NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 07.08.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: IA(IBC)/896(CHE)/2022**
PETITION NUMBER	**: CP/IBC/84/(CHE)2021**
NAME OF THE APPLICANT	**: Santhanam Rajashree (RP) of M/s J R Foods Ltd**
NAME OF THE RESPONDENT(S)	**: Dinesh Kothari & Another**
UNDER SECTION	**: Sec 66 of IBC, 2016**

ORDER

Vide separate order pronounced in open court, **IA(IBC)/896(CHE)/2022** is dismissed.

-SD-	**-SD-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI
IA (IBC)/896(CHE)/2022
In
CP(IBC)/84(CHE)/2021

(Under section 66 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)

In the matter of ***M/s J R Foods Limited***

MR. B. RAMANA KUMAR
Interim Resolution Professional, now Deemed RP
In M/s J R Foods Limited
I Floor (Rear), 51 A (14) Dr. Ranga Road,
Mylapore, Chennai — 600 004.
(Replaced by Santhanam Rajashree Liquidator of
M/s J R Foods Ltd)

… Applicant

v/s

1. DINESH KOTHARI
Suspended Director
2/50, 4th Cross, Anna Nagar, Pondicherry — 605 005.

2. KAMALA J KOTHARI
Suspended Director
2/50, 4th Cross, Anna Nagar, Pondicherry — 605 005.

… Respondents

Order Pronounced on ***7th August 2026***

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant: Ramasubrahmaniam Raja, Advocate

For Respondent No.1: Sathish Kumar A S, Advocate

ORDER

(Heard through hybrid mode)

Under consideration is an application filed under Section 66 of Insolvency and Bankruptcy Code, 2016 (hereinafter, IBC, 2016) seeking directions against the Respondents for fraudulent trading and wrongful conduct in the affairs of the Corporate Debtor, with the following reliefs:-

> *"**6. RELIEF SOUGHT:***
> *Under these circumstances it is therefore prayed that this Hon'ble Court may be pleased to issue Orders U/s. 66 Of the 1B Act 2016 on the Respondent and direct them to repay the amount identified as fraudulent Transactions and pass such other orders as is appropriate and thus render Justice."*

2. SUBMISSIONS OF THE PETITIONER:

2.1. It is submitted that the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was commenced pursuant to the admission order dated 11.02.2022 in CP(IBC)84/CHE/2021. Upon commencement of CIRP, the Applicant assumed charge of the affairs of the Corporate Debtor and undertook an examination of its financial transactions in discharge of the duties cast upon him under the Insolvency and Bankruptcy Code, 2016.

2.2. It is submitted that during scrutiny of the bank accounts of the Corporate Debtor, the Applicant discovered that the first Respondent, a suspended Director, had withdrawn substantial amounts from the Corporate Debtor's bank account. According to the Applicant, withdrawals aggregating approximately Rs.81,96,361/- were made during the period from May 2021 to March 2022, of which a sum of Rs.19,27,937/- was withdrawn after commencement of the CIRP on 11.02.2022.

2.3. It is contended that these withdrawals were made without any explanation or justification and constitute fraudulent siphoning of the Corporate Debtor's funds.

2.4. It is further submitted that repeated efforts were made to obtain the books of accounts, bank statements and other financial information from the suspended management. Letters, emails, telephone calls and personal visits were made requesting the Respondents to furnish the relevant records and explain the impugned withdrawals.

2.65. It is also submitted that the Respondents failed to cooperate or provide any satisfactory explanation. Consequently, the Applicant independently procured the bank statements from the concerned bank and, upon verification thereof, found the impugned withdrawals.

3. SUBMISSIONS OF THE RESPONDENTS:

3.1. The Respondents deny the allegations of fraudulent trading and siphoning of funds and submit that the amounts transferred from the Corporate Debtor's bank account to the account of the first Respondent were not for his personal benefit.

3.2. It is contended that the Corporate Debtor maintained its current account with Puduvai Bharathiar Grama Bank, which did not provide internet banking facilities, and therefore the amounts were transferred to the first Respondent's account solely for making online payments towards the business and statutory obligations of the Corporate Debtor.

3.3. It is further contended that the transferred amounts were utilised towards payment of telephone charges, electricity charges, EPF and ESI contributions, GST dues, insurance premiums, FASTag charges, travel and lodging expenses, TDS payments, professional and legal fees and other business-related expenses of the Corporate Debtor. In support of the said contention, the Respondents have produced documentary evidence including invoices, payment receipts and account statements evidencing utilisation of the amounts.

3.4. It is further stated that by e-mail dated 07.09.2022 addressed to the Resolution Professional, the first Respondent acknowledged that a sum of Rs.81,96,334/- had been transferred to his account, furnished particulars and supporting documents in respect of payments aggregating Rs.66,02,374/-, and sought two weeks' time to submit details relating to the balance amount of Rs.15,93,960/-.

4. SUBMISSIONS OF THE APPLICANT IN REJOINDER:

4.1. The Applicant denies the averments made in the reply and reiterates the contents of the Application.

4.2. It is submitted that the Respondents have admitted the transfer of Rs.19,27,937/- from the Corporate Debtor's account after commencement of the CIRP on 11.02.2022. According to the Applicant, such transfers were made despite the Respondents being fully aware of the commencement of CIRP and are per se impermissible under the provisions of the Insolvency and Bankruptcy Code, 2016.

4.3. It is further submitted that the Respondents have failed to substantiate the utilisation of the entire amount of Rs.81,96,334/- allegedly transferred from the Corporate Debtor's account. While the Respondents claim to have furnished explanations for the transfers, documentary proof has been produced only in respect of Rs.35,51,231/-, and no satisfactory explanation has been furnished for the remaining amount.

4.4. It is contended that the alleged payments towards business expenses are unsupported by proper records and that the Respondents cannot escape liability by merely furnishing a tabulated statement of expenses.

4.5. It is finally submitted that the Respondents have failed to rebut the allegations of fraudulent siphoning of the Corporate Debtor's funds.

5. FINDINGS OF THE TRIBUNAL:

5.1. We have heard the learned counsel appearing for the parties and perused the pleadings and documents placed on record. It is also noted that despite of several opportunities, the Respondents has failed to appear before this Tribunal and therefore the Respondents was set exparte vide order dated 12.03.2026.

5.2. The present Application has been filed under Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking directions against the Respondents to contribute a sum of Rs.81,96,361/- to the assets of the

Corporate Debtor on the allegation that the first Respondent had fraudulently siphoned off the funds of the Corporate Debtor.

5.3. It is not in dispute that an aggregate amount of approximately Rs.81.96 lakhs stood transferred from the account of the Corporate Debtor to the account of the first Respondent during the period from May 2021 to March 2022. It is also an admitted position that a sum of Rs.19,27,937/- was transferred after commencement of the Corporate Insolvency Resolution Process on 11.02.2022. However, the mere fact of transfer of funds, by itself, is insufficient to invoke Section 66 of the Code. The Applicant is required to establish that the business of the Corporate Debtor was carried on with an intent to defraud creditors or for any fraudulent purpose.

5.4. The defence of the Respondents is that the Corporate Debtor maintained its account with a bank which did not provide internet banking facilities and, therefore, amounts were transferred to the account of the first Respondent only to facilitate online payments towards statutory dues and business expenses. The Respondents have further produced invoices, receipts, bank statements and other supporting documents to substantiate the utilisation of a substantial portion of the transferred amount and have also admitted the transfers made to the account of the first Respondent.

5.5. The Applicant, in the rejoinder as well as the subsequent affidavit, has disputed the genuineness and sufficiency of the documents produced by the Respondents and contended that satisfactory proof has not been furnished for the entire amount transferred. According to the Applicant, the Respondents have failed to account for the balance amount and the post-CIRP withdrawals are, in any event, impermissible.

5.6. This Adjudicating Authority is of the considered view that proceedings under Section 66 of the Code are not intended to recover every unexplained transaction or irregular withdrawal. The jurisdiction under Section 66 can be invoked only where there is cogent material demonstrating that the business of the Corporate Debtor was carried on with an intent to defraud creditors or for any fraudulent purpose. The burden to establish the ingredients of Section 66 squarely lies upon the Applicant.

5.7. In the present case, although the Applicant has established that the amounts were transferred to the account of the first Respondent, the Respondents have furnished an explanation regarding the purpose of such transfers and have produced supporting documents evidencing utilisation of a substantial portion of the amounts towards business and statutory expenses of the Corporate Debtor. The Applicant has disputed the adequacy of such explanation; however, no independent material has been placed on record to establish that the amounts were misappropriated for the personal benefit of the Respondents or that the impugned transactions were undertaken with fraudulent intent so as to attract Section 66 of the Code.

5.8. Insofar as the withdrawals made after commencement of the CIRP are concerned, such transactions may constitute violations of the provisions governing the CIRP and may entail consequences under the Code, if otherwise established. However, post-CIRP withdrawals, by themselves, do not automatically satisfy the statutory requirements of Section 66 in the absence of evidence establishing fraudulent trading or wrongful conduct within the meaning of the said provision.

5.9. In order to strengthen the justification of issues raised in the petition, it will be desirable to look into the provisions of Section 66 of the IBC, 2016. The same is reproduced hereinbelow: -

"Section 66. Fraudulent trading or wrongful trading. –

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(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."

5.10. It is well settled that for invoking Section 66, the Applicant is required to establish that:

(i) the business of the Corporate Debtor was carried on with intent to defraud creditors or for any fraudulent purpose; and

(ii) the persons sought to be made liable were knowingly parties to such conduct.

5.11. In view of the foregoing discussion, we are of the considered opinion that the Applicant has failed to establish the essential ingredients necessary for invoking Section 66 of the Insolvency and Bankruptcy Code, 2016.

5.12. Accordingly, the present Application **IA(IBC)896/(CHE)2022** in **CP(IBC)84/(CHE)2017** is **dismissed**.

-Sd-	**-Sd-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)