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

ITEM No. 307- IA/627(AHM)2023
ITEM No. 308- IA/1008(AHM)2023
In
CP(IB) 388 of 2018

IA/627(AHM)2023
Under Sec 66 r/w Sec 60(5) IBC 2016
IN THE MATTER OF:
Central Bank of India
........Applicant

V/s
Jagruti Patel & Ors
....Respondents

IA/1008(AHM)2023
Under Sec 43 r/w Sec 60(5) IBC 2016
IN THE MATTER OF:
Central Bank of India
........Applicant

V/s
Jagruti Patel & Ors
....Respondents

Order delivered on: 27/07/2026

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 order. The common 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. 627 (AHM) 2023
Along with
IA No. 1008 (AHM) 2023
In
CP (IB) No. 388 of 2018

(An application filed under Section 66, 43 r/w Section 66 with 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

CENTRAL BANK OF INDIA
Having address at:
2nd Floor, Mid Corporate Finance Branch,
Central Bank of India Building,
M.G. Road, Kanpith,
Surat - 395003

.... Applicant

VERSUS

1. **MS. JAGRUTI PATEL**
Promoter/Suspended Management
Of Cure life Care Private Limited
Residing at 26, Gurukrupa Society,
B/h. Kotak Mahindra Bank,
Ghod Dod Road, Surat 395007.

...Respondent No. 1

2. **MR. KARAN V PATEL**
Promoter/Suspended Management
Of Cure life Care Private Limited
Residing at 26, Gurukrupa Society, B/h.
Kotak Mahindra Bank,
Ghod Dod Road, Surat 395007.

...Respondent No. 2

3. **MR. JAYESH BUTTI**

Ex-director of Cure life Care Pvt Ltd
37 Pratiksha Row House,
New Honey Park Road,
Rander Road,
Surat 395009

.... Respondent No. 3

Order pronounced on: 27.07.2026

CORAM:

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

APPEARANCE:

For the Applicant : Mr. Vishal Raval, Adv.
For the Respondent : Mr. Masoom K Shah, Adv. for R -1 & R-2
: Mr. Dhiren Dave, Adv. for R-3

COMMON ORDER
(*Per*: Bench)

1. The present Application IA No. 627 of 2023 was instituted on 31.05.2023 vide inward dairy No. E 991 under Sections 66 along with IA No. 1008 of 2023 on 31.05.2023 vide inward dairy no. E 990 under Section 43 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), for avoidance of preferential, extortionate, undervalued or fraudulent transactions.

2. The Application was initially filed by the erstwhile Resolution Professional of the Corporate Debtor. Subsequently, pursuant to the order dated 25.02.2026 passed by Adjudicating Authority in IA No. 1495 of 2025, substitution of the Applicant in the present IA was allowed. Whereupon, the amended memo of IA was filed on 16.04.2026 vide inward dairy no. D 3307. Accordingly, the Central Bank of India, being the sole secured Financial Creditor of the Corporate Debtor, has been substituted in place of the erstwhile Resolution Professional as the Applicant in the present proceedings. The present proceedings for the Corporate Debtor seeking following reliefs: -

I.A. No. 627 (AHM) 2023:-

a. *Your Lordship may be pleased to allow the present application;*

b. *Your Lordship may declare that transactions mentioned in PARA 18 as fraudulent and reverse the effect of such transaction as per provision of IBC, 2016,*

c. *Your Lordship may pass an order giving appropriate directions to the suspended management of the corporate debtor.*

d. *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;*

I.A. No. 1008 (AHM) 2023:-

a. *Your Lordship may be pleased to allow the present application;*

b. *Your Lordship may declare that transactions mentioned in PARA 17 as preferential and reverse the effect of such transaction as per provision of IBC, 2016.*

c. *Your Lordship may pass an order giving appropriate directions to the suspended management of the corporate debtor.*

d. *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;*

3. We note that the facts pleaded in both Applications are substantially identical, however, prayers in one concern transactions under section 66 and in the other section 43.

4. The Applicant has placed the **facts** through the **I.A. No. 627 of 2023** in the following manner: -

i. The Applicant submits that the present Application has been preferred under Section 66 read with Section 60(5) of the Insolvency and Bankruptcy

Code, 2016 and Rule 11 of the NCLT Rules, 2016 against the suspended management of the Corporate Debtor, seeking appropriate directions in respect of fraudulent transactions identified during the CIRP.

ii. It is submitted that the Corporate Debtor was admitted into CIRP vide order dated 31.05.2019 passed in C.P. (IB) No. 388/07/NCLT/AHM/2018 on an application filed by the Central Bank of India under Section 7 of the Code. The Applicant was appointed as the Interim Resolution Professional, issued the public announcement on 07.06.2019, and was subsequently confirmed as the Resolution Professional in the 1st CoC meeting held on 05.07.2019. Pursuant to a unanimous resolution of the CoC, an application under Section 12A was filed and allowed on 11.07.2019 (subsequently corrected on 19.07.2019), resulting in withdrawal of the CIRP.

iii. The Applicant submits that the withdrawal order was challenged before the Hon'ble NCLAT by an alleged unsecured financial creditor, whereupon the Hon'ble NCLAT, vide order dated 24.06.2020, set aside the withdrawal order and remanded the matter for fresh consideration. Since no directions were issued regarding continuation of CIRP, the Applicant sought clarification by filing I.A. No. 572

of 2020, pursuant to which Adjudicating Authority directed the Applicant not to proceed with CIRP until adjudication of the remanded application. Thereafter, I.A. No. 399 of 2019 was dismissed on 11.01.2023 and, by consequential order dated 23. 01. 2023, the Applicant was directed to resume the CIRP.

iv. It is submitted that, thereafter, the Applicant convened the 2nd to 7th meetings of the Committee of Creditors between 09.02.2023 and 13.05.2023, wherein inter alia claims, constitution of CoC, appointment of valuers and transaction auditor, publication of Form-G, Information Memorandum, Expression of Interest, CIRP progress, avoidance transactions, and approval of expenses relating thereto were considered and approved. The Respondents participated in the proceedings and were called upon to extend cooperation.

v. The Applicant further submits that HSVJ & Co., Chartered Accountants, was appointed on 14.02.2023 to conduct a Transaction Audit for the period from 01.04.2015 to 31.05.2019. The Transaction Audit Report dated 09.05.2023 identified transactions attracting Section 66 of the Code, including:

a. Manipulation of books of accounts by understating current liabilities through delayed reversal of dishonoured cheques amounting to Rs. 1,46,34,951;

b. Transfer of a mortgaged vehicle valued at WDV Rs. 6,21,752/- to a director without the knowledge or consent of the secured creditor, coupled with adjustment of sale proceeds towards the personal loan liability of Respondent No. 3; and

c. Diversion of borrowed funds amounting to Rs. 1,60,65,980/- to a director for non-business purposes.

vi. It is submitted that the Applicant placed the findings of the draft Transaction Audit Report before the Respondents during the 6th CoC meeting and again vide email dated 02.05.2023, calling upon them to furnish their explanation. Despite sufficient opportunity, no response or clarification was received from the Respondents.

vii. The Applicant further submits that applications seeking extension of the CIRP period and directions on account of non-cooperation by the suspended management are already pending before Adjudicating Authority.

viii. The Applicant submits that the present Application has been filed in discharge of the statutory obligations cast upon the Resolution Professional under the Code and Regulation 39(2) of the CIRP Regulations, which mandates reporting of transactions falling under Sections 43, 45, 50 and 66 of the Code. It is further submitted that this Tribunal possesses jurisdiction under Sections 60(5) and 66 of the Code to adjudicate the present Application and issue appropriate directions. The Application has been filed bona fide and in good faith, and the Applicant craves leave to amend, alter or supplement the grounds, if required, during the course of proceedings.

5. The Applicant has placed the **facts** through the **I.A. No. 1008 of 2023** in the following manner: -

i. The Application refers to the events that took place till the appointment of transaction auditor and these are already narrated above and hence not repeated in this Order.

ii. The Applicant further submits that HSVJ & Co., Chartered Accountants, was appointed on 14.02.2023 to conduct a Transaction Audit for the review period from 31.05.2017 to 31.05.2019. The Transaction Audit Report dated 09.05.2023 identified preferential transactions under Section 43 of the Code, inter alia, transfer of a mortgaged car having WDV of Rs. 6,21,752/- to the ex-director, Mr. Jayesh Butti, during the relevant period despite subsisting dues of the secured creditor, wherein only Rs. 1,59,477.22/- was adjusted towards the vehicle loan while Rs. 3,53,976/- was appropriated towards the personal loan liability of Respondent No. 3. The audit further noted diversion of borrowed funds amounting to Rs. 1,60,65,980/- to a director for non-business purposes.

iii. It is submitted that the Applicant placed the findings of the Transaction Audit before the suspended management during the 6th CoC meeting and also sought their explanation vide email dated 02.05.2023. Despite sufficient opportunities, the Respondents failed to furnish any explanation or response. The CoC, in its 7th meeting, approved filing of the present avoidance application. The Applicant further submits that applications seeking extension of CIRP and directions for non-cooperation of the suspended management are also pending before Adjudicating Authority.

iv. The Applicant submits that the present Application has been filed in discharge of the statutory duties cast upon the Resolution Professional under the Code and Regulation 39(2) of the CIRP Regulations requiring reporting of avoidance transactions under Sections 43, 45, 50 and 66 of the Code. It is further submitted that Adjudicating Authority has jurisdiction under Sections 43 and 60(5) of the Code to adjudicate the present Application. The Application has been filed bona fide and in good faith, and the Applicant craves leave to amend, alter or supplement the grounds, if so required, during the course of the proceedings.

6. Upon issuance of notice, **Affidavit in Reply** on behalf of Respondent No. 1 and 2 dated 12.02.2024 vide inward dairy no. D 1189 in **IA No. 627 of 2023**. Wherein the following submissions were made: -

i. The Respondents submit that the present Application under Section 66 of the Insolvency and Bankruptcy Code, 2016 is misconceived, devoid of merits and liable to be dismissed. It is submitted that the affairs of the Corporate Debtor were primarily managed by Late Mr. Ishwarbhai Prabhubhai Patel, Chairman of the Corporate Debtor, along with Respondent No. 3 and other directors who were responsible for the day-to-day management and regulatory affairs. Respondent No. 1, being a housewife with limited educational qualifications, had joined the Corporate Debtor merely as a nominal investor and was never involved in its management. Similarly, Respondent No. 2 became associated with the Corporate Debtor only on 31.01.2015 as a young investor to support the family business and had no role in the day-to-day affairs or financial management.

ii. The Respondents further contend that the Applicant has already instituted a separate application under Section 43 of the Code on the same set of allegations and, therefore, filing the present application under Section 66 amounts to duplication of proceedings and is not maintainable.

iii. With regard to the allegation of manipulation of books of accounts by understating current liabilities, the Respondents submit that any delayed accounting treatment of dishonoured cheques was purely inadvertent, attributable to their inexperience and the failure of the professionals engaged by the Corporate Debtor to provide proper guidance. It is specifically denied that there was any fraudulent intent or deliberate manipulation of the books of accounts.

iv. In respect of the allegation relating to transfer of a vehicle to a related party, the Respondents submit that the vehicle was used by Respondent No. 3, who had resigned from the directorship around March 2016, and that the present Respondents were neither involved in nor responsible for the said transaction. It is contended that Respondent No. 3 is the appropriate person to explain the transaction.

v. As regards the allegation of diversion of borrowed funds amounting to Rs. 1,60,65,980/- for non-business purposes, the Respondents deny the same and submit that the amount pertains to allotment of share capital consequent upon the demise of Late Mr. Ishwarbhai Patel, whose shares were transferred to Respondent No. 1. It is further submitted that Respondent No. 1, in fact, infused approximately Rs. 46 lakh into the Corporate Debtor during FY 2016-17 and did not utilize any borrowed funds for personal or non-business purposes. The Respondents rely upon statutory filings and ledger accounts in support of the said contention.

vi. The Respondents further raise preliminary objections that the Application is defective for non-compliance with procedural requirements, including absence of proper dates and events, defective memo of parties, and non-conformity with the prescribed procedure under the NCLT Rules. It is further contended that the Application is vague, cryptic, does not disclose any cause of action, fails to establish the jurisdiction of this Hon'ble Tribunal, and has been filed in a cursory and perfunctory manner. The Respondents submit that the Applicant has failed to satisfy the essential ingredients of Section 66 of the Code, has not complied with the principles laid down by the Hon'ble Supreme Court and other binding precedents, and that the Application is barred by limitation.

vii. Accordingly, the Respondents pray that the present Application be dismissed with costs, while reserving liberty to file an additional affidavit and raise further grounds at the time of hearing, if necessary.

Reply in IA No. 1008 of 2023

i. With respect to the allegation of preferential transaction relating to transfer of a vehicle to a related party, the Respondents submit that the vehicle was used by Respondent No. 3, who had resigned from the directorship of the Corporate Debtor in or around March, 2016. It is contended that Respondent No. 1 was merely a nominal director and housewife, while Respondent No. 2 had joined the Company only to assist the family and neither of them was involved in the day-to-day affairs of the Corporate Debtor. It is further submitted that Respondent No. 3 alone would be in a position to explain the said transaction.

ii. Insofar as the allegation regarding transfer of borrowed funds for non-business purposes is concerned, the Respondents submit that the alleged transaction falls beyond the statutory look-back period prescribed under Section 43 of the Code and is therefore not liable to be examined as a preferential transaction. Without prejudice, it is submitted that the amount of Rs. 1,60,65,980/- allegedly transferred to Respondent No. 1 pertains to allotment and transfer of share capital following the demise of Late Mr. Ishwarbhai Patel and not diversion of borrowed funds. It is further submitted that Respondent No. 1 had infused approximately Rs. 46 lakh into the Corporate Debtor during FY 2016-17 and no amount was utilized by her for any non-business purpose. Reliance is placed upon Form PAS-3 and the ledger accounts maintained by the Corporate Debtor.

iii. The Respondents further raise preliminary objections that the Application is procedurally defective, as it does not contain proper dates and events, fails to implead parties correctly, and is not in the prescribed format under the NCLT Rules. It is further contended that the Application is vague, cryptic, does not disclose any cause of action, fails to establish the jurisdiction of Adjudicating Authority, and has been filed in a cursory and perfunctory manner. The Applicant is put to strict proof of all allegations.

iv. The Respondents further submit that the essential ingredients of Section 43 of the Code have not been established, the principles laid down by the Hon'ble Supreme Court and other binding precedents have not been complied with, and the present Application is barred by limitation. The Respondents reserve their right to file a supplementary affidavit and raise additional grounds at the time of hearing, if required.

v. Accordingly, the Respondents pray that the present Application be dismissed with exemplary costs.

7. Further, the **Reply** on behalf of Respondent No. 3 was received dated 28.11.2023 vide inward dairy no. D 4529 in **IA 627 of 2023**. Wherein following submission were made in:-

i. Respondent No. 3 submits that he resigned as Director of the Corporate Debtor with effect from 02.03.2016, much prior to the commencement of the CIRP on 31.05.2019, and has placed on record Forms DIR-11 and DIR-12 in support thereof. It is contended that, having ceased to be a director more than three years prior to initiation of CIRP, his impleadment in the present application is unwarranted and has been made only to harass and exert undue pressure upon him.

ii. With respect to the allegation regarding transfer of a mortgaged vehicle, Respondent No. 3 submits that the findings of the Transaction Audit Report are incomplete, erroneous and rendered without verification of the relevant records. It is submitted that the vehicle was purchased in the year 2013 in his personal name with financial assistance obtained from HDFC Bank. Although the vehicle was utilized for the business of the Corporate Debtor and the initial loan instalments were paid by the Company, the Company discontinued payment of instalments from 07.10.2016 while continuing to retain possession of the vehicle.

iii. It is further submitted that Respondent No. 3 subsequently regained possession of the vehicle with the assistance of the local police, sold the same to a third party and utilised the sale proceeds to discharge the outstanding vehicle loan in full. The said transaction, according to Respondent No. 3, was duly acknowledged by Respondent No. 2 through a confirmation dated 28.06.2017, copies whereof have been placed on record.

iv. Respondent No. 3 further submits that, having resigned from the directorship on 02.03.2016, he neither had access to the books of accounts nor exercised any control over the affairs of the Corporate Debtor thereafter. Consequently, any accounting entries made after his resignation are beyond his knowledge and responsibility. It is therefore prayed that his name be deleted from the array of parties, he be exempted from further participation in the proceedings, and the present application, insofar as it concerns him, be dismissed. It is further submitted that the remaining allegations in the application do not pertain to him, as he is neither part of the suspended management nor concerned with the subsequent affairs of the Corporate Debtor.

8. That the **Affidavit in Rejoinder to the Reply of Respondent No. 1, 2, 3** in **IA No. 627 of 2023** on behalf of the Petitioner was received dated 21.06.2024 vide inward No. 4873. Wherein following submission were made in: -

i. The Rejoinder states that no comments are required to the averments contained in Paragraphs 1 to 3 of the Reply filed by Respondent Nos. 1 and 2. It is contended that the Respondents have, in effect, admitted the understatement of current liabilities resulting in manipulation and window dressing of the financial statements. It is further alleged that Respondent Nos. 2 and 3 sold the Company's car and retained the sale proceeds without accounting for the same in the books of the Corporate Debtor. The Rejoinder also asserts that the audited financial statements and the Transaction Audit Report establish that the unsecured loan of Rs. 1,60,65,980/- advanced by the Respondent stood repaid or was otherwise transferred.

ii. In response to the Reply of Respondent No. 3, it is stated that Paragraphs 1 and 2 require no specific reply. It is further submitted that Respondent No. 3 has not denied that no charge over the vehicle was created with the Registrar of Companies on 03.07.2015 and has admitted that the vehicle was used for the Company's business and that the loan instalments were paid by the Company. Accordingly, it is contended that the benefit arising from the sale of the vehicle ought to have accrued to the Company. The Rejoinder highlights a discrepancy between the written down value of the vehicle and the outstanding loan amount, alleging manipulation of accounts, undervaluation and fraudulent transaction, while further asserting that Respondent No. 3 has suppressed the actual sale consideration. The allegations contained in Paragraphs 4 and 5 of the Reply of Respondent No. 3 are denied, and it is prayed that the reliefs sought therein be rejected.

IA No. 1008 of 2023

i. The Respondents, being the suspended management of the Corporate Debtor, oppose the Application filed under Section 43 of the Insolvency and Bankruptcy Code, 2016, alleging preferential transactions. It is submitted that the factual averments relating to the CIRP are not disputed at this stage as they are not germane to the present proceedings.

ii. On merits, the Respondents contend that the allegation regarding the sale of a motor vehicle pertains to a vehicle used by Respondent No. 3, who had resigned as a Director in March 2016, and therefore Respondent No. 3 is the appropriate person to answer the said allegations. It is further submitted that Respondent Nos. 1 and 2 had no active role in the management of the Corporate Debtor. In respect of the allegation regarding diversion of borrowed funds amounting to Rs. 1,60,65,980/-, the Respondents submit that the amount represents share capital allotted to Respondent No. 1 upon transmission of the shareholding of the deceased promoter, Late Shri Ishwarbhai Patel, and not utilisation of funds for non-business purposes. It is further asserted that during the Financial Year 2016–17, Respondent No. 1 infused approximately Rs. 46 lakhs into the Corporate Debtor, as reflected in the ledger accounts, thereby refuting the allegation of siphoning or misuse of funds.

iii. The Respondents further raise preliminary objections that the Application is defective for non-compliance with mandatory procedural requirements, including absence of a statement of dates and events and a proper memo of parties, and therefore deserves dismissal. It is also contended that the Application is vague, devoid of material particulars, does not disclose a valid cause of action, has not been filed in the prescribed format under the NCLT Rules, and fails to satisfy the essential ingredients of Section 43 of the Code or the principles laid down by the Hon'ble Supreme Court. The Respondents further plead that the Application is barred by limitation and reserve their right to file a supplementary affidavit, while praying for dismissal of the Application with costs.

9. That the **Synopsis** filed on behalf of the Applicant and the Respondent was taken on record vide inward diary No. D-7480 dated 01.10.2024 and inward diary No. D-7796 dated 15.10.2024.

10. That the **Written Submission** on behalf of the Applicant in **IA No. 627 of 2023** was received dated 04.05.2026 vide inward No. D 3821. Wherein following submission were made in:-

i. *Prasant Chandra Rath v. Surya Kanta Satapathy* (RP), [(2022) ibclaw.in 789 NCLAT]

ii. *Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. & Ors.*, [(2023) ibclaw.in 09 HC]

iii. *Jaypee Infratech Ltd. v. Axis Bank Ltd.*, [(2020) ibclaw.in 06 SC]

iv. *Mr. Vijendra Kumar Jain Professional vs. Mr. Nitin Ramchandra Jadhav & Ors*. In the matter of State Bank of India vs. Gajanan Solvex Limited in I.A. 677 OF 2023 in CP (IB) NO.1023 OF 2021.

<u>IA No. 1008 of 2023</u>

i. *Prasant Chandra Rath v. Surya Kanta Satapathy* (RP), [(2022) ibclaw.in 789 NCLAT]

ii. *Tata Steel BSL Ltd. v. Venus Recruiter Pvt. Ltd. & Ors.*, [(2023) ibclaw.in 09 HC]

iii. *Jaypee Infratech Ltd. v. Axis Bank Ltd.*, [(2020) ibclaw.in 06 SC]

iv. *NCLAT in GVR Consulting Services Limited vs. Pooja Bahry* [2023 SCC Online NCLAT 220]

11. That the **Written Statement** filed on behalf of Respondent Nos. 1 and 2 in I.A. No. 627 of 2023 and I.A. No. 1008 of 2023 was received on 15.06.2026 vide inward diary No. D-4818 and inward diary No. D-4817, respectively.

12. Chronology of dates and Events: -

Date	Event
31.05.2019	Corporate Insolvency Resolution Process ("CIRP") against Cure Life Care Private Limited was admitted in C.P. (IB) No. 388 of 2018 under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the Resolution Professional was appointed.
07.06.2019	Public Announcement under Section 15 of the Code was issued by the Resolution Professional.
05.07.2019	First meeting of the Committee of Creditors ("CoC") was held wherein the Interim Resolution Professional was confirmed as the Resolution Professional.

Date	Event
11.07.2019	CIRP was permitted to be withdrawn under Section 12A of the Code.
19.07.2019	Correction order passed in respect of the withdrawal order dated 11.07.2019.
24.06.2020	The Hon'ble NCLAT set aside the withdrawal order and remanded the matter for fresh consideration.
11.01.2023	I.A. No. 399 of 2019 was dismissed by Adjudicating Authority.
23.01.2023	Consequential order passed directing the Resolution Professional to resume the CIRP.
09.02.2023 to 13.05.2023	The Resolution Professional convened the 2nd to 7th meetings of the Committee of Creditors wherein various CIRP-related matters including appointment of valuers, transaction auditor, publication of Form-G, Information Memorandum, Expression of Interest, CIRP progress and avoidance transactions were considered.
14.02.2023	M/s HSVJ & Co., Chartered Accountants, was appointed as the Transaction Auditor.
02.05.2023	The findings of the Transaction Audit were forwarded to the suspended management seeking their explanation.
09.05.2023	Transaction Audit Report identifying alleged fraudulent and preferential transactions was submitted by the Transaction Auditor.

13. We have heard Ld. Counsel for the Applicant, Ld. Counsel for the Respondents, carefully examined the Interlocutory Application, the reply filed by Respondents, the rejoinder of the Respondents and written statements. The following Issues are framed for determination: -

(A) **Issue No. (1):** Whether the impugned transactions relating to (i) manipulation of books of account by understating current liabilities, (ii) transfer of a mortgaged vehicle, and (iii) diversion of borrowed funds for non-business purposes constitute fraudulent and/or wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016, warranting appropriate directions against the Respondents?

(B) **Issue No. (2):** Whether the Applicant has established that the transactions (asset/car transferred to related party) impugned in I.A. No. 1008 of 2023 constitute preferential transactions under Section 43 of the Insolvency and Bankruptcy Code, 2016, liable to be avoided or reversed?

(C) **Issue No. (3):** Whether the Respondents have established that the impugned transactions were bona fide transactions undertaken in the ordinary course of business or otherwise do not attract Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016?

(D) **Issue No. (4):** 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?

(E) **Issue No. (5):** Whether the findings contained in the Transaction Audit Report, together with the material placed on record, constitute sufficient evidence to establish fraudulent trading under Section 66 and preferential transaction under Section 43?

(F) **Issue No. (6):** Whether the present Applications under Sections 43, 66 and 60(5) of the Insolvency and Bankruptcy Code, 2016 are maintainable, including after substitution of the Resolution

Professional by the Applicant, and whether the preliminary objections regarding limitation, duplication of proceedings and procedural defects raised by the Respondents are sustainable?

OBSERVATION OF THE TRIBUNAL: -

14. Before we analyse and decide the issue, it is considered appropriate to narrate some facts as available on record.

- The Corporate Debtor was incorporated on 09.08.2011.
- Central Bank of India had disbursed CC facility of Rs 2.50 crores, Term Loan 1 of Rs 15.56 crores, and Term Loan 2 of Rs 1.35 crores on 03.07.2015, 22.10.2012, and 24.09.2015 respectively.
- Date of default was 31.03.2016. The Bank had issued notices under section 13(2) and 13(13) of SARFAESI Act, 2002 on 08.07.2016. This shows the company was in financial distress since then.
- CIRP commenced on 31.05.2019.
- The Transaction Audit Report was submitted to the RP on 09.05.2023.
- The audit covered period of 31.05.2017 to 31.05.2019 though the default occurred on 31.03.2016.

15. **Findings on Issue No. (1):** Whether the impugned transactions relating to (i) manipulation of books of account by understating current liabilities, (ii) transfer of a mortgaged vehicle, and (iii) diversion of borrowed funds for non-business purposes constitute fraudulent and/or wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016, warranting appropriate directions against the Respondents?

15.1 Section 66 of the Insolvency and Bankruptcy Code, 2016 reads as follows::-

Section 66: Fraudulent 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 2[or the liquidator,] 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 2[or by a liquidator], 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.
3[(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.

15.2 The Applicant has alleged that the affairs of the Corporate Debtor were carried on by the Respondents with an intent to defraud its creditors and for fraudulent purposes. The allegations primarily relate to

a. deliberate manipulation of the books of account by understating current liabilities,

b. transfer of a mortgaged vehicle without safeguarding the interest of the secured creditor, and

c. diversion of borrowed funds for non-business purposes.

15.3 The Applicant has sought appropriate directions against the Respondents on the basis of the findings recorded in the Transaction Audit Report and the documentary material collected during the Corporate Insolvency Resolution Process.

15.4 Before examining the rival submissions, it is necessary to notice the scope of Section 66 of the Code. The provision is intended to prevent abuse of the corporate form by those in control of the affairs of the Corporate Debtor. The jurisdiction under Section 66 is attracted where the business of the

Corporate Debtor has been carried on with an intent to defraud creditors or for any fraudulent purpose. While the burden of establishing such conduct initially rests upon the Applicant, the standard of proof is to be gathered from the cumulative effect of the surrounding circumstances and the documentary evidence on record. Fraud, by its very nature, is seldom capable of direct proof and is ordinarily established through a chain of circumstances which, when viewed together, unmistakably disclose a deliberate design to prejudice the creditors of the Corporate Debtor.

15.5 The first allegation pertains to deliberate understatement of current liabilities by delaying reversal entries relating to dishonored cheques aggregating to approximately Rs. 1,46,34,951/-. The transaction audit report notes that during financial year 2016-2017 cheques of Rs 1,46,34,951 were issued to the creditors which bounced during the same period. However, the effect of re-crediting was given in creditor's ledger in FY 2017-2018, and this might be done to manipulate the accounts by understating the current liability of the company. This Adjudicating Authority is not persuaded to accept that the manipulation of the accounts by the non-credit of accounts can be considered a fraudulent transaction for the purpose of IBC, 2016. The date of default was 31.03.2016 and the Bank had already started action under SARFAESI Act. The material available on record may disclose accounting irregularities under the applicable provisions of law. However, in the facts of the present case, such accounting treatment by itself is insufficient to attract the ingredients of Section 66 of the Insolvency and Bankruptcy Code, 2016. Therefore, the prayer of the Applicant for this transaction is not allowed.

15.6 The second allegation concerns the transfer of a mortgaged vehicle having a written down value of Rs. 6, 21,752 /- in favour of Respondent No.3 without the knowledge or consent of the secured creditor. Vehicles of the company were mortgaged against the loan and a car with WDV of Rs 6,21,752 was transferred to the Director on 31.03.2018 without satisfying the charge. Further, the car on which company had paid loan instalments was transferred to the Director who sold the car. The proceeds of sale did not come to the company. The transaction, constitutes fraudulent alienation of an asset forming part of the Corporate Debtor's estate. The Transaction

Audit Report records that while only a limited portion of the sale proceeds was utilized towards discharge of the vehicle loan, a substantial amount was appropriated towards the personal liability of Respondent No.3. The Respondents have sought to justify the transaction by contending that Respondent No.3 had resigned from the directorship and that the vehicle stood in his personal name. Such defense, in the considered opinion of Adjudicating Authority, does not satisfactorily answer the allegation. The material placed on record demonstrates that the vehicle had been acquired for and utilized in the business of the Corporate Debtor, the loan installments had been serviced by the Corporate Debtor and the asset remained intrinsically connected with the business operations of the Corporate Debtor. Once such asset stood encumbered in favour of the secured creditor, the management was under a corresponding obligation to protect the interest of the Corporate Debtor and its creditors. The diversion of the sale proceeds towards the personal liability of Respondent No.3, instead of preserving the value of the Corporate Debtor's assets, clearly evidences a transaction designed to confer an undue benefit upon a related person at the expense of the Corporate Debtor.

15.7 The third allegation relates to diversion of funds amounting to Rs. 1,60,65,980/-. The Transaction Audit Report and the financial records disclose that, during FY 2016-17, the outstanding loan of Respondent No. 1 was reduced by the said amount despite the Corporate Debtor having already defaulted in repayment of its dues to the Bank. The Respondents have contended that the transaction related to allotment/transmission of share capital; however, no contemporaneous records have been produced to establish any nexus between such allotment and the reduction of the loan liability. The facts relating to the transaction were within the special knowledge of the Respondents, who have failed to satisfactorily explain the same by producing supporting records. In the absence of a credible explanation, the Tribunal is satisfied that the transaction constituted diversion of the Corporate Debtor's funds to the detriment of its creditors and attracts Section 66 of the Insolvency and Bankruptcy Code, 2016.

15.8 The conduct of the Respondents in effecting the aforesaid transactions after occurrence of default and despite being aware of the financial distress of the Corporate Debtor clearly establishes an intention to prejudice the interests of creditors. The cumulative effect of the transactions evidences fraudulent conduct attracting Section 66 of the Code.

15.9 The Respondents have further sought to avoid liability by contending that Respondent No.1 (Jagruti I Patel) was merely a nominal director, Respondent No.2 (Mr. Karan V Patel) had no active participation in the affairs of the Company and Respondent No.3 had resigned from the directorship prior to commencement of the CIRP. Such defense cannot be accepted. Liability under Section 66 is not determined merely with reference to the date of commencement of the CIRP but with reference to the conduct of the persons managing the affairs of the Corporate Debtor during the period in which the impugned transactions were undertaken. The contemporaneous financial records, statutory filings and findings of the Transaction Auditor indicate active involvement of the Respondents in the transactions under challenge. The Respondents have not produced any material demonstrating that the decisions leading to the impugned transactions were taken without their knowledge or authority. A bald assertion of non-participation cannot prevail over documentary evidence indicating their involvement in the affairs of the Corporate Debtor during the relevant period.

15.10 The Tribunal is also unable to accept the preliminary objections relating to maintainability, limitation and procedural defects. The present proceedings have been instituted by the Resolution Professional in discharge of the statutory obligation cast under the Code after discovery of the impugned transactions during the Transaction Audit. The Applicant has placed sufficient documentary material on record, including the Transaction Audit Report, financial records and statutory documents, to disclose a clear cause of action requiring adjudication under Section 66. The objections raised by the Respondents are devoid of merit and do not detract from the substantive evidence demonstrating fraudulent depletion of the assets of the Corporate Debtor.

15.11 Though the Transaction Audit Report forms an important evidentiary material, the findings recorded herein are independently arrived at after considering the pleadings, replies, rejoinder, books of account, financial statements, statutory filings and other contemporaneous documentary evidence available on record.

15.12 Upon consideration of the pleadings, the Transaction Audit Report, the financial records and the documentary evidence on record, this Adjudicating Authority is satisfied that the transfer of the secured vehicle and the diversion of borrowed funds were not bona fide commercial transactions undertaken in the ordinary course of business. The Respondents have failed to furnish any satisfactory explanation supported by contemporaneous records. The cumulative effect of these transactions establishes a deliberate depletion of the assets of the Corporate Debtor to the prejudice of its creditors, thereby attracting the provisions of Section 66 of the Insolvency and Bankruptcy Code, 2016.

15.13 The intention to defraud is evident from the cumulative conduct of the Respondents in alienating secured assets, diverting borrowed funds after occurrence of default, and diminishing the value of assets available for creditors despite knowledge of financial distress.

15.14 Accordingly, **Issue No. (1)** is answered in the affirmative as far as the transaction of transfer of car to the director and payment of loan of the Respondent No.1 is concerned. Adjudicating Authority holds that the Applicant has successfully established that the impugned transactions constitute fraudulent trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016, thereby warranting appropriate directions against the Respondents.

16. **Findings on Issue No. (2):** Whether the Applicant has established that the transactions (asset transferred to the ex-director) impugned in I.A. No. 1008 of 2023 constitute preferential transactions under Section 43 of the Insolvency and Bankruptcy Code, 2016, liable to be avoided or reversed?

16.1 Section 43 of the Insolvency and Bankruptcy Code, 2016 reads as follows: -

Sec 43 - Preferential transactions and relevant time.

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
(2) A corporate debtor shall be deemed to have given a preference, if—
(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of

a distribution of assets being made in accordance with section 53.
(3) For the purposes of sub-section (2), a preference shall not include the following transfer —
(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—
(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and
(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:
Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.
Explanation.—For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.
(4) A preference shall be deemed to be given at a relevant time, if—
(a) it is given to a related party (other than by reason only of being an employee), during the 1[period starting from] two years preceding the 2[initiation date and ending on the insolvency commencement date]; or
(b) a preference is given to a person other than a related party during the 1[period starting from] one year preceding the 2[initiation date and ending on the insolvency commencement date].

16.2 The Tribunal has independently examined the ingredients of Section 43 of the Code. To constitute a preferential transaction, it must be established that there was a transfer of property or an interest thereof on account of an antecedent financial or operational debt or other liability, which had the effect of placing the beneficiary in a more advantageous position than would have prevailed in distribution under Section 53 of the Code.

16.3 Although the transfer of the vehicle has been held to constitute fraudulent conduct attracting Section 66 of the Code, the Applicant has failed to establish that the transfer was made for or on account of an antecedent financial debt, operational debt or other liability so as to satisfy Section 43(2)(a) of the Code. Consequently, the statutory ingredients of Section 43 are not fully established and the relief under Section 43 cannot be granted.

16.4 The Applicant has also failed to establish that the transfer had the effect of placing Respondent No.3 in a more beneficial position than he would have occupied in the event of distribution under Section 53 of the Code.

17. <u>Findings on Issue No. (3):</u> Whether the Respondents have established that the impugned transactions were bona fide transactions undertaken in the ordinary course of business or otherwise do not attract Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016?

17.1 The principal defence advanced by the Respondents throughout the proceedings is that the transactions questioned by the Applicant were genuine commercial transactions undertaken during the ordinary course of business of the Corporate Debtor and, therefore, neither Section 43 nor Section 66 of the Insolvency and Bankruptcy Code, 2016 is attracted. The Respondents have further contended that the alleged irregularities merely constitute accounting errors or commercial decisions taken in the course of management of the affairs of the Company and cannot be construed either as preferential transactions or as fraudulent trading. It has also been argued that Respondent Nos.1 and 2 were merely nominal directors having no active participation in the affairs of the Company, while Respondent No.3 had resigned prior to commencement of CIRP. The Respondents have relied upon statutory filings, resignation documents, loan account statements, confirmations and other financial records to support their defence. Their written synopsis further contends that the present proceedings are founded solely upon the Transaction Audit Report without independent application of mind and that the impugned transactions fall beyond the statutory look-back period contemplated under Section 43 of the Code.

17.2 At the outset, it is necessary to observe that the Insolvency and Bankruptcy Code draws a clear distinction between genuine commercial transactions undertaken in the ordinary course of business and transactions intended to prefer selected creditors or to defraud the general body of creditors. Every commercial decision resulting in financial loss cannot automatically attract Sections 43 or 66 of the Code. Equally, every transaction described by the management as a commercial decision cannot escape judicial scrutiny merely because it has been recorded in the books of account. The legislative intent is to permit genuine business decisions while preventing depletion of the assets of the Corporate Debtor immediately preceding insolvency.

17.3 The Hon'ble Supreme Court in **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited & Ors., (2020) 8 SCC 401**, while interpreting Section 43, held that the expression "ordinary course of business" must receive a purposive interpretation having regard to the commercial realities of the transaction and the object sought to be achieved by the Code. The

Court observed that a transaction cannot be regarded as falling within the ordinary course merely because it has been documented or because it was entered into in the course of business activities. The true test is whether the transaction represents a normal commercial dealing undertaken bona fide in furtherance of the business of the Corporate Debtor or whether it has the effect of conferring an undue benefit upon a particular person to the prejudice of the remaining creditors.

17.4 Similarly, the Hon'ble Supreme Court held that the burden of proving that a transaction falls within the statutory exception contained in Section 43(3) lies upon the person seeking the benefit of such exception. Once the Applicant establishes the ingredients of Section 43, it is incumbent upon the Respondents to produce cogent material demonstrating that the transaction was undertaken in the ordinary course of business or in accordance with ordinary business terms. Mere assertions or self-serving explanations do not satisfy the statutory burden.

17.5 The defence relates to the transfer of the mortgaged vehicle. The Respondents have contended that the vehicle was primarily used by Respondent No.3 and that he had resigned from the directorship before commencement of CIRP. This explanation fails to address the real issue involved in the present proceedings. The controversy is not with regard to the identity of the user of the vehicle but with regard to the manner in which an encumbered asset belonging to the Corporate Debtor was alienated and the sale proceeds appropriated. The contemporaneous financial records relied upon by the Applicant disclose that while only a portion of the consideration was utilised towards discharge of the secured vehicle loan, a substantial amount was appropriated towards repayment of liabilities associated with Respondent No.3. Such appropriation cannot be characterised as an ordinary commercial transaction undertaken in the interest of the Corporate Debtor. Rather, the transaction had the direct effect of conferring a financial benefit upon a related person while correspondingly diminishing the value available to the secured creditor and the insolvency estate.

17.6 The Respondents have further sought to justify the diversion of substantial funds by contending that the impugned amounts represented share capital adjustments, transmission of shares or internal financial arrangements. However, apart from making such assertions, no contemporaneous Board resolutions, shareholder approvals, valuation reports, commercial agreements or other documentary evidence has been produced to establish the commercial necessity or legitimacy of such transfers. The Tribunal is unable to accept explanations which are unsupported by contemporaneous corporate records, particularly when the impugned transactions have resulted in depletion of the assets of the Corporate Debtor immediately preceding insolvency.

17.7 The Respondents have also emphasised that Respondent No.1 was merely a homemaker who became associated with the Company after the demise of her father, while Respondent No.2 joined the Company at a young age without active participation in its business affairs. Though these personal circumstances have been highlighted at considerable length, they do not constitute a legal defence under the Insolvency and Bankruptcy Code. Once an individual assumes the office of director, he or she undertakes statutory and fiduciary obligations towards the Company and its stakeholders. Such obligations cannot be avoided merely by asserting lack of commercial expertise or limited participation, particularly where the transactions under challenge concern substantial corporate assets and financial dealings.

17.8 The contention that filing Applications under both Sections 43 and 66 reflects non-application of mind is rejected. The provisions operate in distinct fields and may be invoked simultaneously, where warranted. However, for the reasons recorded under Issue No. (2), the impugned transaction does not satisfy the ingredients of Section 43, though it attracts Section 66 of the Code.

17.9 The reliance placed by the Respondents upon the disclaimer contained in the Transaction Audit Report is also misplaced. The disclaimer merely clarifies the scope and purpose of the audit and does not prohibit judicial reliance upon the findings contained therein. The Tribunal is not treating the Report as conclusive evidence. Rather, the findings recorded by the Transaction Auditor have been examined together with the books of account, ledger accounts, statutory filings, financial statements, bank records and the explanations furnished by the Respondents. The audit report is only one component of the larger evidentiary framework and derives corroborative value from the contemporaneous documentary material available on record.

17.10 Upon an overall appreciation of the pleadings, documentary evidence, Transaction Audit Report, books of account, financial statements, statutory records, replies, rejoinder and written submissions, Adjudicating Authority is of the considered opinion that the Respondents have failed to establish that the impugned transactions were undertaken in the ordinary course of business or in accordance with ordinary commercial practice. No satisfactory explanation has been offered to justify the understatement of liabilities, alienation of an encumbered asset or diversion of substantial corporate funds. Equally, the Respondents have further failed to establish that the impugned transactions fall within any of the statutory exceptions under Section 43 or otherwise rebut the case established by the Applicant under Sections 43 and 66 of the Code.

17.11 The cumulative effect of the evidence unmistakably demonstrates that the impugned transactions were not ordinary commercial dealings undertaken in good faith but formed part of a continuing course of conduct whereby the assets of the Corporate Debtor were depleted, selected persons were conferred undue financial advantage and the interests of the general body of creditors were materially prejudiced. The explanations advanced by the Respondents are largely unsupported by contemporaneous documentary evidence and remain insufficient to displace the detailed financial analysis and documentary material relied upon by the Applicant.

17.12 Accordingly, **Issue No. (3) is answered in the negative.**

18. <u>Findings on Issue No. (4):</u> 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?

18.1 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.

18.2 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.

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

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

18.5 The material on record demonstrates that:

i. The Respondents were in control of the affairs and management of the Corporate Debtor;

ii. The transactions held as fraudulent transactions were executed during their tenure;

iii. No evidence has been produced to show that such transactions were undertaken without their knowledge or authority.

18.6 In corporate jurisprudence, directors cannot escape liability merely by attributing responsibility to other individuals when they collectively form part of the decision-making body of the company.

18.7 This Authority finds that the impugned transactions of reduction in liability of Respondent No.1 and transfer of car to Respondent No.3 were not inadvertent acts but were undertaken after the company defaulted in payment to the bank. 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.

18.8 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.

18.9 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.

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

18.11 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. Creditors were prejudiced as the asset pool available for resolution/liquidation was significantly reduced.

18.12 The material facts and chronology of events noted in this order 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 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.

18.13 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.

18.14 In light of the above findings, this Authority is satisfied that: -

i. The Respondents 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 transactions were undertaken which defrauded creditors and the Respondents did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor.

18.15 Accordingly, this Adjudicating Authority is satisfied that the ingredients of Section 66(1) of the Code stand established. The material on record also demonstrates that the Respondents continued the impugned transactions despite knowledge of the Corporate Debtor's financial distress, thereby attracting Section 66(2) as well. Accordingly, the Respondents, being the persons found liable under Section 66 are liable to make contributions to the assets of the Corporate Debtor.

18.16 The object of Section 66 is compensatory and restorative rather than penal. The contribution directed herein is intended only to restore the value wrongfully depleted from the assets of the Corporate Debtor.

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

19 **<u>Findings on Issue No. (5):</u>** Whether the findings contained in the Transaction Audit Report, together with

the material placed on record, constitute sufficient evidence to establish fraudulent trading under Section 66 and preferential transaction under Section 43?

19.1 The Respondents have contended that the present Applications are founded solely upon the Transaction Audit Report and that the said Report, by itself, cannot constitute sufficient evidence to establish the allegations under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016.

19.2 It is settled that a Transaction Audit Report is not conclusive proof of the transactions alleged therein. It is an relevant evidentiary material prepared in discharge of the statutory duties of the Resolution Professional and is required to be examined along with the pleadings, books of account, financial statements, statutory records and other contemporaneous documentary evidence placed on record.

19.3 The Adjudicating Authority is required to independently assess the material available on record and arrive at its own findings. The conclusions contained in the Transaction Audit Report cannot be accepted mechanically without such independent scrutiny.

19.4 In the present case, Adjudicating Authority has independently examined the pleadings, replies, rejoinder, books of account, ledger accounts, financial statements, statutory filings and other documentary material. The findings recorded in this Order are based upon the cumulative effect of such evidence and not merely upon the observations contained in the Transaction Audit Report.

19.5 The Transaction Audit Report substantially corroborates the financial records and other documentary evidence produced before Adjudicating Authority in respect of the transactions held to be fraudulent under Section 66 of the Code. However, for the reasons recorded while deciding Issue No. (2), the material on record is insufficient to establish the essential ingredients of a preferential transaction under Section 43 of the Code.

19.6 Accordingly, Issue No. (5) is answered to the extent that the Transaction Audit Report, when read in conjunction with the independent documentary evidence available on record, constitutes sufficient evidentiary material for adjudication of the present Applications. However, the findings under Sections 43 and 66 shall ultimately depend upon satisfaction of the statutory ingredients of the respective provisions, as discussed hereinabove.

20 **Findings on Issue No. (6):** Whether the present Applications under Sections 43, 66 and 60(5) of the Insolvency and Bankruptcy Code, 2016 are maintainable, including after substitution of the Resolution Professional by the Applicant, and whether the preliminary objections regarding limitation, duplication of proceedings and procedural defects raised by the Respondents are sustainable?

20.1 The preliminary objections regarding maintainability, limitation, duplication of proceedings and substitution of the Resolution Professional are devoid of merit. The present Applications were instituted pursuant to the statutory obligation cast upon the Resolution Professional under the Code after identification of the impugned transactions in the Transaction Audit Report. Subsequently, by order dated 25.02.2026 passed in I.A. No.1495 of 2025, substitution of the Applicant was permitted by this Adjudicating Authority. The substituted Applicant merely continues the proceedings already instituted and no fresh cause of action has arisen.

20.2 Applications under Sections 43 and 66 arise upon discovery of the impugned transactions during CIRP through the Transaction Audit. Therefore, the cause of action for invoking Sections 43 and 66 arose upon discovery of the impugned transactions during the Transaction Audit undertaken in CIRP.

20.3 The contention that simultaneous proceedings under Sections 43 and 66 are not maintainable also deserves rejection. The two provisions operate in distinct fields and confer different statutory remedies. Merely because both Applications arise out of the same Transaction Audit Report does not render either of them non-maintainable. It is open to the Resolution Professional or the substituted Applicant to invoke all applicable avoidance provisions depending upon the nature of the impugned transaction.

20.4 The objections relating to maintainability, limitation, duplication of proceedings and substitution of the Applicant are rejected. The Applications were instituted by the Resolution Professional in discharge of statutory duties under the Code and are validly continued by the substituted Applicant pursuant to the order dated 25.02.2026. Accordingly, Issue No. (6) is answered in the affirmative.

22 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.

23 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.

24 Accordingly, this Adjudicating Authority holds that the Respondents are liable under Sections 66(1) and 66(2) of the Insolvency and Bankruptcy Code, 2016, as applicable. Having regard to the quantified loss established from the books of account, financial statements, contemporaneous records and the Transaction Audit Report, the Respondents are jointly and severally liable to contribute to the assets of the

Corporate Debtor to the extent of the loss caused by the fraudulent transactions established in this Order.

25 In view of the foregoing findings and discussions on **Issue Nos. 1 to 6**, 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 relating to (a) transfer of the motor vehicle to Respondent No. 3, and (b) diversion of Rs. 1,60,65,980/- towards repayment of the loan of Respondent No. 1, are declared to constitute fraudulent trading under Section 66(1) and wrongful trading under Section 66(2) of the Insolvency and Bankruptcy Code, 2016, to the extent held in this order.

ii. The Respondent Nos. 1 to 3, having been found to be knowingly parties to the fraudulent trading carried on in the affairs of the Corporate Debtor and having acted jointly in effecting the impugned transactions, are held jointly and severally liable under Section 66 of the Insolvency and Bankruptcy Code, 2016 to contribute to the assets of the Corporate Debtor.

iii. The Respondents are jointly and severally directed to contribute **Rs. 1,66,87,732/-** (Rs. 6,21,752/- towards transfer of the vehicle and Rs. 1,60,65,980/- towards diversion of funds), together with simple interest at **10% per annum**, considered reasonable in the facts of the case, from the date of filing of the present Application until realization, within **30 days** from the date of this order.

iv. Upon restoration of the aforesaid amount, the Applicant shall deal with the same strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the stage of the insolvency proceedings, including Section 53 of the Code, wherever applicable.

v. In the event of default in compliance with this order, the Applicant shall be at liberty to seek enforcement of this order by initiating appropriate execution proceedings in accordance with law before the competent forum.

26 Consequently, **I.A. No. 627 (AHM) of 2023** is allowed in terms of the directions contained in Paragraph 25 of this

Order. However, **I.A. No. 1008 (AHM) of 2023** is **dismissed** in terms of the findings recorded hereinabove. There shall be no order as to costs.

27 Registry shall upload a copy of this order on the official website forthwith and communicate the same to all concerned in accordance with the NCLT Rules, 2016. A certified copy of this order be issued, if applied for, upon compliance with all requisite formalities

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)
SS

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)