S.No.4

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
20-08-2026 After Court-II

IA (IBC) 1040/2025 in
CP (IB) No. 391/7/HDB/2022
u/s. 7 of IBC

IN THE MATTER OF:

M/s. Edelweiss Asset Reconstruction Company Limited **…Petitioner/s**

Vs

M/s. GVK Gautami Power Limited **…Respondent/s**

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

O R D E R

IA (IBC) 1040/2025

Order pronounced. Recorded vide separate sheets.

In the result, this IA (IBC) 1040/2025 is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Apoorva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I, HYDERABAD

INTERLOCUTORY APPLICATION (IBC) No. 1040 of 2025
In
Company Petition (IB) No. 391/7/HDB/2022

(Under Section 66 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 11 of National Company Law Tribunal Rules, 2016)

IN THE MATTER OF M/s GVK GAUTAMI POWER LIMITED
(CORPORATE DEBTOR)

BETWEEN:
EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED
FOR
GVK GAUTAMI POWER LIMITED ...APPLICANT

VERSUS

1. **VENKATA SANJAY REDDY GUNUPATI**
MEMBER OF SUSPENDED BOARD OF DIRECTORS
GVK GAUTAMI POWER LIMITED
(POWERS SUSPENDED) ...RESPONDENT NO.1

2. **ILYAS GHULAM HUSSAIN GHOUSE**
MEMIBER OF SUSPENDED BOARD OF DIRECTORS
GVK GAUTAMI POWER LIMITED
(POWERS SUSPENDED) ...RESPONDENT NO.2

3. BIRENDRA CHAUDHARY

MEMBER OF SUSPENDED BOARD OF DIRECTORS

GVK GAUTAMI POWER LIMITED

(POWERS SUSPENDED) ...RESPONDENT NO.3

Date of Order: 20.08.2026

CORAM:-

SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Counsels:

For the Applicant: Mr. Indra Prateek Naidu, Advocate

For the Respondent: Mr. Naga Deepak, Advocate

ORDER

1. The present Application is filed by the Applicant under Section 66 & 25(2)(j)of IBC[1] against the suspended board members of the Corporate Debtor, inter alia, praying:

   a. *Allow the present Application;*
   b. *Pass an order declaring the transaction detailed in Paragraphs 26 to 41 as transactions under Section 66 ofthe Code and declare the transactions as null and void and reverse the effect ofthe said transactions;*
   c. *Pass consequential directions against the Respondents to contribute amount of Rs. 4.72 Crore to the account of the Corporate Debtor for deliberately defrauding the creditors of the Corporate Debtor and diverging funds from the Corporate Debtor;*
   d. *Pass Consequential directions against the Respondents for deliberately defrauding the creditors of the Corporate Debtor and diverging funds from the Corporate Debtor to make*

[1] Insolvency and Bankruptcy Code, 2016

such contributions to the assets of the Corporate Debtor as this Adjudicating Authority may deem fit including order/directions under Section 67 of the Code;

Application:

2. The Applicant submits that the present Application is within the period of limitation and is, therefore, maintainable. In support of the said contention, reliance is placed on the judgment of the **Hon'ble NCLAT in *Aditya Tibrewal v. Om Prakash Pandey & Ors.*, Company Appeal (AT) (Insolvency) No. 583 of 2021**, wherein it has been held that the timelines prescribed under Regulation 35A of the CIRP Regulations, 2016, for filing applications under Sections 43, 45, 49 and 66 of IBC are directory in nature and not mandatory.

3. Applicant submits that this Adjudicating Authority, vide order dated 20.10.2023 passed in CP (IB) No. 391/7/HDB/2022, admitted the Corporate Debtor into the Corporate Insolvency Resolution Process (CIRP) and appointed Mr. Anil Kholi as Interim Resolution Professional, who was subsequently confirmed as the Resolution Professional.

4. In the 3rd meeting of the Committee of Creditors ("CoC"), MKPS & Associates was appointed as the Transaction Review Auditor ("Transaction Auditor") to conduct a forensic examination of the affairs of the Corporate Debtor. The audit covered the period from 01.04.2019 till the Insolvency Commencement Date, i.e., 20.10.2023, with the objective of identifying transactions falling within the ambit of Sections 43, 45, 46, 49, 50 and 66 of IBC.

5. Pursuant to the said audit, the Transaction Auditor, vide report[2] dated 14.03.2024, observed that the Corporate Debtor had written off

[2] Transaction Audit Report dated 14.03.2024 at page 87 of the Application

substantial inventories and fixed assets and classified the said transactions as undervalued transactions within the meaning of Section 45 of IBC. Upon an independent examination of the audit report and the underlying records, the Resolution Professional and the Applicant formed the opinion that the write-off of the fixed assets was not merely an undervalued transaction but fraudulent transactions attracting the provisions of Section 66 of IBC.

6. The Transaction Auditor further observed that fixed assets having a gross book value of Rs. 4.72 Crores had been written off by the erstwhile management without obtaining the prior approval of the Secured Financial Creditors. However, when called upon to explain the said write-off, the Respondents represented that only assets amounting to Rs. 0.85 Crores had been written off. Upon verification of the Fixed Asset Register of the Corporate Debtor, the Transaction Auditor found that the actual gross value of the assets written off was Rs. 4.72 Crores, the details whereof are reproduced below:

Asset Type	Amount (Rs. in crore)
3000 Electrical Fittings	0.44
4000 office equipment	2.06
5000 Data Processing Equipment	0.89
6000 Furniture and Fittings	1.11
8000 Software	0.23
Total	**4.72**

7. The Respondents sought to justify the discrepancy by contending that the amount of Rs. 0.85 Crores represented the net written-down value of the assets after accounting for accumulated depreciation. It was further stated that the assets had exhausted their useful and commercial life much prior

to the date of write-off. However, the required details necessitating the write off such as purchase details usage life and balance life remaining of the assets, the disposal details etc. of the assets have not been provided.

8. As per the Applicant, the write-off, on the face of it, has been carried out with a clear intent to defraud the creditors and to keep the assets of the Corporate Debtor beyond their reach. Under no circumstances can the said write-offs be considered to have been made in the ordinary course of business by any company. This leads to the only conclusion that the aforesaid write-offs were carried out by the directors fraudulently and with the intent to defraud the creditors of the Corporate Debtor.

9. The Applicant submits that the aforesaid write-off of fixed assets, effected without any supporting documentation or commercial justification, constitutes a fraudulent depletion of the assets of the Corporate Debtor. Such conduct has resulted in the diminution of the asset base available for resolution and has caused serious prejudice to the Financial Creditors and other stakeholders. At a time when the creditors of the Corporate Debtor are constrained to suffer substantial haircuts in the insolvency resolution process, the Respondents have, by their fraudulent acts, depleted the assets of the Corporate Debtor to the detriment of its creditors.

10. In support of the present Application, the Applicant places reliance on the judgment of the **Hon'ble Supreme Court in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited & Ors.*, Civil Appeal Nos. 8512-8527 of 2019**, wherein the Hon'ble Supreme Court observed that transactions which have an adverse bearing on the financial health of a distressed corporate debtor are liable to be viewed with considerable disfavour. The fraudulent write-off of

valuable fixed assets, unsupported by any contemporaneous records or commercial justification, has materially diminished the value of the Corporate Debtor's estate and, therefore, warrants appropriate directions under Section 66 of IBC.

Reply:

11. The Respondents submit that the present Application is barred by law. A careful perusal of the digital signatures affixed to the present Application reveals that it was digitally endorsed on 23.05.2024. However, the Application was not pressed for hearing until 20.06.2025, by which time the CIRP had already been completed. Further, the memo dated 20.06.2025 discloses that the documents filed along with the Application were not duly certified. Consequently, the filing itself is non est in the eyes of law, and the limitation continues to run despite the presentation on 24.05.2024.

12. The Respondents submit that the Corporate Debtor is a combined-cycle gas-based thermal power generation station. The operations and maintenance of the Corporate Debtor are governed by the Tariff Regulations framed by the relevant State SERC and CERC. Under the CERC Generation Tariff Regulations of 2004, 2009, 2014, and 2019, the Corporate Debtor is required, from the date of commencement of its commercial operations, to adopt and apply the prescribed rates of depreciation in respect of each asset forming part of the generating station for determining its capital cost. The tariff for the electricity generated by the Corporate Debtor is determined on the basis of such capital cost computed in accordance with the applicable Tariff Regulations.

13. The Respondents further submit that the Corporate Debtor has consistently applied the prescribed rates of depreciation to its movable

assets since the year 2009. The depreciation so provided has been duly reflected in the annual financial statements of the Corporate Debtor, which were approved by its statutory auditors and made available to its creditors. The year-wise depreciation details were also furnished to the Transaction Auditor. The Transaction Auditor failed to appreciate that, under the applicable Accounting Standards, the provisions of the Companies Act, 2013, and the Income-tax Act, 1961, assets depreciate over time and are ultimately written off in the books of account once their salvage value becomes nil. The assets in question comprise movable assets such as electrical fittings, electrical equipment, computer software, and data processing equipment, most of which were acquired from the year 2003 onwards and had naturally depreciated over time.

14. The Transaction Auditor has erroneously classified the write-off of such depreciated assets as fraudulent transactions under Section 66 of IBC. Significantly, the Transaction Audit Report contains no finding whatsoever that the write-off was carried out with an intention to defraud the creditors. The only observation made is that the write-off was effected without consulting the creditors. The Resolution Professional himself did not give effect to the said write-off in the financial statements for the FY2023–24 and retained the value of the assets as reflected in the financial statements of the preceding years.

15. The Respondents further submit that a nominee director representing the creditors was a member of the Board of Directors of the Corporate Debtor at the time when the financial statements, including the depreciation and write-off of the assets, were approved. Neither the present Application nor the Transaction Audit Report discloses any wrongful gain derived by the Respondents on account of the alleged write-off. The assets in question had naturally depreciated in value over time, and there was no conceivable

financial benefit that could have accrued to the Respondents by writing off such depreciated assets.

16. The Respondents submit that the Applicant seeks to characterize the write-off of assets having a gross block value of Rs. 4.72 crores as fraudulent transactions. This conclusion has been arrived at merely by comparing the fixed assets reflected in the trial balance with those recorded in the fixed asset register. The Transaction Auditor has reached this conclusion without examining the annual financial statements of the Corporate Debtor, wherein depreciation in respect of the said assets had been consistently accounted for in accordance with the applicable regulatory and accounting framework. The said financial information was readily available to both the Transaction Auditor and the Applicant, yet the same has been completely disregarded.

17. The Respondents place reliance upon the judgment of the NCLT, Chennai Bench, in **M/s. Regen Powertech Private Limited v. Madhusudhan Kemka & Ors.**, **I.A. (IBC)/490(CHE)/2021 in IBA/1099/2019**, in support of the submissions advanced herein.

Findings:

18. We have gone through the entire record and have heard the learned Counsel appearing on behalf of the Applicant as well as the Respondents at length.

19. The principal issue that falls for consideration is whether the impugned write-off of fixed assets constitutes fraudulent transaction within the meaning of Section 66 of IBC.

20. It is an undisputed fact that the Corporate Debtor was admitted into the CIRP by this Adjudicating Authority vide order dated 20.10.2023 passed in CP (IB) No. 391/7/HDB/2022. Pursuant thereto, Mr. Anil Kholi was appointed as the IRP and was subsequently confirmed as the Resolution Professional by the CoC in its first meeting held on 20.11.2023.

21. It is also a matter of record that this Adjudicating Authority, vide order dated 06.03.2025 passed in I.A. (IBC)(Plan) No.22 of 2024, approved the Resolution Plan submitted by M/s. Radha Smelters Private Limited, the Successful Resolution Applicant..

22. During the CIRP, M/s. MKPS & Associates was appointed as the Transaction Review Auditor ("Transaction Auditor") to examine the affairs of the Corporate Debtor for the period commencing from 01.04.2019 till the Insolvency Commencement Date, i.e., 20.10.2023, for identifying transactions falling within the ambit of Sections 43, 45, 46, 49, 50 and 66 of IBC.

23. Upon examination of the books of account and other records, the Transaction Auditor in its report observed that certain fixed assets aggregating to Rs. 4.72 Crores had been written off and opined that the said transactions were liable to be examined as undervalued transactions under Section 45 of IBC.

24. The Applicant however, upon examination of the report and the material available, formed an opinion that the impugned write-off of fixed assets constituted fraudulent trading under Section 66 of IBC and accordingly instituted the present Application.

25. At this juncture it is essential to first consider Section 66 of the IBC which deals with fraudulent or wrongful trading. It empowers the Adjudicating Authority to pass an order directing individuals who were knowingly involved in carrying on the business with the intent to defraud creditors, to contribute to the assets of the corporate debtor. For proper adjudication, it is necessary to extract the statutory provision:

> *"**Section 66: Fraudulent trading or wrongful trading.***
> *66. (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.*
>
> *(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under subsection (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A."*

26. A plain reading of Section 66(1) makes it clear that jurisdiction is attracted only if it is **found** that the business was carried on with intent to defraud creditors or for any fraudulent purpose. The expression ***"found"*** is not ornamental; it mandates a definitive and reasoned conclusion based on cogent evidence. Suspicion, inferences, conjectures, discrepancies, doubts, presumptions, or even suggestions etc. cannot substitute such a finding.

27. Further, the burden lies squarely on the Applicant/Resolution Professional to demonstrate, by placing cogent and convincing material on record, that the impugned transactions were undertaken with the requisite fraudulent intent. In view of the serious consequences that ensue, such intent must be clearly established and proved to a standard commensurate with the gravity of the allegation, and cannot be sustained on the basis of mere inference or speculation.

28. The Hon'ble NCLAT in ***Shibu Job Cheeran & Ors. V. Ashok Velamur Seshadri, (2023) ibc.in 158 NCLAT***, has held that the following elements must be established under Section 66 of IBC:

i) Business of the Corporate Debtor has been carried out with an intent to defraud the creditors.

ii) Directors participated in carrying on business of the Corporate Debtor despite knowing likely insolvency of the Corporate Debtor.

29. The Hon'ble NCLAT in the case of Regen Powertech Pvt. Ltd., represented by erstwhile ***RP Ebenezar Inbaraj v. M/s. Wind Construction Pvt. Ltd. (2022) ibclaw.in 793 NCLAT*** clarified that fraudulent trading requires a high degree of proof, and relevant facts and evidence must be presented unambiguously.

30. The Applicant/Resolution Professional must provide tangible evidence to substantiate the claim of fraudulent intent. The Hon'ble Supreme Court, in ***Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020) ibclaw.in 06 SC***, emphasized the distinction between the elements of preferential, undervalued, and fraudulent transactions, noting that the inquiry for fraudulent trading is distinct from that of preferential and undervalued transactions. Specific material facts must be pleaded if a transaction is sought to be brought under the provisions of Sections 45/46/47 or Section 66 of IBC.

31. In the context of law as explained above, the Applicant/Resolution Professional has alleged that the write-offs relating to fixed assets, were undertaken with the intent to manipulate the books of account and conceal the true financial position of the Corporate Debtor.

32. The foundation of the present Application rests primarily upon the observations contained in the Transaction Audit Report. Except relying upon the said report, the Applicant has not placed on record any independent documentary evidence to demonstrate that the impugned transactions were entered into with an intent to defraud the creditors or for any fraudulent purpose.

33. It is well settled that a Transaction Audit Report is merely an expert opinion based upon the records made available to the Transaction Auditor. While such a report may provide the basis for the Resolution Professional and the Applicant to initiate proceedings under the relevant provisions of IBC, the observations contained therein cannot, by themselves, constitute conclusive proof of fraudulent trading. The burden nevertheless remains upon the Applicant to establish, by cogent

and convincing evidence, the ingredients necessary for invoking Section 66 of IBC.

34. Significantly, the Transaction Auditor has categorised the impugned write-off as an undervalued transaction under Section 45 of IBC. The Applicant, however, chosen to invoke Section 66 of IBC by asserting that, upon examination of the audit report and other material, formed an opinion that the transaction was fraudulent in nature. Despite such assertion, no material other than the Transaction Audit Report has been placed before us to disclose the basis on which such opinion was formed. In the absence of any supporting documentary evidence, the inevitable conclusion is that the present Application has been instituted solely on the basis of the observations contained in the Transaction Audit Report.

35. Thus, when we read the facts in conjunction with the law as explained above, we are of the considered view that the Applicant has failed to establish the essential ingredients of fraudulent conduct of business under Section 66 of IBC. The first requirement is to establish that the business of the Corporate Debtor was carried on with an intent to defraud its creditors or for any fraudulent purpose. The allegations of fraudulent conduct of business are founded primarily upon the observations contained in the Transaction Audit Report. However, the said observations, in the absence of any independent and cogent evidence, do not establish that the impugned write-off of assets was undertaken with an intent to defraud the creditors or for any fraudulent purpose.

36. The second requirement under Section 66 of IBC is to establish that the directors or promoters, knew or ought to have known that there was no reasonable prospect of avoiding the commencement of the CIRP and that,

notwithstanding such knowledge, they failed to exercise due diligence with a view to minimising the potential loss to the creditors. The Applicant has failed to place any material on record to demonstrate that the directors or promoters had such knowledge or that, despite being aware of the absence of any reasonable prospect of avoiding the commencement of CIRP, they failed to exercise the requisite due diligence to minimise the potential loss to the creditors.

37. Accordingly, the Applicant has failed to establish either of the essential requirements contemplated under Section 66 of IBC. Mere reliance upon the observations contained in the Transaction Audit Report, without corroborative evidence establishing the requisite fraudulent intent, knowledge, and failure to exercise due diligence on the part of the directors or promoters, is insufficient to attract the provisions of Section 66 of the IBC. Consequently, no case warranting the exercise of jurisdiction under Section 66 of the IBC is made out.

38. In view of the foregoing discussion, the present Application is devoid of merit and is liable to be dismissed.

Accordingly, the present application is dismissed and disposed of.

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)