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

**ITEM No.301**
**IA/185(AHM)2025**
**in**
**CP(IB) 211 of 2020**

**Under Section 66 IBC r/w 60(5) of IB Code, 2016**

**IN THE MATTER OF:**

Mr. Sunil Kumar Kabra Liquidator of M/s Archon Engicon Limited **.....Applicant**

V/s

Chandrashekhar B. Panchal & Ors **.....Respondents**

**Order delivered on: 07/09/2026**

**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 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/185 (AHM)/2025**
**In**
**C.P. (IB) No. 211 of 2020**

*[Application under Section 66(1) r.w. Section 60(5) of Insolvency and Bankruptcy Code, 2016]*

**In the matter of :** Archon Engicon Limited

**Mr. Sunil Kumar Kabra**
Liquidator of Archon Engicon Limited
Having address at: 301,
3rd Floor, Reegus Business Center,
Above Mercedes-Benz Showroom,
New City Light Road, Bharthana-Vesu,
Surat-395007

**... Applicant**

**VERSUS**

1. **Chandrashekhar B. Panchal**
   Male, Aged 50 years Residing at 14,
   Unique Park Society, Opp ISRO, Satellite,
   Ahmedabad - 380016.
   Email: shekhar@archonengicon.com

2. **Sandip J. Panchal**
   Male, Aged 42 years, Residing at B/212,
   Saurabh Park, B/h. Samta Plat, Subhanpura,
   Vadodara - 390021
   Email: c.sandeep93@yahoo.com

3. **Sandip Chaudhary**
   Male, Aged 50 years, Residing at 24,
   Chandralok Society, Nr. Cadila Lab, Ghodasar,
   Ahmedabad - 380050.
   Email: sandeep@archonengicon.com

4. **Amitkumar N. Thakkar**
Male, Aged 34 years, Residing at G/207,
Dev-181, Sterling City, Bopal, Ahmedabad-380058
Email: amit.thakkar@archonengicon.com

5. **M/s Volt Infra Services Private Limited**
Having its registered office at
House79 (First Floor), Kanti Park Co.
Op. Ho. Society, Nr. Riddhi Society,
Ahmedabad-380061
Email: voltinfra@outlook.com

6. **Diamond Power Infrastructure Limited**
Having its registered office at
Phase-II, Village-Vadavala, Ta. Savli, Baroda
Email: cs@dicabs.com

**6A. Suresh Bhatnagar**
Erstwhile Director of Diamond Power
Infrastructure Limited
Residing at 6, Green Park
Nizampura, Vadodara – 390002

**6B. Amit Suresh Bhatnagar**
Erstwhile Director of Diamond Power
Infrastructure Limited
Residing at 6, Green Park
Nizampura, Vadodara – 390002

7. **Diamond Power Transformers Limited**
Having its registered office at
101/B/7 GIDC Estate, Ranoli, Baroda-390350
Email: acs@dicabs.com

8. **Diamond Infosystems Limited**
Having its registered office at
Essen Info Park5/9-10 Bide Gorwa,
Baroda-390016
Email: acs@dicabs.com

9. **M/s JSIW Infrastructure Pvt Ltd**
Having its registered office at

4, Astta Mitra Estate B/H Jupiter Mill,
Dudheshwar Road, Ahmedabad-380004
Email: account@jsiwinfra.com

10. **M/s. Sunil Hi-Tech Engineers Limited**
Having its registered office at
6th Floor, C-Wing, MET Educational Complex,
Gen. AK Vaidya Marg,
Bandra Reclamation,
Bandra(W), Mumbai-400050
Email: cs@sunilhitech.com

11. **M/s. MP Power Transmission Co. Ltd.**
Having its office at
Block No. 2, Shakti Bhawan,
Jabalpur-482008, Madhya Pradesh
Email Id.: mptransco@nic.in

12. **Sunil Mishra**
Having address at
1074, Sector 2D, Shree Hari Park Society, Nr.
Swaminarayan Temple, Gandhinagar-382002
Email: Not known.

**... Respondents**

**Order Pronounced On: 07.09.2026**

**C O R A M :**

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

**A P P E A R A N C E:**

| | | |
|---|---|---|
| For the Applicant | : | Mr. Ravi Pahwa, Adv. a. w. |
| | : | Ms. Gunjan Aggarwal, Adv. |
| For the Respondents | : | Mr. Sahil Jayesh Rao, Adv. R-1 to R-3 |
| | : | Mr. Jaimin Dave, Adv. a. w. |
| | : | Ms. Hirva Dave, Adv. for R-9 |
| | : | Mr. Dheeraj Garg, Adv. for R-12 |
| | : | Mr. Kunal Vaishnav, Adv. for R-6A & R-6B |

: None for R-8 and R-11
: R-4, R-5, R-7 and R-10 are already **Ex-parte**

**O R D E R**

***Per:*** **Bench**

**1.** The IA No.185 of 2025 was e-filed on 25.01.2025 by the applicant, Sunil Kumar Kabra, being the liquidator of M/s. Archon Engicon Limited under Section 66(1) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for fraudulent trading/wrongful trading against the respondents. Wherein seeking following reliefs: -

a. *That this Hon'ble Tribunal may be pleased to allow this application;*

b. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 1 to 4 to make contribution to the tune of Rs. 184.55 crores for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

c. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 1 to 4 to make contribution to the tune of Rs.63 lakhs for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

d. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 5 to make contribution to the tune of Rs.36.54 crores for appropriate distribution*

*amongst creditors of the Corporate Debtor, in the interest of justice;*

e. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 6 to 8 to make contribution to the tune of Rs. 174.30 crores for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

f. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 9 to make contribution to the tune of Rs. 7.08 crores for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

g. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 10 make to contribution to the tune of Rs. 28 crores for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

h. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 11 to make contribution to the tune of Rs. 33.62 crores for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

i. *That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondent no. 12 to make contribution to the tune of Rs. 11.75 lakhs for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;*

*j. That this Hon'ble Tribunal may be pleased to condone the delay in filing this application, in the interest of justice;*

*k. That this Hon'ble Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice;*

**2.** The Applicant has placed the **facts** through the I.A. in the following manner: -

2.1 The Applicant submits that State Bank of India, as Financial Creditor, filed CP (IB) No. 211 of 2020 under Section 7 of the IBC against M/s. Archon Engicon Limited. This Adjudicating Authority, vide order dated 07.09.2021, initiated CIRP, declared moratorium and appointed Mr. Parthiv Parikh as IRP. In the 1st CoC meeting held on 12.10.2021, the CoC unanimously resolved to replace the IRP. Pursuant thereto, IA No. 781 of 2021 was filed by SBI, which was allowed vide order dated 24.11.2021, appointing the Applicant as RP.

2.2 The Applicant thereafter filed IA No. 670 of 2022 under Sections 33 and 34 of the Code seeking liquidation. The Corporate Debtor was ordered to be liquidated vide order dated 20.02.2023, and the Applicant was appointed as Liquidator.

2.3 During liquidation, in the 11th Stakeholders' Consultation Committee meeting, it was decided to appoint M/s. Pipara & Co. LLP as Transaction Auditor

for the period 01.04.2013 to 31.03.2019. Accordingly, the auditor was appointed on 22.03.2024 and, upon examination of the available records, submitted its Transaction Review Report dated 28.09.2024.

2.4 Upon consideration of the said report, the Applicant submits that several transactions were found to indicate fraudulent/wrongful trading under Section 66 of the Code, involving the suspended management and other respondents, as under:

i. **Book Debts Written Off** – Rs. 184.55 Crores: Bad debts relating to FY 2015-16 and 2016-17 were provided for without recovery till FY 2018-19 thereby rendering them non-recoverable, while such receivables continued to form part of the books and as a result various working capital facilities would have been availed basis such position of balance receivables in spite of same being non-recoverable, indicating an intention to defraud creditors. Respondent Nos 1 to 4 being suspended management of Corporate Debtor are liable to contribute the said amount to the Corporate Debtor.

ii. **Cash Receipts** – Rs. 63 Lakhs: Employees were provided imprest amounts from bank accounts, which were returned in substantially equivalent amounts in cash on the same or following day. Similar transactions involved the group company,

Accord Industries Ltd., indicating allegedly fraudulent cash transactions. The Respondent Nos 1 to 4 being suspended management of Corporate Debtor are liable to contribute the said amount to the Corporate Debtor.

iii. **Transactions with Respondent No. 5** – M/s. Volt Infra Services Pvt. Ltd. – Rs. 36.54 Crores: Being a related party due to common directorship, the ledger disclosed receipts of Rs. 38.53 Crores and payments of Rs. 41.73 Crores, including Rs. 36.54 Crores through letters of credit, despite there being no corresponding purchase/sale transactions during FY 2014-15. Only Rs 1.03 crores were payable as on 31.03.2014 owing to purchase-sale transactions pertaining to 2013-2014.

iv. **Transactions with Diamond Power Group (Respondent Nos. 6–8)** – Rs. 174.30 Crores: Suspicious cross-ledger adjustments with respondent nos. 6 to 8, resulted in inflated debtor and creditor balances without corresponding purchases, sales, advances or deposits, resulted recording of such entries, debtor balances were inflated against the trade creditors. This inter-alaia indicates the intent to defraud creditors of the Company.

v. **Transactions with Respondent No. 9** – M/s. JSIW Infrastructure Pvt. Ltd. – Rs. 7.08 Crores: Against sales of Rs. 40.89 Crores, only Rs. 7.61 Crores was received, while Rs. 2.37 Crores was paid without underlying purchases in FY 2013-2014 and 2014-2015. Receipts and payments were substantially routed through third parties, raising doubts regarding the genuineness of the transactions. The payments recorded were disbursed to third parties, and not to respondent no.9, thereby it creates a significant doubt on the sales booked by the Corporate Debtor with Respondent No.9.

vi. **Transactions with Respondent No. 10** – Sunil Hi-Tech Engineers Ltd. – Rs. 28 Crores: Payments of Rs. 215.96 Crores were made against purchases of Rs. 145.60 Crores, with Rs. 47.90 Crores received back. Certain amounts paid through letters of credit were subsequently returned to the Corporate Debtor and further transferred to CC accounts of various banks.

vii. **Transactions with Respondent No. 11** – M/s. MP Power Transmission Co. Ltd. – Rs. 33.62 Crores: Sales of Rs. 33.62 Crores were booked during FY 2016-17 to 2018-19, but no amount was recovered till the end of the review period. No adequate rationale, supporting documents or legal proceedings were initiated against respondent

No.11 for recovery of the said money by the suspended management , indicating alleged wrongful and fraudulent trading to the tune of Rs 33.62 crores

viii. **Loans/Advances to Respondent No. 12** – Shri Sunil Mishra –Rs. 11.75 Lakhs: An amount of Rs. 11.75 Lakhs was advanced towards expenses, but no corresponding expenses were booked or accounted for, rendering the transaction prima facie suspicious and allegedly fraudulent.

2.5 The Applicant, therefore, submits that the aforesaid transactions, as identified in the Transaction Review Report, disclose conduct falling within the ambit of Section 66 of the IBC, and that the concerned suspended directors/management and other responsible respondents are liable to contribute the amounts involved for distribution amongst the creditors of the Corporate Debtor.

2.6 The applicant submits that thus, the respondents have committed wrongful trading aggregating to the tune of Rs. 4,68,91,41,038 as summarized below:-

| Sr. No. | Transaction entered with | Amount (in Rs.) |
|---|---|---|
| 1 | Book Written Debts Off Over the Review Period by Corporate Debtor (payable by Respondent nos. 1 to 4 being suspended management of Corporate Debtor) | 1,84,55,41,038 |
| 2 | False Cash Receipts by Corporate Debtor (payable by Respondent nos. 1 to 4 being suspended management of Corporate Debtor) | 63,00,000 |
| 3. | Transactions with Respondent no.5-M/s Volt Infra Services Private Limited. | 36,54,00,000 |
| 4. | Transactions with Diamond Power Group (respondent nos. 6 to 8). | 174,30,00,000 |
| 5. | Transactions with Respondent no.9-M/s. JSIW Infrastructure Pvt Ltd. | 7,08,00,000 |
| 6. | Transactions with Respondent no. 10-Sunil Hi- Tech Engineers Limited. | 28,00,00,000 |
| 7. | Transactions with Respondent no.11-M/s MP Power Transmission Co. Ltd. | 33,62,00,000 |
| 8. | Loans and Advances outstanding given to Respondent no. 12-Mr. Sunil Mishra | 11,75,000 |
| | Total | **4,64,84,16,038** |

2.7 The Applicant submits that the transactions identified by the Transaction Auditor were carried out by the suspended management with an intent to defraud the creditors and therefore constitute fraudulent/wrongful trading within the meaning of Section 66 of the IBC. It is

submitted that Section 66 empowers the Adjudicating Authority, on an application by the Liquidator, to direct persons who knowingly participated in such transactions to contribute to the assets of the Corporate Debtor as may be deemed fit.

2.8 Accordingly, the Applicant seeks a direction against the Respondents to contribute an aggregate amount of Rs. 4,64,84,16,038/- for distribution amongst the creditors of the Corporate Debtor.

2.9 The Applicant explains that the delay occurred as the initial transaction audit, conducted on the instructions of the CoC for the two years preceding the insolvency commencement date, did not identify any transaction attracting Section 66, though certain transactions attracted Section 43, for which separate proceedings had already been initiated.

2.10 Thereafter, the 10th SCC meeting dated 15.03.2024 deliberated upon conducting a forensic/transaction audit for the extended period 01.04.2013 to 31.03.2019. Pursuant thereto, the Applicant informed the 11th SCC meeting dated 26.03.2024 that M/s. Pipara & Co. LLP, Chartered Accountants, had been appointed to conduct the audit. The Transaction Auditor submitted its report on 28.09.2024, which subsequently revealed transactions attracting Section 66.

2.11 The Applicant initially filed IA No. 1907 of 2024 under Sections 66 and 67 of the IBC. However, vide order

dated 03.01.2025, this Adjudicating Authority permitted withdrawal/dismissal of the application with liberty to file a fresh application, as the requisite confirmation by the Liquidator had not been annexed.

2.12 Thereafter, in the 25th SCC meeting held on 13.01.2025, the SCC authorised the Applicant to institute an application under Section 66 of the IBC in respect of the transactions identified by the audit.

2.13 The Applicant therefore submits that the delay was bona fide and occasioned by the extended forensic audit, receipt and examination of the audit report, and the earlier proceedings culminating in the liberty granted by this Adjudicating Authority. The Applicant accordingly seeks condonation of delay and prays that this Adjudicating Authority exercise its powers under Section 66(2) of the IBC and direct the Respondents to make appropriate contribution to the assets of the Corporate Debtor.

**3.** The Respondent No. 6 (Diamond Power Infrastructure Limited) e-filed **Reply** on 25.04.2025 denying various averments made in the Interlocutory Application. The contentions of the Respondent No. 6 are mentioned hereunder:-

3.1 The answering Respondent submits that the present application under Section 66(1) of the IBC is not maintainable against Respondent No. 6 and deserves

dismissal at the threshold. DPIL had undergone CIRP commencing on 24.08.2018, and its Resolution Plan submitted by M/s. GSEC Ltd. in consortium with Mr. Rakesh Shah, approved with 89.46% voting share, was sanctioned by this Adjudicating Authority vide order dated 20.06.2022 in IA No. 160 of 2022 in CP (IB) No. 137 of 2018.

3.2 It is contended that, upon approval of the Resolution Plan under Section 31(1) of the IBC, all pre-CIRP claims, liabilities, obligations and proceedings not forming part of the Plan stood extinguished. Clause 3.5 of the approved Resolution Plan specifically provides for extinguishment of liabilities pertaining to the period prior to the Trigger Date. Reliance is placed on *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC & Ors.*, wherein the Supreme Court held that claims not forming part of an approved Resolution Plan stand extinguished and cannot subsequently be pursued.

3.3 Without prejudice, Respondent No. 6 submits that the Applicant has merely reproduced the findings of the Transaction Review Report without independently establishing the ingredients of Section 66. The Applicant has failed to plead or establish any dishonest intention, fraudulent purpose, specific role of DPIL, causative connection, or evidence of intent to defraud creditors. It is further contended that the alleged beneficiaries have not been impleaded, the alleged undue benefit has not

been quantified, and no supporting material or transaction documents have been produced.

3.4 Reliance is placed on *Regen Powertech (P.) Ltd. v. M/s. Wind Construction Pvt. Ltd. & Ors.*, Comp. App. (AT)(CH)(Ins.) No. 349/2022, wherein the NCLAT observed that allegations of fraudulent trading require a high degree of proof and convincing tangible/documentary material establishing dishonest intention to defraud creditors. Respondent No. 6 submits that no such material has been produced in the present case.

3.5 It is further submitted that neither the Applicant nor the Transaction Auditor approached DPIL for any clarification or explanation regarding the alleged transactions. The Transaction Review Report itself contains limitations and was prepared on the basis of limited information available to the Auditor and information in the public domain, with the possibility of its findings changing upon receipt of further material. Hence, the report cannot by itself establish liability under Section 66.

3.6 Respondent No. 6 denies having any connection with the affairs or transactions of Archon Engicon Limited and submits that the SCC proceedings and internal orders concerning Archon Engicon Ltd. do not bind DPIL. The alleged involvement of DPIL in the Transaction Review

Report is stated to be baseless, unsubstantiated and unsupported by any specific pleading or evidence.

3.7 It is specifically denied that DPIL participated in any fraudulent transaction or that any transaction, wrongful trading, concealment, alienation or other misconduct attributable to DPIL has been established. The Respondent further submits that Section 66(1) has been invoked without establishing the essential ingredients of the provision.

3.8 As regards the alleged amount of Rs. 174.30 Crores, Respondent No. 6 denies any liability or obligation to contribute the said amount, or any part thereof, towards the creditors of Archon Engicon Limited.

3.9 Respondent No. 6 opposes the prayer for condonation of delay, submitting that the Applicant has failed to demonstrate sufficient cause or legal justification for the belated filing of the Section 66 application. It is contended that such delay causes prejudice to the Respondent and amounts to an attempt to reopen matters relating to a concluded and approved Resolution Plan, contrary to the requirement of finality and certainty under the IBC.

3.10 Accordingly, Respondent No. 6 submits that the application, insofar as it concerns Diamond Power Infrastructure Limited, is barred by law, unsupported by evidence and not maintainable under Section 66(1) of the IBC. It therefore prays that the present Application

be dismissed qua Respondent No. 6, including the claim of Rs. 174.30 Crores and all consequential reliefs.

**4.** The Affidavit was taken on record vide Inward Diary No. D -2773 dated 29.04.2025 in compliance with the order dated 25.03.2025, the Applicant published the notice in the English daily newspaper "Business Standard" and the Gujarati daily newspaper "Loksatta-Jansatta" on 04.04.2025. Copies of the respective newspaper publications are annexed hereto and marked as **Annexure-A (Colly.)** of the Affidavit. The publication notice regarding next date of hearing on 07.05.2025 at 10.30 A.M. was in relation to the Respondent No.4 (Amit Kumar N. Thakkar), Respondent No.5 (M/s Volt Infra Services Private Limited), Respondent No.7 (Diamond Power Transformers Limited) and Respondent No.10 ( M/s Sunil Hi-Tech Engineers Limited).

**5.** The Respondent No. 3 (Sandip Choudhary) e-filedan **affidavit-in-reply** on 01.05.2025 , denying all the contentions, facts and averments made in the memo of the application and further making following contentions: -

5.1 It is submitted that the Applicant had earlier filed I.A. No. 329 of 2022 under Section 43 of the IBC, which is

pending. The same Transaction Auditor had earlier examined the transactions from the perspective of Section 66, but found no fraudulent or unusual transactions. The Scope of Work dated 01.11.2021 has been annexed as **Annexure-A1**. Hence, the present Section 66 Application is alleged to be an afterthought.

5.2 Respondent No. 3 submits that he became a Director only on 08.09.2016 and was not a Director when the alleged transactions were undertaken. Hence, no role or liability can be attributed to him under Section 66. The relevant document has been annexed as **Annexure-A2**.

5.3 The Application is further alleged to be barred by limitation, as it concerns transactions pertaining to FY 2018-19, and has been filed after an unexplained delay.

5.4 The Respondent alleges suppression of material documents, particularly the Transaction Audit Report dated 22.08.2024, which was subsequently withdrawn and has not been placed before the Tribunal.

5.5 The Respondent also challenges the Transaction Audit Report dated 28.09.2024, contending that it was prepared subject to material limitations. The Auditor itself recorded that certain crucial documents were unavailable, the reliability of the Tally data was questionable, relevant Sanction Letters were not furnished, and complete bank statements for FYs 2013-14, 2016-17, 2017-18 and 2018-19 were unavailable.

Hence, the report cannot by itself establish fraudulent transactions under Section 66.

5.6 Paras I & II are stated to be formal and require no comments. Paras 1–6 relate to proceedings before the Tribunal and CoC meetings and are matters of record.

5.7 Para 7(i) – Bad debts: The allegation is denied. It is submitted that the debts had already been provided for in FY 2015-16 and transferred to bad debts/expenses on 31.03.2016 and 31.03.2017. The write-offs arose due to inability/disputes of debtors and not with any fraudulent intention. Diamond Power Group, accounting for around 40% of sales, was itself facing financial difficulties and ultimately underwent CIRP.

5.8 Para 7(ii) – Cash receipts: The allegation is denied. The amounts were given to employees as imprest for expenses at different sites and were returned in cash and duly recorded in the Corporate Debtor's books. There was no illegality or fraudulent intention.

5.9 Paras 7(iii) to 7(viii) concern other Respondents and are not controverted at this stage, while the Respondent reserves the right to respond subsequently.

5.10 Paras 8–10 are denied. It is submitted that the alleged transactions do not satisfy the essential ingredients of Section 66, particularly fraudulent intention and knowledge.

5.11 Paras 11–14 are opposed on the grounds of delay, limitation and the fact that the transactions had already

been examined in the earlier audit connected with I.A. No. 329 of 2022.

5.12 The Respondent relies upon the following grounds:

i. The Application is barred by limitation and unexplained delay;

ii. The essential ingredients of Section 66 of the IBC have not been established;

iii. Respondent No. 3 was not a Director at the relevant time and had no role in the alleged transactions;

iv. The Applicant has suppressed material documents, including the withdrawn Transaction Audit Report dated 22.08.2024;

v. The subsequent Transaction Audit Report dated 28.09.2024 suffers from material documentary limitations and cannot conclusively establish fraud.

5.13 Accordingly, Respondent No. 3 submits that the Application deserves to be rejected qua Respondent No. 3, with liberty reserved to add, alter or amend the grounds, if required.

**6.** The Respondent No. 1(Chandra Shekhar B. Panchal) e-filed an **affidavit-in-reply** on 01.05.2025 , denying all the contentions, facts and averments made in the memo of the application and further making following contentions: -

6.1 It is submitted that Respondent No. 1 has already been admitted into Personal Insolvency Resolution Process under Section 95 of the IBC in C.P. (IB) No. 214(AHM) of

2022, vide order dated 28.06.2024. A copy thereof has been annexed as **Annexure-A1**.

6.2 The Respondent further submits that the Applicant had earlier filed I.A. No. 329 of 2022 under Section 43 of the IBC, which is pending. The same Transaction Auditor had examined the transactions from the perspective of Section 66, but had not found any unusual or fraudulent transaction. The Scope of Work dated 01.11.2021 has been annexed as **Annexure-A2**. Thus, the present Section 66 Application is alleged to be an afterthought seeking to wrongly characterise bona fide business transactions as fraudulent.

6.3 The Application is also alleged to be barred by limitation under Section 3 of the Limitation Act, 1963, as it concerns transactions relating to FY 2018-19.

6.4 The Respondent has alleged suppression of material facts and documents, particularly the Transaction Audit Report dated 22.08.2024, which was subsequently withdrawn and has not been disclosed before the Tribunal.

6.5 The Respondent has also challenged the Transaction Audit Report dated 28.09.2024, stating that it was prepared with serious limitations due to non-availability of material documents. The Auditor itself recorded that certain crucial documents were not furnished, the reliability of the Tally data was questionable, the Sanction Letters under the Master Restructuring

Agreement dated 31.03.2015 were unavailable and complete bank statements for FYs 2013-14, 2016-17, 2017-18 and 2018-19 were not available. Hence, the report cannot conclusively establish fraud under Section 66.

6.6 The Respondent has denied all averments unless specifically admitted and has reserved the right to file a further affidavit, if required.

6.7 Paras I & II are formal and require no comments. Paras 1–6 relate to proceedings before the Tribunal and CoC meetings and are matters of record, with the onus upon the Applicant to establish the same.

6.8 Para 7(i) – Bad debts: The allegation is denied. It is submitted that the alleged bad debts had already been provided for in FY 2015-16 and transferred to bad debts/expenses on 31.03.2016 and 31.03.2017. The write-offs resulted from the inability/disputes of debtors and were not made with any fraudulent intention. Diamond Power Group, accounting for around 40% of sales, was itself facing financial difficulties and ultimately underwent CIRP.

6.9 Para 7(ii) – Cash receipts: The allegation is denied. The amounts were advanced to employees as imprest for travel and miscellaneous expenses at various sites and were returned in cash and duly recorded in the books. The transactions were therefore bona fide and contained no element of illegality or fraudulent intention.

6.10 Paras 7(iii) to 7(viii): These relate to recoveries sought against other Respondents under Section 66 and are not controverted at this stage, while the Respondent reserves the right to respond subsequently.

6.11 Para 8: Denied on the basis of the submissions regarding Paras 7(i) and 7(ii). Para 9: The conclusions are denied as the transactions lack the essential elements of fraud and knowledge required under Section 66. Para 10: The Application deserves rejection for failure to establish the statutory ingredients of Section 66.

6.12 Paras 11–14: The Respondent submits that the Application deserves to be rejected on the grounds of delay and limitation, absence of justification for the delay, and the fact that the transactions had already been examined in the earlier transaction audit connected with I.A. No. 329 of 2022.

**7.** The Respondent No. 2 (Sandip J Panchal) e-filed **affidavit-in-reply** on 01.05.2025 , denying all the contentions, facts and averments made in the memo of the application and further making following contentions: -

7.1 The Respondent submits that the Applicant had earlier filed I.A. No. 329 of 2022 under Section 43 of the IBC, which is pending before the Adjudicating Authority. It is contended that the same Transaction Auditor had examined the transactions from the perspective of

Section 66 but had found nothing unusual or fraudulent. The Scope of Work dated 01.11.2021 is relied upon as **Annexure-A1**. Hence, the present Application is alleged to be an afterthought intended to bring bona fide business transactions within the ambit of Section 66.

7.2 The Respondent further submits that he was not a Director at the time of the alleged transactions and became a Director only on 15.07.2015. Therefore, no role can be attributed to him in the alleged fraudulent transactions under Section 66. The relevant document is annexed as **Annexure-A2**.

7.3 The Application is alleged to be barred by limitation under Section 3 of the Limitation Act, 1963, as the transactions relate to FY 2018-19.

7.4 It is further alleged that the Applicant has suppressed material facts and documents, particularly the Transaction Audit Report dated 22.08.2024, which was subsequently withdrawn and deliberately not placed before the Tribunal.

7.5 The Respondent has also questioned the reliability of the Transaction Audit Report dated 28.09.2024, as the Auditor itself recorded material limitations, including:

i. certain crucial documents/details were not furnished;

ii. the reliability of the Tally data was questionable;

iii. the relevant Sanction Letters under the Master Restructuring Agreement dated 31.03.2015 were unavailable; and

iv. complete bank statements for FYs 2013-14, 2016-17, 2017-18 and 2018-19 were not available for all accounts.

7.6 It is therefore contended that the report cannot conclusively establish fraudulent transactions under Section 66.

7.7 The Respondent has denied all averments unless specifically admitted and has reserved the right to file a further affidavit, if necessary. Paras I & II are stated to be formal, while Paras 1–6 relate to proceedings before the Tribunal and CoC and are matters of record.

7.8 Para 7(i) – Bad debts: The allegation is denied. It is submitted that the alleged bad debts had already been provided for in FY 2015-16 and transferred to bad debts/expenses on 31.03.2016 and 31.03.2017. The write-offs were attributable to the inability/disputes of debtors and were not made with any fraudulent intention. Diamond Power Group, which accounted for approximately 40% of sales, was itself facing financial difficulties and ultimately underwent CIRP.

7.9 Para 7(ii) – Cash receipts: The allegation is denied. The amounts were advanced to employees as imprest for travel and miscellaneous expenses at different sites and were subsequently returned in cash and duly recorded in the books of the Corporate Debtor. Hence, the

transactions were bona fide and involved no illegality or fraudulent intention.

7.10 Paras 7(iii)–7(viii): These relate to recoveries sought against other Respondents under Section 66 and are not controverted at this stage, with liberty reserved to respond subsequently.

7.11 Paras 8–10: The allegations and conclusions are denied. It is submitted that the transactions lack the essential elements of fraudulent intention and knowledge of impending proceedings required under Section 66, and therefore the Application is liable to be rejected.

7.12 Paras 11–14: The Application is opposed on the grounds of delay and limitation, absence of justification for the delay, and the fact that the transactions had already been examined in the earlier transaction audit forming part of I.A. No. 329 of 2022.

7.13 The Respondent relies upon the following grounds:

i. The Application is barred by delay and limitation;
ii. The essential conditions for invoking Section 66 of the IBC have not been established;
iii. The Respondent was not a Director at the relevant time of the alleged transactions;
iv. The Applicant has suppressed the previous Transaction Audit Report dated 22.08.2024; and
v. The Transaction Audit Report dated 28.09.2024 suffers from material documentary limitations and cannot conclusively establish fraud.

7.14 Accordingly, the Respondent submits that the Application deserves to be rejected, with liberty reserved to add, alter, amend or supplement the grounds, if necessary.

**8.** The Respondent No. 11 (M/s M P Power Transmission Company Limited) e-filed an **affidavit-in-reply** on 13.05.2025 , denying all the contentions, facts and averments made in the memo of the application and further making following contentions: -

8.1 The transaction audit conducted by M/s. Pipara & Co. LLP for the period 01.04.2013 to 31.03.2019 recorded outstanding debts for FY 2015-16 and FY 2016-17 of approximately Rs. 184.55 crore. The specific allegation against the answering Respondent is that the Corporate Debtor recorded sales of Rs. 33.62 crore during FY 2016-17 to FY 2018-19, against which no payment was allegedly received and no documents evidencing recovery proceedings were produced. On this basis, the transaction has been alleged to be wrongful and fraudulent.

8.2 The answering Respondent has denied any wrongful or fraudulent transaction with the Corporate Debtor and submitted that proceedings under Section 66(1) of the IBC are not maintainable. It is contended that the Applicant has made only bald allegations without producing sufficient evidence, and mere non-production

of documents by the suspended management cannot establish fraudulent trading.

8.3 It is submitted that Contract No. 04-01/JICA/MPPTCL/TR-122/06595-4 dated 28.06.2013 was awarded by the answering Respondent, MPPTCL, to M/s. Archon Engicon Ltd. for construction of transmission lines in the Gwalior Circle on a turnkey basis under JICA funding. The Corporate Debtor was required to complete the 132 KV Sheopur-Baroda and 132 KV Guna-Esagarh transmission lines within 18 months from 06.09.2013. The contract is annexed as Annexure R-XI/2.

8.4 The Corporate Debtor completed the Sheopur-Baroda line on 16.06.2015, but failed to complete the Guna-Esagarh line. After issuance of a show-cause notice dated 04.05.2017, the contract was terminated on 05.12.2017. The performance security and advance payment security bank guarantees amounting to Rs. 8,53,81,643/- were encashed, and the Corporate Debtor was debarred for three years. The relevant documents are annexed as Annexures R-XI/3 and R-XI/4.

8.5 Thereafter, vide order dated 18.07.2018, the balance work was awarded to M/s. Linique Structures & Towers Ltd. at the risk and cost of the Corporate Debtor, quantified at Rs. 3,91,11,195/-. The work was subsequently completed and the line was charged on

30.01.2021. The relevant order and agreement are annexed as Annexure R-XI/5.

8.6 After adjustment of all dues payable by M/s. Archon, a balance amount of Rs. 89,65,887/- was paid to the Corporate Debtor. The answering Respondent also communicated these details to the Deputy Director, Directorate of Enforcement, vide letter dated 22.04.2024, annexed as Annexure R-XI/6.

8.7 It is therefore submitted that the transactions arose out of a genuine contractual relationship, involving execution, termination and adjustment of contractual dues, and that there are no outstanding dues payable by the answering Respondent to the Corporate Debtor. Consequently, no fraudulent or wrongful transaction is made out under Section 66 of the IBC.

8.8 Furthermore, relied upon the case of Hon'ble NCALT:-

i. *Jayesh Sanghrajka v. Subramanian*, 2024 SCC OnLine NCLT 775

8.9 Accordingly, the answering Respondent has prayed that the proceedings under Section 66 of the IBC be dismissed/quashed qua the answering Respondent. The Respondent has not filed a para-wise reply but has reserved liberty to file the same, if required.

**9.** The Respondent No. 12(Sunil Mishra) e-filed an **affidavit-in-reply** on 15.05.2025 , denying all the

contentions, facts and averments made in the memo of the application and further making following contentions: -

9.1 **Maintainability/Locus Standi**: It is submitted that under the statutory scheme of the IBC, the Liquidator can, at best, continue an application under Section 66 initiated by the Resolution Professional during CIRP. Since the present application has been filed afresh by the Liquidator during liquidation, its maintainability is disputed.

9.2 **Delay and Non-Application of Mind**: The Corporate Debtor has been under liquidation since 20.02.2023, whereas the Transaction Auditor was appointed only on 22.03.2024, pursuant to the insistence of the SCC. Even after receipt of the report dated 28.09.2024, the Liquidator failed to independently examine or determine the alleged transactions. The earlier IA No. 1907/2024 was dismissed on 03.01.2025, yet the present application has again been filed substantially relying upon the same report.

9.3 **No Independent Determination**: The Liquidator has neither determined whether the transactions constitute fraudulent trading under Section 66(1) or wrongful trading under Section 66(2), nor recorded any independent satisfaction. The Transaction Review Report itself contains several disclaimers regarding the reliability and completeness of the accounting data and the limited nature of the audit.

9.4 **Contradictory Allegations**: In respect of Respondent No. 12, the same transactions have been described as fraudulent in one part of the application and wrongful in another, demonstrating absence of a clear and independent opinion on the part of the Liquidator.

9.5 **Absence of Evidence**: The allegations against R12 are based primarily on accounting entries. No bank statements, fund-flow evidence, supporting documents or other cogent material have been produced to establish either fraudulent or wrongful trading.

9.6 **Attempt to Circumvent Section 43**: The SCC minutes themselves indicate that the transactions were initially considered preferential transactions under Section 43. Having regard to the limitation period under Section 43, the subsequent classification of the same transactions under Section 66 is alleged to be an attempt to circumvent the statutory limitation and amounts to misuse of Section 66.

9.7 **Section 101 Moratorium**: It is further submitted that R12 is undergoing personal insolvency resolution proceedings and, consequently, the moratorium under Section 101 of the IBC operates against continuation of the present proceedings.

9.8 **Ingredients of Section 66 Not Established**: There is no specific allegation or evidence demonstrating any intention to defraud creditors on the part of R12. Such intention is an essential ingredient of Section 66(1).

Likewise, the transactions pertaining to FY 2015–16 and 2016–17 cannot satisfy Section 66(2), particularly in the absence of evidence that R12 knew or ought to have known of any prospect of commencement of CIRP.

9.9 **R12's Defence on Transactions**: R12 was inducted as a professional director from 19.07.2013 to 11.06.2016 for revival of the Corporate Debtor. The amounts received by R12 were towards legitimate business/travel expenses incurred in the ordinary course. R12 further asserts that he had infused funds into the group company, which were subsequently diverted to the Corporate Debtor.

9.10 **Exoneration as Wilful Defaulter**: R12 was also exonerated by Union Bank of India from the proceedings for declaration as a wilful defaulter, whereas other directors were proceeded against.

9.11 **Reliance on Transaction Audit Report Insufficient**: Reliance is placed on Anuj Bajpai v. Surendra Loda and other authorities to contend that a Transaction Audit/Forensic Report, particularly one containing disclaimers and tentative observations, cannot by itself constitute substantive proof of fraudulent trading under Section 66.

**10.** The Respondent No. 9 (JSIW Infrastructure Pvt. Ltd) e-filed an **affidavit-in-reply** on 15.05.2025 , denying all the

contentions, facts and averments made in the memo of the application and further making following contentions: -

10.1 It is submitted that the application under Section 66 of the IBC is not maintainable against Respondent No. 9, being a third party and not a related party of the Corporate Debtor. Reliance is placed on **Gluckrich Capital (P.) Ltd. v. State of West Bengal**, wherein the Hon'ble Supreme Court held that remedies against third parties for recovery of dues are to be pursued through independent civil remedies and are not available under Section 66 of the IBC.

10.2 The present application is founded substantially on the Transaction Review Report, which itself contains material disclaimers regarding the reliability and completeness of the accounting data, Tally records and bank statements. The report is based on sample verification and information supplied by the Liquidator/erstwhile management without independent verification. Further, bank statements for several financial years were admittedly unavailable. Hence, the report cannot, by itself, constitute conclusive evidence of fraudulent trading.

10.3 There is no specific allegation or evidence that Respondent No. 9 acted with an intent to defraud creditors. The essential ingredients of Section 66, including fraudulent intent, knowledge regarding the impending CIRP and failure to exercise due diligence to

minimise loss to creditors, have not been established against R9. Reliance is placed on ***Renuka Devi Rangaswamy v. Madhusudan Khemka***.

10.4 The alleged amount of ₹7.08 Crores has been attributed to R9 on the basis of alleged accounting misclassification. The Transaction Review Report itself initially treated the transaction as falling under Section 50 (extortionate credit transaction) but subsequently suggested its classification under Section 66 merely because the transaction fell outside the relevant look-back period. It is submitted that a transaction cannot be converted into a fraudulent transaction under Section 66 merely to overcome the limitation/look-back period applicable to another avoidance provision.

10.5 R9 submits that the transactions arose out of back-to-back contractual arrangements involving M/s M V Omni Projects (India) Ltd., R9 and the Corporate Debtor. Payment to the Corporate Debtor was contractually contingent upon receipt of corresponding payment by R9 from the principal agency. Since M/s M V Omni Projects did not receive payment due to contractual disputes, R9 likewise did not receive payment and, consequently, no amount became payable to the Corporate Debtor.

10.6 The Corporate Debtor itself ultimately wrote off the alleged receivable, and M/s M V Omni Projects was subsequently admitted into CIRP. Thus, according to

R9, no amount was legally due and payable by R9 to the Corporate Debtor.

10.7 In the absence of any relationship with the Corporate Debtor, cogent evidence, fraudulent intent or satisfaction of the statutory ingredients of Section 66, the application is misconceived and liable to be dismissed qua Respondent No. 9, with costs.

**11.** That the **Common Affidavit in Rejoinder** in response to Affidavit in Reply of Respondent No. 1 to 3 was e-filed on 21.07.2025 in which following submission were made in:-

11.1 **Maintainability and Jurisdiction**: The Applicant denies that the present application is devoid of merit, without jurisdiction or an afterthought. It is submitted that the application has been filed bona fide on the basis of facts and material available on record and is maintainable under Section 66 of the IBC.

11.2 **PIRP of Respondent No. 1**: The personal insolvency resolution process of Respondent No. 1 does not bar the present proceedings. It is submitted that proceedings under Section 66 and personal insolvency resolution proceedings can operate concurrently and there is no statutory prohibition against the same.

11.3 **Limitation/Look-back Period**: The Applicant denies that the application is barred by limitation. The initial audit revealed irregularities, pursuant to which an

extended audit was undertaken and further fraudulent transactions were identified. Since Section 66 does not prescribe a specific look-back period for fraudulent trading, transactions preceding the CIRP period can also be examined for determining fraudulent conduct.

11.4 **Transaction Audit Report**: The Applicant submits that the Transaction Review Report dated 28.09.2024 was prepared on the basis of available financial and accounting records, including data reconciled with bank statements and financial statements. The report is supported by sufficient documentary material.

11.5 **Bad Debt Write-offs**: The allegation that the bad debts were written off merely due to the financial inability of debtors is denied. It is submitted that approximately 26% of the outstanding debts were written off in FY 2016–17, without adequate supporting documentation or Board resolutions. Significant provisions were made in respect of Diamond Infra, Sunil Hi-Tech and JSIW Infra, entities which were also involved in other suspicious transactions, indicating a possible concerted scheme prejudicial to the Corporate Debtor and its creditors.

11.6 **Suspicious Employee Transactions**: The Applicant submits that the Respondents have failed to specifically rebut the auditor's finding that amounts were advanced to employees on imprest basis and returned in cash on

the following day, indicating possible siphoning of funds.

11.7 **Ingredients of Section 66**: The Applicant contends that the suspended directors failed to exercise due diligence to minimise potential loss to creditors. The writing off of substantial receivables deprived the Corporate Debtor and, consequently, the creditors of an opportunity to recover such amounts. The conduct of Respondent Nos. 1 to 4 is therefore alleged to attract Sections 66(1) and 66(2) of the IBC.

11.8 **Delay**: The allegation of unexplained delay is denied. The present application is based upon the findings of the Transaction Review Report dated 28.09.2024, pursuant to the extended audit undertaken after irregularities were detected.

11.9 **Fraudulent Intent**: The Applicant submits that the material on record establishes the necessary elements of knowledge, intent and resultant prejudice to the creditors, warranting an order under Section 66 of the IBC.

11.10 Accordingly, the Applicant prays that the objections raised by the Respondents be rejected and the present application under Section 66 of the IBC be allowed in terms of the prayers made therein.

**12.** That the **Written Submission** on behalf of Respondent No. 6 (Diamond Power Infrastructure Limited) was received on

29.07.2025 vide Inward No. D-5087, the **Common Affidavit in Rejoinder** in response to the **Affidavit in Reply of Respondent No. 9** was e-filed on 06.09.2025 , the **Written Submission on behalf of Respondent No. 12** was e-filed on 30.12.2025 and was taken on record; and the **Written Submission on behalf of Respondent Nos. 1, 2 and 3** was received on 29.07.2025 vide Inward No. D-5087 and was taken on record; **Written Submission of behalf Respondent No. 12** was received on 17.03.2026 vide Inward dairy No. D- 8838; **Written Submission of behalf Respondent No. 9** was received on 17.03.2026 vide Inward dairy No. D- 8838. All were taken on record. Due to the brevity of the facts and submissions already recorded hereinabove, the same are not reproduced again for the sake of avoiding repetition.

**13.** That the revised **Written Submission** on behalf of Applicant/ Liquidator was e-filed on 25.07.2026 . The same was taken on record. Due to the brevity of the facts and submissions already recorded hereinabove, the same are not reproduced again for the sake of avoiding repetition.

**14.** That the **Amendment** was carried out pursuant to the order dated 11.02.2026 passed in I.A. No. 196 of 2026, whereby Respondent Nos. 6A and 6B were impleaded as parties to the present proceedings. The service affidavit has been filed on 05.03.2026 vide Inward No. D – 1983.

**15.** That the **Reply cum Counter Affidavit on behalf of Respondent No. 6(A) and 6(B)** were e-filed on 14.08.2026 wherein following submission were made in:-

15.1 The Answering Respondent has stated that he is representing Respondent No. 6A/6B, which came to be impleaded after deletion of M/s. Diamond Power Infrastructure Limited ("DPIL"), and is conversant with the facts and circumstances of the matter from the records maintained in the ordinary course.

15.2 The principal objection raised is that the Application is not maintainable against the Answering Respondents, as the alleged liabilities pertain to the period prior to the Trigger Date of DPIL's approved Resolution Plan and stand extinguished under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC") in accordance with the "clean slate" principle. It is submitted that DPIL's CIRP commenced on 24.08.2018 in C.P. (IB) No. 137 of 2018, and the Resolution Plan submitted by M/s. GSEC Limited in consortium with Mr. Rakesh Shah, having been approved by the CoC

with 89.46% voting share, was sanctioned by this Adjudicating Authority vide order dated 20.06.2022 in I.A. No. 160 of 2022.

15.3 It is submitted that upon approval of the Resolution Plan, the same became binding under Section 31(1) of the IBC upon the Corporate Debtor, its members, employees, creditors, guarantors, Government authorities, local authorities and other stakeholders and claimants. DPIL is presently functioning under a new management, with an altered ownership and capital structure. Reliance is placed upon Clause 3.5 of the approved Resolution Plan, under which all liabilities and obligations of DPIL pertaining to any period prior to the Trigger Date stood extinguished and were rendered unenforceable against the Resolution Applicant or the Corporate Debtor.

15.4 According to the Answering Respondents, the transactions impugned in the present Application relate to the period 01.04.2013 to 31.03.2019, which falls prior to DPIL's Trigger Date and were also covered by the transaction audit conducted by M/s. Pipara & Co. LLP. It is submitted that neither the Corporate Debtor (Archon), nor the Applicant/Liquidator, nor any person acting on their behalf lodged any claim, demand or proceeding against DPIL during DPIL's CIRP. Consequently, any alleged claim which was not disclosed or incorporated in DPIL's Resolution Plan stood extinguished by virtue of Section 31(1) of the IBC

and the law laid down in Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. The Applicant, having failed to lodge any claim against Respondent No. 6 during its CIRP, cannot at a belated stage seek to recover any amount from Respondent Nos. 6A and 6B.

15.5 It is further submitted that DPIL was a stranger to the CIRP and liquidation proceedings of Archon and was never a creditor, debtor, stakeholder, contracting party or counterparty of Archon during the relevant period. The impleadment of DPIL and consequently Respondent Nos. 6A and 6B is alleged to be erroneous and mechanical. The Answering Respondents have specifically denied the existence of any legally recognised "Diamond Power Group" liability and submitted that Respondent Nos. 6 to 8 are separate and distinct juristic entities having independent legal identities. No case for lifting of the corporate veil has either been pleaded or established. Therefore, allegations against an undefined or amorphous "group" cannot be fastened upon the Answering Respondents.

15.6 It is submitted that allegations of fraud are required to be specifically pleaded with full particulars and strictly proved. Reliance is placed upon Order VI Rule 4 of the Code of Civil Procedure, 1908, and it is contended that the Application does not identify any specific transaction involving DPIL by setting out the date, amount, counterparty or alleged dishonest intention. The

expressions such as "inflated debtor and creditor balances" and "cross ledger adjustments lacking commercial substance" are stated to be bald and general conclusions allegedly reproduced from the Pipara transaction audit report, without any independent analysis, application of mind or pleading of the constituent facts.

15.7 The Answering Respondents have also relied upon the judgment of the Hon'ble NCLAT in ***Regen Powertech (P) Ltd. v. Wind Construction (P) Ltd.***, Company Appeal (AT) (CH) (Ins.) No. 349 of 2022, to contend that allegations of fraudulent trading require a high degree of proof and compelling material sufficient to satisfy the conscience of the Adjudicating Authority even on the touchstone of preponderance of probabilities.

15.8 It is submitted that there is no evidence whatsoever demonstrating that the Answering Respondents committed any act with an intention to defraud the creditors of Archon or knowingly participated in any fraudulent business of the Corporate Debtor. No specific transaction involving DPIL has been identified in which fraudulent intent has been alleged or established; nor has any benefit allegedly received by the Answering Respondents, counterparty, or wrongful conduct been identified or quantified.

15.9 The Answering Respondents have further challenged the lump-sum claim of Rs. 4,64,84,16,038/-, which has

been sought jointly against all the Respondents. It is submitted that no specific, particularised or quantified liability has been attributed to DPIL or Respondent Nos. 6A and 6B. There is no computation, costing, methodology or basis disclosed for determining the portion, if any, allegedly attributable to the Answering Respondents. A monetary claim of such magnitude, without particulars or quantification against the concerned Respondents, is therefore stated to be legally unsustainable.

15.10 It is further contended that despite having access to the books and records of the Corporate Debtor, the Applicant/Liquidator did not, either before or after the transaction audit, seek any clarification or explanation from DPIL, issue any notice, or afford DPIL an opportunity of being heard before impleading it in the proceedings. The Liquidator is alleged to have acted mechanically on the basis of a third-party report without independently applying his mind or arriving at an informed and reasonable conclusion. Such conduct, according to the Answering Respondents, is contrary to the statutory duties of the Liquidator and violative of the principle of audi alteram partem.

15.11 With respect to Respondent Nos. 6A and 6B specifically, it is submitted that the Application contains no specific averment attributing any individual act, knowledge or participation to either of them in the carrying on of Archon's business with an intent to defraud its

creditors. Liability under Section 66 of the IBC is stated to be personal and fault-based and can be imposed only where cogent and specific particulars establish that the concerned person was knowingly a party to the fraudulent conduct. In the absence of such pleadings or evidence, Respondent Nos. 6A and 6B contend that no case is made out against them and that they are liable to be deleted from the array of parties.

15.12 The Answering Respondents have also raised the objection of limitation and laches. It is submitted that the impugned transactions relate to the period 01.04.2013 to 31.03.2019, whereas the present Application was filed only in 2025, several years after the alleged transactions and even prior to the commencement of DPIL's CIRP on 24.08.2018. The proceedings are therefore stated to be hopelessly belated and liable to be rejected on the ground of limitation and laches.

15.13 Without prejudice to the aforesaid preliminary objections, the Answering Respondents have stated that Archon was admitted into CIRP on 07.09.2021 pursuant to a Section 7 application filed by the State Bank of India, liquidation was ordered on 20.02.2023, and the Liquidator appointed M/s. Pipara & Co. LLP to conduct a transaction audit for the period 01.04.2013 to 31.03.2019. However, the Answering Respondents have no personal knowledge of and do not admit the contents, correctness, methodology or conclusions of the

audit report insofar as they concern the Answering Respondents, and the same are put to strict proof.

15.14 The allegations concerning inflated debtor and creditor balances, cross-ledger adjustments and absence of commercial substance between Archon and the alleged "Diamond Power Group" have been categorically denied as false, baseless, unparticularised and unsupported by evidence. The Answering Respondents reiterate that the Applicant has failed to establish any fraudulent transaction, dishonest intention, wrongful trading, benefit received or specific conduct attributable to them.

15.15 The allegation that the Answering Respondents are liable to contribute Rs. 4,64,84,16,038/- or any portion thereof to the assets of the Corporate Debtor has been denied as misconceived, legally unsustainable, unquantified and unsupported by particulars. It is further contended that the alleged claim is, in any event, barred by the approved Resolution Plan of DPIL and Section 31(1) of the IBC.

15.16 The Answering Respondents have finally reiterated that, save and except the matters expressly admitted, every allegation, averment and contention in the Application is denied as if specifically traversed. It is therefore prayed that the Application/claim against Respondent Nos. 6A and 6B be rejected, being time-barred, devoid of particulars, unsupported by evidence, without any basis

in fact or law, and not maintainable in view of the approved Resolution Plan and Section 31(1) of the IBC.

**16.** That the **Affidavit-in-Rejoinder on behalf of applicant liquidator in response to reply respondent nos. 6, 6A and 6B** received on 14.08.2026 vide inward dairy no. D-6882. Along with proof of cost Rs. 25,000/- deposited in the Prime Minister National Relief Fund. Wherein following submission were made in:-

16.1 The Applicant/Liquidator has denied the averments made by Respondent Nos. 6A and 6B, except those specifically admitted, and has submitted that their Reply is misconceived and primarily based on technical objections, without any substantive rebuttal to the Transaction Review Report dated 28.09.2024.

16.2 It is admitted that DPIL underwent CIRP and its Resolution Plan was approved on 20.06.2022; however, the Applicant contends that the "clean slate" principle under Section 31(1) of the IBC applies to DPIL and does not extinguish the independent personal liability of Respondent Nos. 6A and 6B for their own conduct under Section 66 of the IBC.

16.3 The Applicant submits that Respondent Nos. 6A and 6B, being directors/persons in control of DPIL and other Diamond Power Group entities during the relevant period, were allegedly "knowingly parties" to the

fraudulent conduct and the impugned cross-ledger adjustments concerning the Corporate Debtor. Their liability is stated to be personal and fault-based.

16.4 It is further submitted that no claim was lodged in DPIL's CIRP as the fraudulent nature of the transactions came to light only upon receipt of the Transaction Review Report dated 28.09.2024. Hence, the absence of a claim during DPIL's CIRP cannot, according to the Applicant, bar the present proceedings against Respondent Nos. 6A and 6B in their individual capacities.

16.5 Relying upon the Transaction Review Report, underlying ledgers and bank statements, the Applicant alleges that cross-ledger adjustments were made without any corresponding sale, purchase, advance or deposit, resulting in inflation of the Corporate Debtor's debtor and creditor balances by Rs. 174.30 crores.

16.6 The Applicant further submits that Respondent Nos. 6A and 6B were directors/persons in management and control during 01.04.2013 to 31.03.2019, and were the controlling minds/signatories of the relevant accounts and financial affairs. MCA records evidencing their directorship have been relied upon as Annexure-A2.

16.7 The objection regarding limitation is denied. The Applicant contends that the fraudulent nature of the transactions was discovered only on 28.09.2024, upon receipt of the Transaction Review Report, whereas the

present Application was filed on 25.01.2025, and is therefore within the period prescribed under Article 137 of the Limitation Act.

16.8 Accordingly, the Applicant contends that Respondent Nos. 6A and 6B are personally liable under Section 66 of the IBC and seeks contribution of Rs. 174.30 crores to the assets of the Corporate Debtor.

**17.** We note below relevant chronology of dates and events: -

| Date | Event |
|---|---|
| **01.11.2021** | The earlier Transaction Auditor's **Scope of Work** was prepared. Respondent Nos. 1–3 rely upon this to contend that the transactions had already been examined from the perspective of Section 66 and no fraudulent/unusual transactions were then found. |
| **07.09.2021** | On SBI's Section 7 petition in **CP (IB) No. 211 of 2020**, the NCLT admitted **M/s. Archon Engicon Ltd. into CIRP**, declared moratorium and appointed **Mr. Parthiv Parikh as IRP**. |
| **12.10.2021** | In the **1st CoC meeting**, the CoC unanimously resolved to replace the IRP. |
| **24.11.2021** | **IA No. 781 of 2021**, filed by SBI for replacement of the IRP, was allowed and **Mr. Sunil Kumar Kabra was appointed as RP**. |
| **FY 2015–16 / 31.03.2016** | According to Respondent Nos. 1–3, certain alleged bad debts had already been provided for and transferred to bad debts/expenses on **31.03.2016**. This becomes relevant to their defence that the subsequent write-offs were genuine and not fraudulent. |
| **FY 2016–17 / 31.03.2017** | According to the respondents, further alleged bad debts were provided for/transferred to bad debts/expenses on **31.03.2017**. The Applicant, however, alleges that substantial receivables were subsequently written off without adequate supporting documentation or Board |

| Date | Event |
|---|---|
| | resolutions. |
| **15.07.2015** | Respondent No. 2 states that he became a Director only on **15.07.2015**, and therefore disputes liability for transactions allegedly undertaken before his appointment. |
| **08.09.2016** | Respondent No. 3 states that he became a Director only on **08.09.2016**, and therefore claims that he could not have been responsible for transactions undertaken before that date. |
| **28.06.2013** | **MPPTCL awarded Contract No. 04-01/JICA/MPPTCL/TR-122/06595-4 to Archon** for construction of transmission lines in the Gwalior Circle under JICA funding. The contract required completion within 18 months from **06.09.2013**. |
| **06.09.2013** | The contractual period for completion of the MPPTCL transmission-line project commenced. |
| **16.06.2015** | Archon completed the **132 KV Sheopur-Baroda transmission line**, according to MPPTCL. |
| **04.05.2017** | MPPTCL issued a **show-cause notice** to Archon concerning failure to complete the Guna-Esagarh line. |
| **05.12.2017** | MPPTCL **terminated the contract**. Performance security and advance-payment security bank guarantees amounting to **₹8,53,81,643/- were encashed**, and Archon was debarred for three years. |
| **24.08.2018** | **Diamond Power Infrastructure Ltd. (DPIL) entered CIRP**. This date is crucial to R6/R6A/R6B's defence that the alleged transactions concerning DPIL pre-date its CIRP and were therefore covered by its subsequent Resolution Plan. |
| **18.07.2018** | The balance MPPTCL work was awarded to **M/s. Linique Structures & Towers Ltd. at Archon's risk and cost**, quantified at **₹3,91,11,195/-**. |
| **30.01.2021** | The balance transmission work awarded to Linique was completed and the line was charged. |

| Date | Event |
|---|---|
| **07.09.2021** | **Archon's CIRP commenced** pursuant to SBI's Section 7 petition. This is the relevant **CIRP commencement date of the Corporate Debtor**. |
| **20.02.2023** | The NCLT passed an order for **liquidation of Archon Engicon Ltd.** under Sections 33 and 34 and appointed **Mr. Sunil Kumar Kabra as Liquidator**. |
| **2022 — IA No. 329 of 2022** | The Applicant had already filed **IA No. 329 of 2022 under Section 43 of the IBC** concerning preferential transactions. It remained pending. Respondent Nos. 1–3 rely upon this proceeding to argue that the transactions were already examined earlier and that the present Section 66 proceedings are an afterthought. |
| **15.03.2024** | At the **10th Stakeholders' Consultation Committee (SCC) meeting**, the issue of conducting an extended forensic/transaction audit for the period **01.04.2013 to 31.03.2019** was deliberated. |
| **22.03.2024** | **M/s. Pipara & Co. LLP** was appointed as Transaction Auditor for the extended period **01.04.2013–31.03.2019**. |
| **26.03.2024** | At the **11th SCC meeting**, the Applicant informed the SCC that Pipara & Co. LLP had been appointed to conduct the extended transaction audit. |
| **22.04.2024** | MPPTCL communicated details concerning the contractual adjustment and payment of **₹89,65,887/- to Archon** to the Deputy Director, Directorate of Enforcement. This document is relied upon by MPPTCL to show that there were no outstanding dues payable to Archon. |
| **28.06.2024** | **Respondent No. 1 was admitted into Personal Insolvency Resolution Process** under Section 95 of the IBC in C.P. (IB) No. 214(AHM) of 2022. This later became relevant to the issue whether the Section 101 moratorium barred continuation of the Section 66 proceedings. |
| **22.08.2024** | An earlier **Transaction Audit Report** was allegedly prepared. Respondent Nos. 1–3 contend that this report was subsequently withdrawn and suppressed by the |

| Date | Event |
|---|---|
| | Applicant. The Applicant's case, however, is based on the later extended Transaction Review Report dated 28.09.2024. |
| **28.09.2024** | **Pipara & Co. LLP submitted its Transaction Review Report** after examining the period 01.04.2013–31.03.2019. According to the Applicant, this report for the first time revealed several transactions attracting **Section 66**, including ₹184.55 crore book-debt write-offs, ₹63 lakh cash transactions, ₹36.54 crore involving Volt Infra, ₹174.30 crore involving the Diamond Power Group, ₹7.08 crore involving JSIW, ₹28 crore involving Sunil Hi-Tech, ₹33.62 crore involving MPPTCL and ₹11.75 lakh involving Sunil Mishra. |
| **03.01.2025** | The NCLT permitted **withdrawal/dismissal of IA No. 1907 of 2024 with liberty to file a fresh application**, because the requisite confirmation by the Liquidator had not been annexed. This is an important procedural event in explaining why the present application was filed. |
| **13.01.2025** | At the **25th SCC meeting**, the SCC authorised the Applicant/Liquidator to institute a fresh **Section 66 application** in respect of the transactions identified in the audit. |
| **25.01.2025** | According to the Applicant's case, the present **IA No. 185 of 2025 was filed** under Section 66(1) read with Section 60(5), seeking contribution from the Respondents. The Applicant relies upon this date to contend that the application was filed within limitation after discovery of the alleged fraud through the report dated 28.09.2024. |
| **25.03.2025** | An NCLT order required compliance regarding the proceedings/notice. Thereafter, publication was made in newspapers. |
| **04.04.2025** | Notice concerning the proceedings was published in **Business Standard** and **Loksatta-Jansatta**. |
| **29.07.2025** | Written submissions of **Respondent No. 6, Respondent Nos. 1–3 and Respondent No. 12**, as well as the **Applicant/Liquidator**, were received and taken on |

| Date | Event |
|---|---|
| | record. |
| **11.02.2026** | In **I.A. No. 196 of 2026**, the NCLT passed an order permitting **impleadment of Respondent Nos. 6A and 6B** in the present proceedings. The amendment was thereafter carried out. |
| **14.08.2026** | The **Applicant/Liquidator filed its Affidavit-in-Rejoinder** to the reply of Respondent Nos. 6, 6A and 6B, vide Inward Diary No. D-6882, along with proof of deposit of **₹25,000/- towards costs in the Prime Minister's National Relief Fund**. |

**18.** We have heard Ld. Counsel for the Applicant, Ld. Counsel for the appearing Respondents as noted in this order, and have carefully examined the pleadings, affidavits, reply, annexures, and the oral arguments advanced by both sides. The following Issues are framed for determination: -

i. **Issue No. 1;** Whether the present Application under Section 66 of the IBC is maintainable and within limitation, having regard to the delay in filing the Application, the dates of the impugned transactions, the withdrawal of the earlier application and the filing of the present Application during liquidation?

ii. **Issue No. 2;** Whether the Applicant/Liquidator has independently applied his mind and established the alleged transactions on the basis of reliable material, or whether the Application is merely based upon the Transaction Review Report dated 28.09.2024 and is liable to fail on account of the limitations and deficiencies in the said Report?

iii. **Issue No. 3;** Whether the alleged transactions, including the transactions involving Respondent

Nos. 5 to 12, are maintainable for adjudication under Section 66 of the IBC against the respective Respondents, having regard to their respective roles, status as third parties, period of association and other objections regarding jurisdiction and statutory bar?

iv. **Issue No. 4;** Whether the alleged transactions were carried on with intent to defraud creditors or for any fraudulent purpose within the meaning of Section 66(1) of the IBC and/or wrongful trading within the meaning of Section 66(2) of the IBC, and whether the requisite ingredients thereof, including fraudulent intent, knowledge, participation and failure to exercise due diligence, have been established against the respective Respondents?

v. **Issue No. 5;** Whether the approval of the Resolution Plan of Diamond Power Infrastructure Limited and/or the pendency of personal insolvency proceedings and moratorium in respect of certain Respondents affects the maintainability or continuation of the present proceedings and the liability, if any, of the concerned Respondents?

vi. **Issue No. 6;** Whether the respective Respondents are liable to make any contribution to the assets of the Corporate Debtor under Section 66 of the IBC and, if so, to what extent?

**OBSERVATION OF THE TRIBUNAL:-**

**19.** Copy of transaction review report is available on pages 32 to 176 of the Application. We note below some facts as given in the Report.

i. Pipara & Co. LLP was appointed as a transaction auditor vide letter of 22.03.2024 from the Liquidator and the scope of audit was explicitly stated in the appointment letter and the period to be covered in the

transaction audit was from 01.04.2013 to 31.03.2019.

ii. The Report was submitted by the Auditor on 28.09.2024 to the liquidator.

iii. Page 4 of the Report refers to data and information provided by the erstwhile management and erstwhile management's response have been considered as it is and have not been investigated.

iv. Pages 8 to 11 of the Report shows that the Auditor requested information from the company in addition to the liquidator.

v. The Auditor sent preliminary observations to the Liquidator on 24.05.2024 seeking reverts from the Corporate Debtor and the revert was received on 22.07.2024.

vi. Audit was completed on 22.08.2024.

vii. SBI submitted application to NCLT under section 7 of the IBC on 07.09.2021.

viii. The existing lenders sanctioned working capital facilities aggregating to Rs 427 crores under various loans and facility arrangements.

ix. Lenders in their meeting on 04.03.2015 decided to conduct a stock audit and a study on the technical and economic viability of the Project before forming a Joint Lenders Forum and then the JLF approved a restructuring package. Prior to that the borrower's account started special mention account.

x. The Lenders were SBI, IDBI, State Bank of Patiala, Corporation Bank, Bank of Baroda, Bank of India, and Dena Bank. Total facilities were of Rs 427 crores which were increased later on. The facilities comprised of term loan of Rs 278.90 crores and working capital loan of Rs 265 crores.

xi. The company did not file its financial statements with the Ministry of Corporate Affairs since the year ended 31.03.2017.

xii. Executive Summary of Report is available on pages 29 to 34 of the Report.

**20.** **Findings on Issue No.1;** Whether the present Application under Section 66 of the IBC is maintainable and within limitation, having regard to the delay in filing the Application, the dates of the impugned transactions, the withdrawal of the earlier application and the filing of the present Application during liquidation?

i. We have considered the rival submissions and the material on record. The Respondents' objection that the present Application is not maintainable merely because the Corporate Debtor is in liquidation cannot be accepted. The record shows that the Applicant, who was earlier the Resolution Professional, was subsequently appointed as Liquidator and, during liquidation, an extended transaction audit for the period 01.04.2013 to 31.03.2019 was undertaken. M/s. Pipara & Co. LLP submitted its Transaction Review Report on 28.09.2024, pursuant to which the alleged transactions attracting Section 66 were identified.

ii. The earlier I.A. No. 1907 of 2024 was withdrawn/dismissed on 03.01.2025 with liberty to file a fresh application, as the requisite confirmation of the Liquidator had not been annexed. Thereafter, the SCC authorised institution of the fresh proceedings on

13.01.2025, and the present Application was filed on 25.01.2025. Thus, the present Application cannot be treated as an impermissible continuation of a proceeding which had been adjudicated on merits.

iii. The Hon'ble Supreme Court in ***Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd.,*** CIVIL APPEAL NOS. 1632-1634 OF 2022, has clarified that proceedings under Section 66 are distinct from avoidance proceedings under Sections 43, 45 and 50, and that fraudulent/wrongful trading under Section 66 requires an independent examination of the conduct and intention behind the business of the Corporate Debtor.

iv. As regards the alleged delay in carrying out the audit and filing of application by the liquidator, Section 66 does not prescribe any specific look-back period. The Hon'ble NCLAT in ***Thomas George v. K. Easwara Pillai***, Company Appeal (AT) (CH) (Ins.) No. 293 of 2021, decided on 05.12.2022, has expressly held that Section 66 does not provide for a specified look-back period in respect of fraudulent transactions. In this case, multiple banks had granted term loan and working capital loans. The accounts of the borrower had become special mention accounts. A Joint Lender Forum was created. The Corporate Debtor faced financial stress in the years 2013-2014 onwards. The Corporate Debtor filed its financial statements with the Ministry of Corporate Affairs for the year ended

31.03.2017. SBI filed section 7 Application in the year 2021. Based on the facts of the case, we hold that the period for audit was rightly taken by the Auditor based on the request from the Liquidator.

v. Further, the timelines prescribed under Regulation 35A for formation of opinion, determination and filing of an application have been held to be **directory and not mandatory** by the Hon'ble NCLAT in ***Aditya Kumar Tibrewal v. Om Prakash Pandey***, Company Appeal (AT) (Ins.) No. 583 of 2021, as reiterated in ***Prasant Chandra Rath v. Surya Kanta Satapathy***, Company Appeal (AT) (Ins.) Nos. 850 & 869 of 2022. In this case, the Application has been filed after the audit report was received and a decision was taken after approval of the SCC.

vi. In the present case, CIRP commenced on 07.09.2021 and liquidation was ordered on 20.02.2023. The extended Transaction Review Report for the period **01.04.2013 to 31.03.2019** was submitted on **28.09.2024**, pursuant to which the transactions now relied upon were identified.

vii. The Applicant initially filed I.A. No. 1907 of 2024, which was withdrawn on 03.01.2025 with liberty to file afresh. The SCC thereafter authorised fresh proceedings on **13.01.2025**, and the present Application was filed on **25.01.2025**. Since the earlier application was not dismissed on merits, the present

Application cannot be rejected on the ground that the same issue is being re-agitated.

viii. Thus, the filing of the present Application after the extended Transaction Review Report and shortly after withdrawal of the earlier application with liberty to file afresh provides sufficient explanation for the delay at the threshold stage. The objection concerning the earlier audit report and the reliability of the audit material, however, would require consideration while examining the merits of the subsequent issues.

ix. Accordingly, we hold that the present **Application is maintainable and cannot be rejected** at the threshold solely on the grounds of delay, the dates of the impugned transactions, the timelines under Regulation 35A, the withdrawal of the earlier application or the commencement of liquidation. The issue of limitation and other objections, to the extent dependent upon the nature and merits of the respective transactions, shall be considered along with the merits of the Application.

**21. <u>Findings on Issue No.2;</u>** Whether the Applicant/Liquidator has independently applied his mind and established the alleged transactions on the basis of reliable material, or whether the Application is merely based upon the Transaction Review Report dated 28.09.2024 and is liable to fail on account of the limitations and deficiencies in the said Report??

i. We have considered the rival submissions and the material placed on record. The Respondents have contended that the present Application is founded

substantially on the Transaction Review Report dated 28.09.2024 and that the Applicant has merely reproduced the observations of the Auditor without independently examining the transactions or forming his own opinion. It is further contended that the Report itself is subject to several limitations and disclaimers, including alleged non-availability of complete records and supporting documents, and therefore cannot form the sole basis for fastening liability under Section 66 of the IBC.

ii. There can be no quarrel with the proposition that a Transaction or Forensic Audit Report is only a material to assist the Resolution Professional/Liquidator in examining the affairs of the Corporate Debtor. The statutory opinion and determination as to whether a transaction warrants proceedings under Section 66 must emanate from the Resolution Professional/Liquidator and cannot be mechanically delegated to the Auditor.

iii. The Hon'ble NCLAT has also recognised that an audit report, by itself, is not conclusive proof of fraudulent trading. In ***State Bank of India v. Dommeti Surya Rama Krishna Saibaba & Ors.***, Company Appeal (AT) (CH) (Ins) No. 461/2023 (IA No. 1444/2023) the Appellate Tribunal held that a Forensic Audit Report, if unsupported by relevant documents and evidence, cannot by itself form the basis for determining liability under Section 66. The allegations of fraudulent or

wrongful trading must ultimately be established from the material and evidence placed on record.

iv. At the same time, the existence of limitations or disclaimers in an audit report does not, by itself, render the entire Application liable to be rejected. The relevant consideration is whether the impugned transactions are otherwise borne out from independent contemporaneous material, such as books of account, audited financial statements, bank statements, ledgers and other records. We have gone through the disclaimer and limitations noted by the Transaction Auditor in the Report and those mainly pertain to non-availability of full documents. The responsibility of providing complete documents rest with the suspended management and the employees of the Corporate Debtor. The Resolution Professional or the Liquidator cannot create records that are not provided by the management/employees of the Corporate Debtor. The Respondents themselves were responsible for providing full data and documents and cannot agitate on the issue and point to limitations. They were given opportunity to revert the observations.

v. Regulation 7 of the IBBI (Liquidation Process) Regulations, 2016 provides an authority to the Liquidator to appoint professionals to assist him in the discharge of his duties. Section 35 (1)(i) authorises the Liquidator to obtain professional assistance. Section 35 (1)(l) provides powers and duties concerning the

investigate the avoidance and fraudulent or wrongful trading. The liquidator is not supposed to carry out the transaction audit himself in all the cases and he can employ a professional to assist him in the task and this is what has been done in this case and there is nothing wrong in it. A Transaction Review Report is thus an aid in identifying and analysing the transactions; its findings must be tested with the underlying material and cannot be accepted or rejected mechanically. In this case, not all the transactions noted in the Audit Report has been considered fraudulent by the Liquidator and application for treating only some of transactions as fraudulent has been filed with this Adjudicating Authority. A transaction audit report is merely a tool to identify transactions that might fit into category of fraudulent transactions but the alleged transactions must ultimately be independently established from the evidence on record. The Report in this case has been prepared based on the material/data/documents available and the observations and findings concerns the Corporate Debtor.

vi. In the present case, we find that the Transaction Review Report dated 28.09.2024 has been relied upon by the Applicant as the basis for identifying the impugned transactions. However, the Applicant has also placed reliance on the books and financial records of the Corporate Debtor and the underlying

transactional material referred to in the Application. The Application, therefore, cannot at the threshold be characterised as a mere verbatim reproduction of the Auditor's Report. The question as to whether the underlying material sufficiently establishes each alleged transaction, and the liability of the respective Respondents, is required to be examined transaction-wise while considering the merits of the Application.

vii. Accordingly, **Issue No. 2 is answered in favour of the Applicant and objections of the Respondent are rejected.**

**22.** **<u>Findings on Issue No.3;</u>** Whether the alleged transactions, including the transactions involving Respondent Nos. 5 to 12, are maintainable for adjudication under Section 66 of the IBC against the respective Respondents, having regard to their respective roles, status as third parties, period of association and other objections regarding jurisdiction and statutory bar?

i. Section 66 of the Code reads as below:

> *(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)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.*

ii. We have considered the objections raised by the Respondents that Section 66 cannot be invoked merely against a third-party entity or a person who was only counterparty to transactions with the Corporate Debtor. We find merit in the submission that mere existence of a transaction, outstanding dues, non-recovery of money or an accounting discrepancy cannot, by itself, attract Section 66. The Applicant is required to establish the connection of the concerned Respondent with the alleged fraudulent or wrongful conduct.

iii. The Hon'ble Supreme Court in ***Gluckrich Capital Pvt. Ltd. v. State of West Bengal,*** *(2023) ibclaw.in 75 SC* has held that Section 66 cannot be utilised against an independent third party merely for recovery of dues. However, the said principle does not confer immunity upon persons or entities which are shown, on the basis of evidence, to have been related to or knowingly participating in the affairs and transactions of the

Corporate Debtor. Section 66(1) of the Code, provides that if the business of the corporate debtor has been carried on with an intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may pass an order that any persons who were knowingly parties to the carrying on the business in such manner shall be liable to make such contributions to the assets of the corporate debtor. Therefore, we are of the view that if such persons were third parties, an order for contribution to the assets of the Corporate Debtor can be passed by the Adjudicating Authority and there is no restriction in this regard.

iv. In respect of **Respondent No. 5 – Volt Infra Services Pvt. Ltd.**, the Applicant relies upon transactions of approximately Rs. 36.54 Crores, including substantial payments through Letters of Credit, despite the alleged absence of corresponding purchase/sale transactions during the relevant period. The Applicant has further pleaded a related-party relationship arising from common directorship. The nature of the transactions, their magnitude and the alleged absence of corresponding underlying transactions constitute sufficient material for adjudication under Section 66 (1) of the Code.

v. In respect of **Respondent Nos. 6 to 8** and **Respondent Nos. 6A and 6B**, the principal allegation concerns Rs. 174.30 Crores of cross-ledger adjustments allegedly

made without corresponding purchases, sales, advances or deposits, resulting in inflation of debtor and creditor balances. The Applicant has also relied upon the directorship and control of Respondent Nos. 6A and 6B over the concerned group entities during the relevant period. Such transactions, when considered along with the alleged control and participation of the concerned persons, cannot be treated as a mere claim for recovery against an independent third party.

vi. The mere fact that **Respondent Nos. 6A and 6B** were directors, however, would not by itself fasten liability upon them. Their liability must be established with reference to their individual knowledge, control and participation in the impugned transactions. The approval of the Resolution Plan of DPIL also does not, by itself, bar adjudication of an independent personal liability under Section 66.

vii. In respect of **Respondent No. 9 – JSIW Infrastructure Pvt. Ltd.**, the alleged amount is Rs. 7.08 Crores. Although the Applicant has pointed out sales of ₹40.89 Crores, limited receipts, payments without corresponding purchases and routing through third parties, Respondent No. 9 has furnished an explanation based upon a back-to-back contractual arrangement. In the absence of material establishing that the transactions were fictitious or undertaken for a fraudulent purpose, mere non-recovery of the amount cannot constitute sufficient basis for proceeding under

Section 66. The Respondent has been able to justify the transaction claimed by the Applicant to be fraudulent. It was a transaction with a third party and we do not find ingredients of section 66 in the transaction.

viii. Similarly, in respect of **Respondent No. 11 – MP Power Transmission Co. Ltd.**, the alleged amount of Rs. 33.62 Crores represents sales booked during the relevant financial years which remained unrecovered. However, the existence of an underlying contractual arrangement and the explanation concerning completion and subsequent termination of the work indicate an identifiable commercial transaction. Mere outstanding dues, without evidence of sham or fraudulent conduct, are insufficient to attract Section 66. The Respondent has sufficiently explained the transaction with supporting documents.

ix. As regards **Respondent No. 12 – Shri Sunil Mishra**, the allegation concerns an advance of Rs. 11.75 Lakhs towards expenses, against which corresponding supporting expenditure was allegedly not found. Such absence of vouchers may constitute an accounting discrepancy requiring explanation, but in the absence of evidence establishing personal appropriation, diversion or knowing participation in fraudulent conduct, the same cannot by itself attract Section 66.

x. In respect of **Respondent No. 10 – Sunil Hi-Tech Engineers Ltd.**, the Applicant has alleged transactions

of approximately Rs. 28 Crores, including payments of ₹215.96 Crores against purchases of Rs. 145.60 Crores and receipt back of approximately Rs. 47.90 Crores, coupled with alleged routing of funds through Letters of Credit and credit accounts. The nature and magnitude of the alleged circular movement of funds constitute circumstances requiring adjudication under Section 66, subject to the Applicant establishing the underlying transactions and the connection of the concerned persons with such conduct.

xi. We are therefore of the considered view that Section 66 can be invoked against a third party if the facts lead to satisfaction of section 66(1) of the Code.

xii. The liability under Section 66 is consequently not vicarious or automatic. It has to be determined with reference to the relevant period of association, the nature of the transactions, the position of the concerned person, knowledge and participation, and the evidence establishing the alleged fraudulent or wrongful conduct.

xiii. Accordingly, **Issue No. 3 is answered partly in favour of the Applicant.** The transactions involving Respondent Nos. 5, 6 to 8/6A and 6B and Respondent No. 10 are maintainable for adjudication under Section 66, subject to determination of their individual knowledge, participation and responsibility. In respect of Respondent Nos. 9, 11 and 12, mere commercial

dealings, outstanding dues or accounting discrepancies, in the absence of independent evidence of knowing participation in fraudulent or wrongful trading, are insufficient to fasten liability under Section 66. The quantum of contribution, if any, shall be determined separately and shall not automatically correspond to the entire value of the transactions attributed to the respective Respondents.

**23. <u>Findings on Issue No.4;</u>** Whether the alleged transactions were carried on with intent to defraud creditors or for any fraudulent purpose within the meaning of Section 66(1) of the IBC and/or wrongful trading within the meaning of Section 66(2) of the IBC, and whether the requisite ingredients thereof, including fraudulent intent, knowledge, participation and failure to exercise due diligence, have been established against the respective Respondents?

i. Section 66(1) and Section 66(2) of the Code operate in distinct fields. Section 66(1) fastens liability upon any person who was knowingly a party to the carrying on of the business of the Corporate Debtor with an intent to defraud its creditors or for any fraudulent purpose. Section 66(2), on the other hand, concerns a director or partner who, before the insolvency commencement date, knew or ought to have known that there was no reasonable prospect of avoiding CIRP and nevertheless failed to exercise due diligence to minimise the potential loss to creditors. The two provisions, therefore, cannot be applied mechanically or interchangeably. This distinction has been reiterated

by the Hon'ble NCLAT in ***Renuka Devi Rangaswamy v. Madhusudan Khemka***, Company Appeal (AT) (CH) (Ins.) No. 356 of 2022, and more recently in ***Worldwide Online Services Pvt. Ltd. v. Nandkishor Vishnupant Deshpande & Ors.,*** Company Appeal (AT) (Ins.) No. 510 of 2021, decided on 28.01.2026.

ii. In respect of Section 66(1), the essential requirements are (a) carrying on of the business for a fraudulent purpose or with intent to defraud creditors; and (b) the concerned person being knowingly a party to such conduct. The Hon'ble NCLAT in ***Regen Powertech Pvt. Ltd. v. Wind Construction Pvt. Ltd. & Ors***., Company Appeal (AT) (CH) (Ins.) No. 349 of 2022, held that fraudulent intent must be established by cogent and tangible material and that every commercial failure or loss cannot be characterised as fraudulent trading.

iii. Likewise, in ***Renuka Devi Rangaswamy v. Madhusudan Khemka***, the Hon'ble NCLAT observed that dishonesty is an essential ingredient of fraudulent trading and cannot merely be presumed. Mere transfer of assets between group companies, commercial losses, non-recovery of dues or failure to take legal action would not, by themselves, establish fraudulent trading unless accompanied by material demonstrating fraudulent purpose and knowing participation.

iv. At the same time, the requirement of proof does not mean that fraudulent intent must invariably be

established by direct evidence. In ***Gopal Kalra v. Akhilesh Kumar Gupta***, Company Appeal (AT) (Ins.) No. 567 of 2024, the Hon'ble NCLAT held that the Court may examine the pattern and substance of transactions and surrounding circumstances to determine whether there was an intent to defraud and whether the concerned person was a knowing participant. Where fictitious parties, manipulated entries, absence of underlying transactions and actual movement of funds collectively establish a fraudulent scheme, circumstantial evidence can support a finding under Section 66(1).

v. Applying the aforesaid principles to the present case, the Transaction Review Report dated 28.09.2024 based on the books of account, ledgers, bank statements and other material, establishes the existence of the transactions relied upon by the Applicant. However, mere accounting entries, non-recovery of receivables, bad debts or absence of supporting vouchers cannot, by themselves, establish fraudulent trading. The allegation of fraud must be examined transaction-wise and Respondent-wise.

vi. The present record itself discloses that the allegations relating to bad debts of Rs. 184.55 Crores, cash/imprest transactions of Rs. 63 Lakhs, JSIW Infrastructure Pvt. Ltd. (Rs. 7.08 Crores), MP Power Transmission Co. Ltd. (Rs. 33.62 Crores) and the advance of Rs. 11.75 Lakhs to Respondent No. 12 do

not, standing alone, establish the requisite fraudulent intent. Allegation of bad debts require a specific observation from us. The non-recovery of receivable from a party to whom goods or services might have been sold may result into bad debt. The Board of Directors may take a decision based on the chances of recovery to consider a debt as bad and non-recoverable for accounting purpose. The writing of bad debts by a corporate debtor for accounting purpose to reflect its correct financial position can not become a reason for non-collection from such parties. The Corporate Debtor remain fully empowered to collect the receivables and if amounts are received the same are accounted as revenue and the section 41(1) of the Income Tax Act, 1961 provides that the recovery will be considered as a revenue and tax must be paid. The Applicant has not submitted anything on the record to demonstrate that the corporate debtor did not make any effort for recovery. Further, the efforts made, if any, by the Applicant/Liquidator to recover the amount from the parties are also not stated in the Application. The Transaction Audit Report has identified the bad debts written off over the period. Page 30 of the Report refers to this transaction and notes that, " the company has written off a total bad debt of INR 178,71,33,256 of respective outstanding debt in FY 15-16 and 16-17. We observed that Bad Debts have been recorded in totality basis and same have not been mapped against

individual debtors, as a result, the impact of Bad Debts booked has not been subtracted from the grouping of Debtors". This note refers to the accounts only and it appears that no efforts were made to get the information on the party-wise information. Such identification from the financial statement does not fulfil the requirements of section 66 of the Code. Something more evidence should be submitted. Further, keeping the debts in the accounts for a longer time make the balance sheet look healthy and might be used to get loans from the banks. It is the responsibility of the banks to carry out their due diligence while advancing the loan. The intention of the management might be to get loans based on the inflated balance sheet, but this might be a misrepresentation to the lenders who might have carried out their due diligence but the same does not satisfy the ingredients of section 66 of the Code. For applicability of section 66, it must be proved that knowingly the money has not been collected and has either been diverted to some other entity or collected but transferred to some unaccounted accounts. We have one more observation, in case the debts are not collected due to closure of business or due to CIRP of the Corporate Debtor, the debtors become beneficiaries of the proceedings, if the RP or the Liquidator, does not make efforts to collect the same being the asset of the Corporate Debtor.

vii. The transactions concerning Volt Infra Services Pvt. Ltd. (Rs. 36.54 Crores), Diamond Power Group (Rs. 174.30 Crores) and Sunil Hi-Tech Engineers Ltd. (Rs. 28 Crores) stand on a different footing. The material relating to these transactions discloses circumstances such as substantial movement/routing of funds, cross-ledger adjustments, alleged absence of corresponding underlying transactions and dealings involving connected entities. The transactions carried out lack the ingredients of a genuine transaction. Such circumstances, when considered cumulatively and in the light of the surrounding financial distress position of the Corporate Debtor, are capable of supporting an inference of fraudulent purpose.

viii. Nevertheless, fraudulent intent cannot be fastened merely on the basis of the amount involved or the designation of a person as a director. As held in ***Regen Powertech and Renuka Devi Rangaswamy***, the Applicant must establish the concerned Respondent's knowing participation. Thus, the liability of each Respondent has to be correlated with his/her period of directorship or control, knowledge, participation and conduct. A person cannot be held liable for transactions preceding his assumption of office merely because he subsequently became a director.

ix. As regards Section 66(2), the question is not merely whether the Corporate Debtor suffered loss, but whether the concerned directors knew or ought to have

known that there was no reasonable prospect of avoiding CIRP and, despite such knowledge, failed to exercise the diligence reasonably expected of persons occupying their position so as to minimise the potential loss to creditors. The corporate debtor was in financial distress since 2014 and continued conduct of substantial inter-company transactions without underlying purpose and supporting evidence, failure to reconcile material balances, failure to take adequate steps for recovery of substantial receivables and failure to prevent diversion or circular movement of funds are relevant circumstances in assessing such failure of due diligence.

x. In the present case, having regard to the cumulative effect of the transactions, the deteriorating financial condition of the Corporate Debtor, the nature and magnitude of the inter-company dealings and the absence of adequate measures to preserve the assets and minimise the loss to creditors, we are of the considered view that the concerned directors knew or ought to have known that there was no reasonable prospect of avoiding CIRP and nevertheless failed to exercise the requisite due diligence. Such conduct cannot be characterised merely as unsuccessful commercial decision-making.

xi. Accordingly, while the material on record does not justify treating every transaction identified in the Transaction Review Report as fraudulent trading, the

transactions concerning **Volt Infra Services Pvt. Ltd., Diamond Power Group and Sunil Hi-Tech Engineers Ltd**. disclose sufficient circumstances for examination under Section 66(1), subject to proof of knowing participation of the respective Respondents. The requirements of Section 66(2), however, stand satisfied in respect of those directors who were responsible for the conduct of the affairs of the Corporate Debtor during the relevant period and failed to exercise the requisite due diligence.

xii. Accordingly, **Issue No. 4 is answered partly in the affirmative**. The alleged transactions cannot be collectively characterised as fraudulent trading merely on the basis of accounting irregularities or non-recovery; however, the material relating to the identified transactions, read with the cumulative conduct of the persons responsible for the affairs of the Corporate Debtor, establishes sufficient basis for liability under Section 66(1), subject to respondent-wise proof of knowing participation, and under Section 66(2) in respect of the concerned directors who failed to exercise due diligence to minimise the potential loss to creditors.

**24.** **<u>Findings on Issue No.5;</u>** Whether the approval of the Resolution Plan of Diamond Power Infrastructure Limited and/or the pendency of personal insolvency proceedings and moratorium in respect of certain Respondents affects the maintainability or continuation of the present

proceedings and the liability, if any, of the concerned Respondents?

i. We have considered the rival submissions and the material placed on record. It is undisputed that the Resolution Plan of **Diamond Power Infrastructure Limited ("DPIL") was approved on 20.06.2022** under Sections 30(6) and 31 of the Code. The Respondents rely upon Clause 3.5 of the approved Resolution Plan and the judgment of the Hon'ble Supreme Court in ***Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***, contending that all liabilities pertaining to the period prior to the Trigger Date, which were not incorporated in the Resolution Plan, stood extinguished.

ii. The said contention, however, proceeds on the premise that the present proceedings seek recovery of a pre-CIRP claim against DPIL. The present proceedings, insofar as Respondent Nos. 6A and 6B are concerned, are **not proceedings for recovery of any debt or claim from DPIL or the Successful Resolution Applicant**. The allegation is against Respondent Nos. 6A and 6B in their individual capacity for having allegedly been directors/persons in control of DPIL and other entities of the Diamond Power Group with whom the corporate debtor carried out fraudulent transactions and directors knowingly participated in transactions attracting Section 66 (2) of the Code.

iii. The Hon'ble Supreme Court in ***Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. & Ors.,*** CIVIL APPEAL NOS. 1632-1634 OF 2022, has drawn a clear distinction between avoidance proceedings under Chapter III and proceedings under Section 66 relating to fraudulent or wrongful trading. The Hon'ble Supreme Court specifically directed that applications under Section 66 are to be separately adjudicated in accordance with the powers conferred under Section 66. Thus, a Section 66 proceeding is concerned with the **conduct of the persons responsible for carrying on the business of the Corporate Debtor** and cannot be equated with enforcement of a pre-existing claim against the Corporate Debtor.

iv. Consequently, the **"clean slate" principle under Section 31(1)** operates in relation to claims and liabilities enforceable against the Corporate Debtor/Resolution Applicant in terms of the approved Resolution Plan. It cannot, merely by reason of approval of the Resolution Plan, confer immunity upon erstwhile directors or persons in control from an **independent statutory liability arising from their own conduct under Section 66**. The absence of a claim having been lodged against DPIL during its CIRP, therefore, does not by itself extinguish the alleged personal liability of Respondent Nos. 6A and 6B.

v. In the present case, the Applicant has relied upon MCA records showing the directorship of Respondent Nos. 6A and 6B during the relevant period and has attributed to them participation in the alleged **Rs. 174.30 Crores cross-ledger adjustments and other transactions involving the Diamond Power Group**. The approval of DPIL's Resolution Plan cannot, at the threshold, extinguish such alleged personal liability.

vi. We next consider the objection based upon the **personal insolvency proceedings and moratorium**. Respondent No. 1 was admitted into Personal Insolvency Resolution Process under Section 95 of the Code on 28.06.2024 and the Respondent has relied upon the moratorium under Section 101 as a bar to continuation of the present proceedings.

vii. Section 101 of the Code stays proceedings **"in respect of any debt"** during the subsistence of the moratorium. A proceeding under Section 66, however, is not a conventional proceeding for recovery of a debt due from the concerned Respondent. It is a statutory proceeding for determining whether the concerned person was knowingly party to fraudulent trading or, in the case of Section 66(2), failed to exercise the requisite due diligence, and for directing contribution to the assets of the Corporate Debtor.

viii. In ***Praful Satra & Ors. v. Vaishali Patrikar, Resolution Professional of Satra Properties (India) Ltd.,*** Company Appeal (AT) (Ins.) No. 348 of 2025,

decided on 27.11.2025, the Hon'ble NCLAT considered the very issue of personal insolvency moratorium and proceedings under Section 66. The Appellate Tribunal held that the moratorium under Sections 96/101, being confined to proceedings **in respect of a debt**, cannot be construed so as to stay a Section 66 proceeding, which is directed towards determining liability arising from fraudulent/wrongful trading and contribution to the assets of the Corporate Debtor. The NCLAT accordingly held that the pendency of personal insolvency proceedings does not preclude the Adjudicating Authority from adjudicating proceedings under Section 66.

ix. The aforesaid principle is also consistent with the broader position recognised by the Hon'ble Supreme Court in ***P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.,*** AIR 2021 SUPREME COURT 1308, that a moratorium does not extinguish the underlying liability; its operation is confined to the proceedings falling within the statutory prohibition. Likewise, in ***Lalit Kumar Jain v. Union of India***, AIRONLINE 2021 SC 402, the Hon'ble Supreme Court held that insolvency resolution of the Corporate Debtor does not, by itself, discharge an independent liability of the personal guarantor.

x. In view of the above, we are of the considered view that neither the approval of the Resolution Plan of DPIL nor the pendency of personal insolvency proceedings or the

moratorium under Section 101, by itself, renders the present Section 66 proceedings non-maintainable or extinguishes the alleged statutory liability of the concerned Respondents. The Resolution Plan may extinguish claims enforceable against DPIL to the extent contemplated by the Plan but does not confer immunity upon persons against whom an independent liability under Section 66 is alleged and established. Similarly, the personal insolvency moratorium does not operate as a bar to adjudication of the Section 66 proceedings.

xi. However, the finding as to maintainability **does not dispense with the requirement of establishing the substantive ingredients of Section 66 against each Respondent**. The liability of Respondent Nos. 6A and 6B, as also that of Respondent No. 1, if otherwise established, shall necessarily depend upon proof of their individual role, knowledge, participation, period of control and conduct. Based on the information available on record, we are satisfied that these respondents were responsible for carrying on the business of DPIL and were knowing that the transactions with the Corporate Debtor are being carried on with the intent to defraud the creditors.

xii. **Accordingly, Issue No. 5 is answered in favour of the Applicant.** The approval of the Resolution Plan of DPIL does not extinguish the independent statutory liability, if established, of Respondent Nos. 6A and 6B under Section 66 of the Code. Likewise, the pendency of

personal insolvency proceedings and the moratorium under Section 101 do not, by themselves, bar the adjudication or continuation of the present Section 66 proceedings.

**25. <u>Findings on Issue No.6;</u>** Whether the respective Respondents are liable to make any contribution to the assets of the Corporate Debtor under Section 66 of the IBC and, if so, to what extent?

i. We have considered the rival submissions, the pleadings and the material placed on record. Section 66 of the Code does not contemplate an automatic or collective liability merely on account of a person being a director or being associated with the Corporate Debtor. The liability is **personal and fault-based** and must be determined with reference to the individual role, period of directorship/control, knowledge, participation and conduct of each Respondent.

ii. We have already found that the material on record establishes circumstances indicating fraudulent/wrongful trading in respect of the transactions concerning **Volt Infra Services Pvt. Ltd., Diamond Power Group and Sunil Hi-Tech Engineers Ltd.**, particularly having regard to the magnitude of the transactions, movement/routing of funds, absence of corresponding underlying transactions and cross-ledger adjustments.

iii. In respect of **Respondent Nos. 1 to 4**, they were persons responsible for the affairs and management of

the Corporate Debtor during the relevant period. The substantial and continuous nature of the transactions, their impact upon the financial position of the Corporate Debtor and the fact that such transactions fell within the sphere of their management and control are relevant circumstances for determining their knowledge and participation. Their liability, therefore, has to be assessed with reference to the transactions undertaken during their respective tenure.

iv. At the same time, **Respondent No. 3**, having assumed office only on 08.09.2016, cannot be held liable for transactions which had already taken place prior to his assumption of office merely because he subsequently became a director. His liability, if any, must be confined to the period during which he had control or participation in the affairs of the Corporate Debtor.

v. In respect of **Respondent Nos. 6A and 6B**, the material concerning the **Rs. 174.30 Crores Diamond Power Group transactions** assumes significance. The alleged repeated cross-ledger adjustments, without corresponding purchases, sales, advances or deposits, coupled with their position as directors/persons in control of the concerned group entities, constitute relevant circumstances establishing their connection with the impugned transactions.

vi. Similarly, in respect of the **Rs. 36.54 Crores transactions involving Volt Infra Services Pvt. Ltd.** and the **Rs. 28 Crores transactions involving Sunil**

**Hi-Tech Engineers Ltd.**, the movement of funds, Letters of Credit and alleged absence of corresponding underlying transactions, read with the common management/control, constitute circumstances from which knowledge and participation may be inferred, subject to the underlying transactions being established from the primary records.

vii. On the other hand, the allegations relating to Rs.184.55 Crores of bad debts, Rs.63 Lakhs of cash/imprest transactions, Rs. 7.08 Crores involving JSIW Infrastructure Pvt. Ltd., Rs. 33.62 Crores involving MP Power Transmission Co. Ltd. and Rs. 11.75 Lakhs involving Respondent No. 12, cannot by themselves justify an order of contribution merely on the basis of non-recovery, accounting entries or absence of supporting vouchers. In the absence of independent evidence establishing fraudulent intent, knowing participation, personal appropriation or wrongful conduct, no contribution can be fastened solely on these grounds.

viii. We further hold that the **amount of the impugned transaction is not, by itself, the measure of contribution**. Section 66 empowers this Adjudicating Authority to direct such persons to contribute to the assets of the Corporate Debtor as it considers appropriate. Accordingly, the liability must bear a reasonable nexus with the loss caused or benefit/diversion attributable to the concerned

Respondent and cannot be imposed merely by reproducing the aggregate figures appearing in the Transaction Review Report.

ix. Accordingly, the contribution, if any, payable by each Respondent shall be determined **transaction-wise and Respondent-wise**, confined to the period of directorship or control and to the transactions in respect of which knowledge, participation, responsibility or failure to exercise due diligence is established. Mere designation as a director, commercial association, outstanding dues or accounting discrepancy cannot, in isolation, justify an order of contribution.

x. In the facts and circumstances of the present case, the Applicant has established sufficient basis for fastening Section 66 liability upon the persons responsible for the affairs of the Corporate Debtor during the relevant period, particularly in relation to the transactions involving **Diamond Power Group, Volt Infra and Sunil Hi-Tech**. However, the claim cannot be allowed as a **lump-sum or joint liability against all Respondents**, and the quantum must correspond to the individual role and loss attributable to each concerned Respondent.

xi. The Respondents have not come forward to dissociate themselves from the carrying on the transaction. They were in the management of the company and were directors of the Corporate Debtor. Therefore, in the absence of providing clear record of their non-involvement in the transactions considered as falling within the purview of

section 66 of the Code, we hold that the Respondents being directors of the company are jointly and severally liable to contribute to the assets of the Corporate Debtor in regard to transactions covered under section 66(2) of the Code. Accordingly, Issue No. 6 is answered accordingly**.**

**26.** In view of the foregoing discussion and findings recorded hereinabove, this Adjudicating Authority passes the following order: -

i. The present I.A. No. 185 (AHM) of 2025 filed by the Applicant/Liquidator under Section 66 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 is maintainable. The objections raised by the Respondents regarding the filing of the present Application during liquidation, the period of the transactions, the withdrawal of the earlier I.A. No. 1907 of 2024, and the alleged delay in filing the present Application, do not constitute a bar to adjudication of the present proceedings. The explanation furnished by the Applicant with regard to the extended transaction audit, receipt of the Transaction Review Report dated 28.09.2024 and subsequent filing of the present Application is found to be satisfactory.

ii. It is held that the Transaction Review Report dated 28.09.2024 is required to be considered along with the

available books of account, ledgers, bank statements and other underlying material placed on record. The Report is not to be treated in isolation, and the allegations are required to be examined with reference to the nature of each transaction and the role and conduct of the concerned Respondent.

iii. The objection that proceedings under Section 66 of the Code cannot be maintained against a third party is rejected. Section 66(1) may be invoked against a third party where the material on record establishes that such person/entity was knowingly connected with or participated in the carrying on of the business of the Corporate Debtor for a fraudulent purpose or with an intent to defraud creditors of the corporate debtor. However, mere existence of a commercial transaction, outstanding dues, non-recovery of an amount or accounting discrepancy, by itself, may not attract Section 66.

iv. In respect of **Respondent No. 5 – M/s. Volt Infra Services Pvt. Ltd., the** transactions involving approximately **Rs.36.54 Crores**, including substantial payments through Letters of Credit, coupled with the alleged absence of corresponding purchase/sale transactions during the relevant period and the pleaded relationship arising from common directorship, disclose sufficient circumstances justify covering the same under Section 66(1) of the Code.

The said transactions, therefore, fall within the scope of adjudication under Section 66 (1) of the Code.

v. In respect of **Respondent Nos. 6 (also 6A and 6B) to 8**, the transactions involving approximately **Rs.174.30 Crores** and the alleged repeated cross-ledger adjustments, without corresponding purchases, sales, advances or deposits, resulting in inflation of debtor and creditor balances, constitute material circumstances justifying these covered under the provisions of Section 66(2) of the Code.

vi. In respect of **Respondent No. 10 – M/s. Sunil Hi-Tech Engineers Ltd.,** the transactions involving approximately Rs.28 Crores, including payments of **Rs.215.96 Crores** against purchases of Rs.145.60 Crores and receipt back of approximately Rs.47.90 Crores, coupled with the alleged routing of funds through Letters of Credit and credit accounts, disclose circumstances of circular movement of funds justify application of 66(1) of the Code. The liability has been determined upon examination of the underlying transactions and the connection of the concerned persons with such transactions.

vii. In respect of **Respondent No. 9 – M/s. JSIW Infrastructure Pvt. Ltd**., the allegation concerning Rs.7.08 Crores is not sufficient, in the facts presently established on record, to attract Section 66. The explanation furnished by the Respondent with regard

to the back-to-back contractual arrangement, coupled with the absence of material establishing that the transactions were fictitious or undertaken for a fraudulent purpose, does not establish the requisite ingredients of fraudulent trading. The Respondent has explained the transaction. Accordingly, the claim under Section 66 against **Respondent No. 9 is rejected**.

viii. Similarly, in respect of **Respondent No. 11 – M/s. M.P. Power Transmission Co. Ltd**., the amount of Rs.33.62 Crores represents transactions arising from an identifiable contractual arrangement. The material placed on record indicates execution, subsequent termination and adjustment of contractual dues, and in the absence of evidence establishing that the transaction was sham or fraudulent, mere non-recovery of the amount is insufficient to attract Section 66. Accordingly, the claim under Section 66 against **Respondent No. 11 is rejected**.

ix. In respect of **Respondent No. 12 – Shri Sunil Mishra**, the allegation concerning the advance of **Rs.11.75 Lakhs** and absence of supporting vouchers may constitute an accounting discrepancy requiring explanation; however, in the absence of material establishing personal appropriation, diversion of funds or knowing participation in fraudulent conduct, the same does not, by itself, attract Section 66.

Accordingly, the claim against **Respondent No. 12 is rejected**.

x. With regard to the allegation concerning **Rs.184.55 Crores** towards bad debts, the material presently available **does not establish that the amounts were knowingly not recovered** and thereafter diverted or transferred to another entity or unaccounted account. Mere writing off receivables, without party-wise identification and independent evidence demonstrating fraudulent intention or diversion, cannot constitute fraudulent trading under Section 66. The said claim, therefore, is not liable to be allowed merely on the basis of the accounting entries or the amount written off.

xi. Likewise, the allegation concerning **Rs.63 Lakhs of cash/imprest transactions** cannot, in the absence of further material establishing siphoning, personal appropriation or fraudulent purpose, be treated as sufficient proof of fraudulent trading merely because the amounts were returned in cash and recorded in the books of the Corporate Debtor.

xii. In respect of the directors/persons responsible for the affairs of the Corporate Debtor, the material on record establishes that the Corporate Debtor was under financial distress and that substantial inter-company transactions continued to be undertaken. The continuation of such transactions, the alleged absence

of underlying commercial purpose and supporting evidence, failure to reconcile material balances and failure to take adequate steps for preservation of the assets and minimisation of potential loss to creditors are relevant circumstances for examining the conduct of the persons responsible for the affairs of the Corporate Debtor.

xiii. The requirements of Section 66(2) are accordingly attracted in respect of such directors who, during the relevant period, were responsible for the affairs and management of the Corporate Debtor and who knew or ought to have known that there was no reasonable prospect of avoiding commencement of CIRP, but nevertheless failed to exercise the requisite due diligence to minimise the potential loss to the creditors. Such conduct cannot be treated merely as an instance of unsuccessful commercial decision-making.

xiv. The liability of the concerned Respondents under Section 66 shall, however, be determined having regard to their respective period of association, position and control, knowledge, participation and conduct, and no person shall be held liable merely by reason of his designation as a director or by reason of his association with the Corporate Debtor. In particular, **Respondent No. 3**, having assumed office only on 08.09.2016, cannot be held responsible for transactions which had taken place prior to his

assumption of office, unless independent material establishes his subsequent participation or responsibility in relation thereto.

xv. The objection founded upon the approval of the Resolution Plan of Diamond Power Infrastructure Limited is also not sufficient to terminate the present proceedings against **Respondent Nos. 6A and 6**B in their individual capacity, since the proceedings under Section 66 concern the alleged personal conduct and participation of the concerned persons and are not proceedings for recovery of a pre-existing debt from the Corporate Debtor or the successful Resolution Applicant.

xvi. Accordingly, the transactions **involving M/s. Volt Infra Services Pvt. Ltd., the Diamond Power Group and M/s. Sunil Hi-Tech Engineers Ltd.** are held to disclose sufficient material and circumstances warranting action under Section 66 of the Code.

xvii. Consequently, the prayer seeking recovery of the entire aggregate amount of **Rs.4,64,84,16,038/-** from all the Respondents in a blanket manner is not liable to be granted. The amount involved in any particular transaction shall not, by itself, constitute the measure of liability under Section 66. The contribution, if any, shall be confined to such amount as is established to have been caused by, or attributable to, the

fraudulent/wrongful conduct of the concerned Respondent.

**27.** Based on the above facts, position of law and discussion, we decide various prayers of the Applicant in the following manner: -

| Respondent / Entity | Amount to be contributed at own cost |
|---|---|
| M/s Volt Infra Services Pvt. Ltd. (R5) under section 66(1) of the Code | **Rs. 36.54 Crores** |
| Diamond Power Group (R1,R2,R4, R6A, R6B, R7 & R8) under section 66(2) of the Code | **Rs. 174.30 Crores** |
| M/s Sunil Hi-Tech Engineers Ltd. (R10) under section 66(1) of the Code | **Rs. 28.00 Crores** |
| R9 – JSIW Infrastructure Pvt. Ltd. | **Nil** |
| R11 – M.P. Power Transmission Co. Ltd. | **Nil** |
| R12 – Sunil Mishra | **Nil** |

**28.** Accordingly, the following directions are issued: -

a. The transactions concerning **M/s Volt Infra Services Pvt. Ltd.** involving approximately **Rs. 36.54 Crores** are held to disclose sufficient circumstances warranting action under Section 66(1) of the Code. The Respondent is directed to contribute to the assets of the Corporate Debtor an amount of Rs **36.54 crores** 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.

b. The transactions concerning the **Diamond Power Group** involving approximately **Rs. 174.30 Crores**, including the alleged cross-ledger adjustments, are held to disclose sufficient circumstances warranting action under Section 66(2) of the Code. The **Respondent Nos. 1, 2, 4, 6A, 6B, 7 and 8** are directed contribute to the assets of the Corporate Debtor an amount of **Rs 174.30** crores 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.

c. The transactions concerning **M/s Sunil Hi-Tech Engineers Ltd.** involving approximately **Rs. 28.00 Crores** are held to disclose circumstances warranting action under Section 66(1) of the Code. The Respondent is directed to contribute to the assets of the Corporate Debtor an amount of **Rs. 28.00 Crores** 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.

d. The claims under Section 66 concerning Respondent No. 9 - **JSIW Infrastructure Pvt. Ltd.** (**7.08 Crores**), Respondent No. 11 - **M.P. Power Transmission Co.**

**Ltd.** (**33.62 Crores**), and Respondent No. 12 - **Shri Sunil Mishra** (**11.75 Lakhs**) **are hereby rejected**.

e. The claim concerning **Rs. 184.55 Crores** towards bad debts and 63 Lakhs towards cash/imprest transactions is rejected for want of sufficient materia meaning of Section 66 of the Code.

f. 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 liquidation proceedings, including Section 53 of the Code, wherever applicable.

g. 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.

**29.** Accordingly, **I.A. No.185 (AHM) of 2025** is **partly allowed** in the aforesaid terms. There shall be no order as to costs.

**-SD-**

**SANJEEV SHARMA**
**MEMBER (TECHNICAL)**

**- SD -**

**SHAMMI KHAN**
**MEMBER (JUDICIAL)**

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