ltd. (Rep. RP Ebenezar Inbaraj) v. Wind Construction Ltd.,*** (2022) ibclaw.in 793 NCLAT decided on 23.09.2022 (Chennai Bench), isolated discrepancies were not treated as fraudulent trading absent clear evidence of deceitful motive.

31. For wrongful trading under Section 66(2), liability arises if directors knew or ought to have known that insolvency was inevitable and failed to minimise potential loss to creditors. The Hon'ble NCLAT in ***Nalinesh Kumar Paurush and Ors. v. Arvind Mittal (RP) and Anr.,*** (2025) ibclaw.in 808 NCLAT decided on 25.09.2025 (New Delhi Bench) clarified that audit observations alone, without establishing knowledge of inevitability of insolvency and deliberate inaction, cannot sustain a finding under Section 66.

32. Now we proceed to decide the nature and effect of, if any, of the transactions identified in the Application as fraudulent by the Liquidator.

Disposal of Stock in cash or without any consideration

33. It has been stated in the Application that value of stock as per stock and book statement dated 31.10.2015 was of Rs 34,26,95,392. However, on physical verification of the stock on 05.01.2016, it was found of Rs 3.79 crores. It was claimed that a stock of value of Rs 8.14 crores was recorded to be held with third party location that was not allowed to be verified. There is no receipt corresponding to the sale of stock in the bank accounts of the CD. It has been claimed that the shortage of stock of (34.26 crores -3.79 crores) amounting to Rs 30.48 crores is not explained and it might have been sold in cash or disposed without accounting the transaction in the regular books of account and has been considered as a fraudulent transaction.

34. The Respondent submits the lack foundation of accounting concepts as comparison of the stock at two different dates cannot be made. The Respondent No.5 has submitted that he was neither in control of books of accounts nor signatory to audit reports nor submission made to the banks.

35. The Respondent Nos. 2 to 4 have submitted that the allegation with respect to difference in stock is made and termed as cash transactions. The stock could be sold on credit to various customers and others did make payment of the same in different banks which aspect has not been verified by the auditor or the applicant.

36. It is a fact that the value of stock as per stock and book statement dated 31.10.2015 was of Rs 34,26,95,392. However, on physical verification of the stock on 05.01.2016, it was found of Rs 3.79 crores only resulting into short fall of stock of Rs 30.48 crores. The physical stock was taken by stock auditor appointed by the credit monitoring department of the Indian Overseas Bank. The physical stock was taken after 65 days of the book stock, and it was found short. The sales, if any, has not been recorded in the regular books of account and no credit entries appear in the bank statement indicating that there was no accounted sale of goods. It is a clear case of fraudulently selling the stock for which consideration is not recorded in the books of account.

37. The Forensic Audit Report is available on pages 43 to 124 of the Application. The Corporate Debtor had availed various loan facilities of Rs 68,39,77,909. The issue with relevant facts is discussed on pages 21 to 23 of the Transaction Audit Report.

38. In absence of any satisfactory reply (with evidence), we are inclined to agree with the allegations of the Liquidator based on the transaction audit report supported by the stock audit (physical verification) that the disappearance of the stock has not been explained. Non recording of the sale either in cash or removal of the same without recording in the accounts deprived the company of its asset/funds and it is a clear case of carrying on the business of the corporate debtor with an intent to defraud the creditors. Instead of paying to creditors by making accounted sales, the goods of the CD had been sold or shifted to unknown locations. The intent was to deprive the company and its creditors of its legitimate goods or funds associated with the sale of goods.

The transaction is covered by provisions of section 66(1) of the Code and we hold that it is fraudulent transaction.

Misreporting of Debtors and Creditors in Stock and Book Debt Statements submitted to Bank

39. The above given is second category of transactions alleged to be of fraudulent nature by the Liquidator. It has been claimed that the CD has not deducted the advance taken from customers amounting to Rs 301.76 lakhs from the value of stock in the book debt statement submitted to the bank for claiming higher drawing power limit. Further, the CD misreported debtors in book debt statement to increase drawing power limit. There exists a misreporting of book debt amounting to Rs 1417.36 lakhs shown to be outstanding for 120-150 days in both book debt statement dated 25.03.2015 and 30.06.2015. Consequently, the CD has claimed higher drawing power limit as the aforesaid amount was not shown under the heading outstanding for above 150 days. Further, there is misreporting of sundry debtors in book debt statement. There is a misreporting of debtors as there exists a difference of approximately Rs

6,27,59,714 between the Balance as per Book Debt statement dated 30.10.2015 and Balance as per book debt statement dated 30.06.2015. Additionally, there is misreporting of balance of M/s G.E.T.C.O (kheralu) in book debt statement submitted to the Bank. It has also been alleged that CD received total amount of Rs 296.95 lakhs during February and March 2015 but the same was not reported through CC A/C with IOB and such amount was received in ICICI Bank which was against the terms of sanction of loan by the Bank.

40. Respondent No.5 has submitted that at the best the allegations constitute violation of the RBI norms or sanction terms, but not a fraud under IBC.

41. Respondent Nos. 2 to 4 have submitted that calculation of drawing power is correctly done by a professional chartered accountant and submitted before the bank and issue raised is merely a technical issue.

42. We have considered the issue and considering the facts reported in the transaction audit report and the Application, we are of the view that misreporting of debts or aging thereof, or receiving the money in other bank accounts might be violation of the terms of the loan and a fraud on the bank for seeking higher drawing power. It could have been an issue for consideration of the loan sanctioning banks but does not satisfy the requirements of section 66 as the misstatements does not result into deprivation of the assets including money for the Corporate Debtor. The actions do not cause a loss to the creditors in general though a fraud might have been played on the bankers who sanctioned the higher amount of the loans based on the misreporting by the Corporate Debtor. Therefore, this Adjudicating Authority is of the view that these misreporting is not a fraudulent or wrongful trading within the scope of section 66 of the Code.

Transactions with Related Parties

43. Third category of transactions identified by the Transaction Auditor and considered fraudulent by the Applicant are transactions with related parties. It has been alleged that the terms of sanction of loan require that book debt should not include debt belonging to sister concerns. The CD calculated drawing power on total book debt of Rs 1934.07 lakhs as on 30.10.2015 and this debt included a debt of Rs 1267.12 lakhs of M/s Archon Engicon, a related party. Further, the transaction audit report and the Application noted that Rs 15.10 crores has been diverted to the sister concerns.

44. Respondent No. 5 submitted that including related party in drawing power calculation could be a breach of loan sanction terms and could be classifiable as a regulatory violation but not a fraud under IBC. Further, no bank statement placed to record evidence of fund diversion.

45. The Respondents Nos. 2 to 4 submitted that issue concerning drawing power calculation is merely a technical issue.

46. We have considered facts of the case including analysis in the transaction audit report and for the reasons stated in paragraph 42 above we consider that the misreporting of debts for seeking more drawing power from the banks does not satisfy the ingredients of section 66. Further, regarding transactions with related parties by diversion of funds nothing is brought on record to prove that transactions were not supported by corresponding transactions for supply of goods/services/money. Simple transactions with a related party are not prohibited if backed by corresponding transfer of goods and services and transactions with a related party as such cannot be considered as a fraudulent transaction.

47. Due to above reasons, we consider that the allegations have not been supported by evidence to give a level of fraudulent transactions to the identified transactions.

Transactions with other parties

48. The transaction audit report has compared the receivable as per book debt and stock statement as at 25.03.2015 and as at 30.06.2015. The report has considered the amount received from parties during this period. The position has been examined in the cases of Ambica Alloys and Steel India Limited, Diamond Power Transformers Limited, Kalpataru Power Transmission Limited, Besto Tradelink Limited, Alstom T& D India Limited, Diamond Power Infrastructure

Limited, Prime Ispat Limited, and Prakash Rerollers Private Limited. It has been claimed that the Corporate Debtor was to receive (stated money) from these entities but on 30.06.2015 the balance is shown as ZERO.

49. The Respondent Nos. 2 to 4 have submitted that non receipt of money from various customers is a business loss and not a fraudulent transaction. Respondent No.5 has submitted that writing of debts is a usual accounting measure adopted in ordinary course of business to present a true and fair view and does not extinguish the Corporate Debtor's legal right to recovery. It does not satisfy the intent to defraud criteria under section 66 of the Code.

50. The Respondent No. R-10 (Besto Tradelink Limited) in its reply filed on 25.11.2021 [Though R-10 was deleted as a Respondent] has denied any dealings/transactions with either the corporate debtor or its directors.

51. As noted above, all these parties were deleted as respondents and none other than R-10 has filed reply. It appears that the liquidator has also not confirmed the transactions with these parties for which it had power to do so.

52. The Liquidator has claimed that money was receivable as on 31.03.2015 and entries of zero receivable were made on 30.06.2015. The entries on 30.06.2015 are within the accounting year and not at the end of the year say 31.03.2016. Therefore, it cannot be considered as write off of bad debts. As noted above, the Liquidator has not verified the transactions with these third parties, and they have also not filed replies as those were deleted from being respondents.

53. We are not inclined to agree with the Liquidator as he has failed to make out a proper case that money was collected and not accounted, or it should not have been written off. We are unable to understand the reasons for liquidator to consider these recording of transactions as fraudulent and whether the collections from the parties were made through mode other than accounts or directly benefitting the directors and money not going to the Corporate Debtor.

Therefore, the liquidator has failed to make a case for application of section 66 of the Code.

54. Therefore, we hold that the provisions of section 66 are applicable only in regard to the depletion in stock of Rs 30.48 crores.

55. Now the issue arises, whether the Respondents (erstwhile directors/promoters) can be held liable for the alleged fraudulent transactions and directed to contribute to the assets of the Corporate Debtor?

56. At the outset, it is pertinent to note that Section 66 of the Code empowers this Adjudicating Authority to pass orders against persons who were knowingly parties to the carrying on of the business of the Corporate Debtor with intent to defraud creditors or for any fraudulent purpose.

57. Further, in cases of wrongful trading, liability may be fastened where it is established that:

i. The directors knew or ought to have known that there was no reasonable prospect of avoiding insolvency; and

ii. They failed to exercise due diligence in minimizing potential losses to creditors.

58. Thus, the provision contemplates lifting of the corporate veil and imposing personal liability upon those responsible for fraudulent or wrongful conduct.

58. From the records, it is evident that the Respondents Nos. 1 to 5 were **erstwhile directors/promoters** of the Corporate Debtor during the relevant period when the impugned transactions were undertaken.

59. The material on record demonstrates that:

i. The Respondents were in control of the affairs and management of the Corporate Debtor;
ii. The stock of the CD got depleted by Rs 30.48 crores.
iii. What happened to the stock? No evidence has been produced to show that stock vanished without their knowledge or authority.

60. This Authority finds that the impugned transactions of depletion of stock by Rs 30.48 crores is a very serious matter and not replied properly by the Respondents. The CD was facing financial difficulties, and the loan was classified as NPA in December 2015. The stock vanished between April and June 2015.

61. Given the large quantity of stock of about Rs 30 crores not found during physical verification, it is implausible that the same could have been carried out without the **knowledge, consent, or active participation** of the Respondents.

62. The doctrine of "**constructive knowledge**" also applies, wherein directors are deemed to be aware of the financial affairs of the company, especially in matters involving substantial financial transactions.

63. Directors occupy a fiduciary position and are duty-bound to:

i. Act in good faith;
ii. Exercise due care and diligence;
iii. Protect the interests of the company and its creditors, especially during financial distress.

64. In the present case, the conduct of the Respondents demonstrates:

i. Failure to act in the best interest of the Corporate Debtor;
ii. Active depletion of the asset base of the company.

65. Such actions amount to a **clear breach of fiduciary duties** and cannot be justified as mere business decisions.

66. The Respondent No.5 has contended that he was not involved in day-to-day affairs.

67. However, this Authority is not persuaded by such submissions, for the following reasons:

i. No documentary evidence has been produced to substantiate disengagement from the affairs of the company;

ii. The Respondents continued to hold positions of authority during the relevant period;

iii. The transactions in question are of such magnitude that ignorance cannot be presumed.

68. It is a settled principle that **directors cannot take shelter under the plea of lack of knowledge**, particularly when they have failed to exercise due diligence expected of them.

69. The material facts that the stock was not available during physical verification by the auditor of the bank and this happened just prior to the account being declared NPA demonstrate that the transactions identified in this Application as fraudulent trading or wrongful trading took place after the account of the Corporate Debtor became irregular and was declared NPA and the directors knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a CIRP in respect of such a corporate debtor.

70. There exists a direct nexus between the conduct of the Respondents and the losses suffered by the Corporate Debtor. The depletion of assets cannot be attributed to market forces or business exigencies, but to deliberate acts of mismanagement and diversion of funds of the corporate debtor.

71. In light of the above findings, this Authority is satisfied that:

i. The Respondents (No. 1 to 5) were knowingly parties to the fraudulent conduct and they were knowing or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of the Corporate Debtor in this case and this finding by this Adjudicating Authority is reasonable because depletion of stock which remained unexplained defrauded creditors and the Respondents did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor

72. Therefore, conditions of section 66 (1) and 66(2) are satisfied. Accordingly, the Respondents, being Directors of the Corporate Debtor are liable to make contributions to the assets of the Corporate Debtor.

73. The objective of such direction is not punitive alone, but also **restorative**, to bring back the value that was wrongfully diverted.

74. In view of the foregoing analysis, this Adjudicating Authority holds that the Respondents, being erstwhile directors/promoters of the Corporate Debtor, were actively involved in and/or had knowledge of the fraudulent transactions carried out during the relevant period.

75. The Respondents have failed to discharge their fiduciary duties and have contributed to the depletion of the assets of the Corporate Debtor through transactions that were not in the ordinary course of business and were detrimental to the interests of the creditors.

76. Accordingly, this Authority is of the considered opinion that the Respondents are **liable** under Section 66 of the Insolvency and Bankruptcy Code, 2016 and they are jointly and severally directed to **contribute to the assets of the Corporate Debtor** to the extent of the losses of Rs 30.48 crores caused by their actions as discussed in this Application.

77. In view of the foregoing findings, this Adjudicating Authority is satisfied that the Respondents were knowingly parties to the fraudulent and wrongful trading carried out in the affairs of the Corporate Debtor and are liable under Section 66 of the Insolvency and Bankruptcy Code, 2016 in following terms: -

(i) The transactions carried out by the erstwhile management of the Corporate Debtor, as detailed in the present application concerning depletion of stock, is hereby declared as fraudulent trading and wrongful trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016.

(ii) The Respondent Nos. 1 to 5, being erstwhile directors/promoters of the Corporate Debtor and having been found to be knowingly parties to such transactions, are hereby held liable under Section 66 of the Code.

(iii) The Respondent Nos. 1 to 5 are jointly and severally directed to contribute an amount of **INR 30.48 Crores** to the assets of the Corporate Debtor together with **interest @ 12% per annum** from the date of filing of the present Application till realization, within a period of 30 days from the date of this order.

(iv) In the event of non-compliance, the Applicant shall be at liberty to initiate appropriate execution proceedings in accordance with law, including attachment of assets of the defaulting Respondents and may seek appropriate assistance from the concerned authorities, if required.

(v) The objection raised by the Respondents with regard to lack of mandate to pursue the Application, delay in filing the Petition, deficiencies in the forensic audit report, absence of evidence to demonstrate the knowledge of the Respondents are rejected as facts of the case clearly demonstrate that a fraud has been committed on the Corporate Debtor due to unaccounted depletion of stock valuing Rs 30.48 crores and the creditors have been defrauded to that extent. These objections have no legs to stand.

78. Before we part with the matter, we make some general observations about the collection from the debtors/receivables. The present application refers to transactions with about 8 unrelated parties and notes that receivable as per book debt and stock statement on a specific date was some large amount and the same is reduced to nil or some small amount. There has not been any recorded transaction of receipt of money during this period. This issue has been discussed on pages 32 to 36 of the Forensic Audit Report. In all the cases the auditor has noted that there might be possibility of adjustment of certain creditors receivable through JV, or the amount might have been written off as bad debt and it might be recovered in another bank account not available with us. What the Liquidator has done, he has treated all these reduction of receivables from the parties as fraudulent transactions. However, it is unclear whether the Liquidator communicated with these parties and tried to collect the money which is a part of the liquidation estate. What have been the real transactions and whether the money was recovered from these parties or these parties enjoyed the money payable by not paying because the Corporate Debtor went into liquidation. Powers and duties of Liquidator are given in section 35 of the Code. It requires the Liquidator to take in control all actionable claims of the Corporate Debtor, to take such measures to protect and preserve the assets and properties of the corporate debtor as considered necessary, to institute or defend any suit, prosecution or other legal proceedings, to carry on the business of the corporate debtor for its beneficial liquidation. Section 36 dealing with liquidation estate and it among other things include any asset over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor. Regulation 6 of the IBBI (Liquidation Process) Regulations, 2016 require the Liquidator to complete and bring up to date, the books of account of the corporate debtor which are incomplete on the liquidation commencement date. Regulation 7 allows him to appoint professional. While deciding similar application for adjudication under section 66, we notice that the Liquidator files application under section 66 but in most cases do not inquire into transaction with parties transactions with whom have been considered as fraudulent. On inquiry, a correct picture of receivable/payable/payments received and made might emerge. But is not being done. The Resolution Professional or the Liquidator may file Petition under section 9 or 7 if the amount is more than the threshold limit and not paid.

79. Accordingly, the **IA No. 543 (AHM) of 2021** in CP (IB) 143 of 2017 is **partly allowed** in the aforesaid terms. No order as to costs.

80. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)
VP

SHAMMI KHAN
MEMBER (JUDICIAL)