IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.305
IA/1044(AHM)2022
in
CP(IB) 53 of 2017

Proceedings under Section 60(5), 66 r.w 67 of IBC, 2016

IN THE MATTER OF:

Sanjay Gupta Liquidator of ABG Shipyard Limited **.....Applicant**
V/s
Shivris Resources Private Limited(Earlier as ABG Resources Pvt Ltd & Second Land Developers Pvt Ltd) & Others **.....Respondent**

Order delivered on: 29/10/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

Vide order dated 26.04.2023, this Tribunal had permitted the amendment of the name of the Liquidator from Mr. Sundaresh Bhat to Mr. Sanjay Gupta. However, the Applicant has failed to carry out the necessary amendment in the memo of parties. Accordingly, the Applicant is directed to deposit costs of Rs. 10,000/- with the PM Relief Fund.

The order is pronounced in open court vide separate sheet.

-SD-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-SD-

CHITRA HANKARE
MEMBER (JUDICIAL)

SJ/AD/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

IA 1044 of 2022
In
CP (IB) No. 53 of 2017

(Filed under Section 66 and Section 67 of the IBC, 2016)

IN THE MATTER OF:

M/s ABG SHIPYARD LIMITED
Having its registered office at
Near Magadalla Port, Dumas Road,
Surat- 395007, Gujarat
Through its Liquidator
Mr. Sanjay Gupta

...Applicant

Versus

1 **SHIVRIS RESOURCES PRIVATE LIMITED**
(Earlier as ABG Resources Private Limited and Second Land Developers Private Limited)
Having address at-5th Floor, Bhupati Chambers,
13, Mathew Road, Mumbai, Maharashtra- 400004

2 **MR. RISHI AGARWAL**
7A/B. Somerset Place 61D, Bhulabai Desai Road,
Near Sophia College Road, Mumbai-400026

3 **MR. S MUTHUSWAMY B-1203,**
12th Floor, Park Royal,
B-Wing, Madan Mohan Malviya Road,
Mulund (West) Mumbai- 400080

4 **MR. SYED ABDI**
C/o Mr. S.S.R. Zaidi 18, Gali No.- 8,
Ghaffar Manzil Exn Jamia Nagar,
Okhla South Delhi- 110025 And
1500, Supreme Epitome,
Dr. C.G. Road. Chembur East,
Mumbai 0 400074 And 5, Sethna Manor,
6th Road, Chembur East, Mumbai- 400071

5 **MR. DHANANJAY DATAR**
B-1/61, Gagan Apartments, Opposite Minakshi Tower,
Gokuldham Goregaon (East) Mumbai- 400063

6 **MR. NILESH ARJUN PANDERE**
F-401, Shree Ram Nagar, Saibaba Nagar,
Near Amar Jyoti School, Navghar Road,
Bhayander (East) Thane, - 401105

7 **Sanjay Barod**
Bankruptcy Trustee of Mr. Rishi Agarwal
2nd Floor, 210-212, Vrajbhumi Complex, Opp. Sardar Patel
Seva Samaj Off CG Road, Navrangpura
Ahmedadabad- 380009

…. Respondents

Order Pronounced on 29.10.2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant	: Mr. Monaal J. Davawala Adv.
For Respondent-2 & 3	: Mr. Aditya B. Mehta Adv. and Mr. Harshang Himanshu Patel Adv.
Respondent- 5	Mr. Aditya B. Mehta Adv; Mr. Ratnesh Shah Adv; Mr Bhavik Karia,Adv; and Mr. Harshang Himanshu Patel Adv.
Respondent- 7	: Mr. Dheeraj Garg, Adv. and Harshvardhan Nasra, Adv.

JUDGEMENT

1. This application, is filed under Section 66 and Section 67 of the Insolvency and Bankruptcy Code, 2016, seeking following reliefs:

    a. *To direct the Respondents jointly and severally to make a contribution to the tune of INR 203.36 Crores to the Corporate Debtor on account of funds siphoned and fraudulently transferred by the Respondents No. 2 to 5 from the Corporate Debtor to ABG Resources Private Limited now Shivris Resources Private Limited/Respondent No. 1.*
    b. *To pass appropriate order(s) and directions(s) under Section 66 of the Code in relation to the transaction between the Corporate Debtor and ABG Resources Private Limited Limited/Respondent No. 1. now Shivris Resources Private*
    c. *To award costs of this application.*

2. The brief facts of the case are that the Applicant/Liquidator has alleged that the Corporate Debtor, through Respondent Nos. 2 to 5, had undertaken transactions with Respondent No. 1, *Shivris Resources Private Limited* (formerly known as *ABG Resources Private Limited*), which were fraudulent in nature and were not undertaken in the ordinary course of business.

3. It is stated that pursuant to the order dated 25.04.2019, whereby liquidation of the Corporate Debtor was commenced

under Section 33 of the Code, the Applicant was appointed as the Liquidator. During the liquidation process, certain accounting and other records of the Corporate Debtor, which were initially unavailable due to a hardware/software crash, were subsequently retrieved. On examination of the records and information obtained during the liquidation process, the Applicant noticed certain transactions which, according to him, warranted examination under Section 66 of the Code.

4. The Applicant appointed Kirtane & Pandit LLP as Transaction-cum-Forensic Auditor to examine the books and records of the Corporate Debtor for the period from 01.08.2012 to 01.08.2017. The Forensic Auditor submitted its final report dated 07.06.2022. Upon consideration of the said report and further examination of the books and records, the Applicant alleges that substantial amounts had been advanced by the Corporate Debtor to Respondent No. 1, then known as ABG Resources Private Limited.

5. It is stated that, over various financial years, the Corporate Debtor advanced funds to Respondent No. 1 and, as reflected in the audited financial statements as on 31.03.2017, an amount of approximately Rs.103.36 Crores was shown as loan

and Rs.100 Crores as deposit, aggregating to Rs. 203.36 Crores, as recoverable from Respondent No. 1.

6. The Applicant submitted that Respondent No. 1 was a group/related company of the Corporate Debtor and that Respondent No. 3, namely Mr. S. Muthuswamy, was a common director in the Corporate Debtor and Respondent No. 1 at the relevant time. It is further stated that Respondent Nos. 2 to 5 were directors of the Corporate Debtor and were in control of its affairs when the transactions in question were undertaken.
7. Applicant submitted, no loan agreements or other supporting documents specifying the terms of repayment, interest, security or other conditions governing the advances were available. It is further alleged that no approval of the Board of Directors was obtained before extending such loans to Respondent No. 1.
8. The Applicant further submitted that Respondent No. 1 had a comparatively insignificant financial capacity and, as per its financial statements, had reported revenue of only approximately Rs.1.60 Crores as on 31.03.2014. According to the Applicant, despite the same, substantial amounts were advanced to Respondent No. 1 over a period of time without adequate security, interest or other consideration.

9. It is further contended that there was no apparent business nexus between the Corporate Debtor and Respondent No. 1 which could justify the advances and that the transactions were not undertaken in the ordinary course of business. The Applicant submitted that the funds of the Corporate Debtor were thereby diverted to Respondent No. 1 and that such diversion was undertaken with the intent to defraud the creditors of the Corporate Debtor or for a fraudulent purpose.

10. The Applicant therefore contended that the aforesaid transactions constitute fraudulent trading within the meaning of Section 66(1) of the Code and that Respondent Nos. 2 to 5, being the persons who were in control and management of the Corporate Debtor at the relevant time, are liable to contribute to the assets of the Corporate Debtor to the extent directed by this Adjudicating Authority.

11. The Applicant further stated that the amount so advanced has not been recovered and continues to remain outstanding, thereby causing loss to the Corporate Debtor and its creditors. On the aforesaid basis, the Applicant has sought appropriate directions against the concerned Respondents under Section 66 of the Code.

12. The Respondent nos. 2 and 3 filed reply and raised a preliminary objection to the locus of the Applicant, contending that Section 66 of the Code permits an application only by the Resolution Professional and does not expressly confer such power upon the Liquidator. It was submitted that, unlike Sections 43, 45 and 50, Section 66 does not specifically authorise the Liquidator to institute such proceedings.The Respondents further questioned the propriety of the proceedings on the basis of the disciplinary action taken by the IBBI against the erstwhile Liquidator, Mr. Sundaresh Bhat, vide order dated 28.09.2022. They contended that the steps taken by the erstwhile Liquidator in relation to the present application were therefore required to be viewed with caution.

13. The Respondents also questioned the reliance placed upon the Transaction Audit Report, contending that an earlier forensic audit for the period April 2012 to July 2017 had already been conducted by Ernst & Young LLP and its report was submitted on 18.01.2019. Despite the same, Kirtane & Pandit LLP was subsequently engaged to conduct an audit for the same period, whose report was submitted on 07.06.2022. It was therefore alleged that the present application was filed belatedly.

14. On merits, Respondent No. 2 submitted that he had ceased to be an Executive Director in 2008 and thereafter remained only a Non-Executive Director. He contended that he was not involved in the day-to-day affairs or management of the Corporate Debtor during the relevant period and had attended only five Board meetings over the relevant six-year period. Accordingly, it was contended that he could not be held personally liable merely by virtue of being a director.

15. The Respondents further contended that Section 66 requires the existence of an intention to defraud creditors or a fraudulent purpose and that mere suspicion, opinion or inference regarding a transaction is insufficient to establish such intent. It was submitted that the erstwhile Liquidator had only expressed an opinion regarding applicability of Section 66 and had not recorded any conclusive finding of fraudulent intent. The present Liquidator, therefore, was required to independently satisfy himself regarding the ingredients of Section 66 before instituting the proceedings.

16. The Respondent also relied upon the interim moratorium under Section 96 arising from the proceedings under Section 95 of IBC 2016 initiated by State Bank of India against the personal

guarantors, including Respondent No. 2, contending that the present proceedings, being in the nature of recovery of a liability arising from the alleged fraudulent transactions, could not proceed during the subsistence of the moratorium.

17. Further the Respondents submitted that the transactions were old and that, being a Non-Executive Director not involved in the day-to-day affairs of the Corporate Debtor, Respondent No. 2 was not in a position to effectively respond to the allegations at this stage. It was contended that the relevant books and records were in the custody of the Liquidator and, in their absence, the Respondent was unable to properly deal with the allegation

18. Respondent No. 7 filed written submission and submitted that he is acting as the Bankruptcy Trustee of Mr. Rishi Kamlesh Agarwal pursuant to the order dated 05.06.2025 and was impleaded in the present proceedings in his statutory capacity pursuant to order dated 01.04.2026. He submitted that he has no other role or capacity in the present proceedings. It was submitted that no relief has been sought against Respondent No. 7 or the bankruptcy estate in the present Section 66 application and, therefore, his impleadment is only formal and pro forma. He further submitted that he has no knowledge of

the affairs of the Corporate Debtor and, hence, no adverse order or order of contribution can be passed against him or the bankruptcy estate.

19. Respondent No. 7 further contended that proceedings under Section 66 concern the personal conduct, intent and participation of the persons alleged to have committed fraudulent acts and are distinct from the bankruptcy proceedings against Mr. Rishi Agarwal. Such proceedings, according to him, are therefore liable to proceed independently against the concerned respondents in their personal capacity. It was further submitted that any liability arising under Section 66 would constitute an excluded debt under Section 79(15) of the Code and would be a personal liability of the concerned respondent, not recoverable from the bankruptcy estate. Accordingly, Respondent No. 7 prayed that no adverse order or order of contribution be passed against him or the bankruptcy estate.

20. The Applicant, in rejoinder, submitted that the application is founded upon the findings of the Transaction Auditor and the independent determinative opinion of the erstwhile Liquidator, and that the subsequent substitution of the Liquidator does not

render the application or the opinion contained therein ineffective, as the proceedings are being pursued by the office of the Liquidator and not in the personal capacity of the erstwhile Liquidator. It was further submitted that the Respondents have not challenged the methodology or findings of the Transaction Auditor and have failed to rebut the findings on merits.

21. It was further submitted that the interim moratorium under Section 96 of the Code does not operate as a bar against proceedings under Section 66. It was submitted that the omission of the expression "Liquidator" in the latter part of Section 66(1) does not preclude the Liquidator from filing such an application, and that a contrary interpretation would leave the Liquidator without any remedy upon detection of fraudulent transactions during liquidation.

22. The Applicant further submitted that the objections concerning the antecedents of the erstwhile Liquidator and the IBBI proceedings do not discredit the present proceedings, as the present Liquidator is pursuing the application in his official capacity. It was also submitted that the IBBI order had already been disclosed while filing the application and that the

challenge thereto before the Hon'ble High Court of Delhi was pending; hence, the Applicant did not seek to rely upon or comment upon matters which were sub judice.

23. Vide order dated 12.02.2024, Respondent Nos. 1, 4 and 6 were proceeded **ex parte** on account of their non-appearance despite service of public notice.

24. Perused the documents on record alongwith written submissions of the parties.

25. Upon perusal of the application, the documents annexed thereto, and the submissions made on behalf of the Applicant, the following observations arise for consideration:

26. **Observations:**

I. It is observed that the present application has been filed by the Liquidator of the Corporate Debtor, ABG Shipyard Limited, seeking contribution of Rs. 203.36 crore to the assets of the Corporate Debtor under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 ("the Code"). The amount comprises Rs. 103.36 crore stated to be outstanding as loans and Rs. 100 crore as deposits advanced to ABG Resources Private Limited, now known

as Shivris Resources Private Limited, over various financial years between 2006 and 2017.

II. The Applicant upon review of such information/documents was of the opinion that the aforesaid amounts were advanced to a group company of the Corporate Debtor and have remained unpaid. It is further alleged that the transactions were undertaken without adequate consideration, security, supporting loan agreements or requisite Board approval and were not in the ordinary course of business. According to the Applicant, the transactions resulted in the diversion of the funds of the Corporate Debtor to the recipient company, thereby prejudicing the interests of the creditors.

III. In order to assist the Liquidator appointed Kirtane & Pandit LLP as the Transaction-cum-Forensic Auditor to examine the transactions undertaken during the period from 01.08.2012 to 01.08.2017. The report dated 07.06.2022 has been relied upon in support of the allegations concerning the impugned transactions. The Liquidator, upon examining the transactions and the findings recorded in the said report, has formed the

opinion that the circumstances surrounding the advances warrant proceedings under Section 66 of the Code. The said opinion has been considered along with the auditor's report, the pleadings of the parties and the other material available on record.

IV. It is pertinent to note that the Respondents have not specifically disputed the advancement of the aforesaid loans and deposits. The absence of a specific denial of the advances, therefore, is a relevant circumstance to be considered along with the other evidence on record.

V. The initial burden lies upon the Applicant to establish, through relevant documents and other material, the advancement of the amounts in question and the circumstances indicating that the transactions were undertaken for a fraudulent purpose. Once the Applicant produces material showing that substantial amounts were advanced to a group company, remained unpaid, and were allegedly advanced without adequate supporting documentation, security or requisite approvals, the Respondents are required to address these circumstances and provide an explanation for the transactions,

particularly as the relevant details may be within their knowledge. In the present case, the Respondents' failure to specifically dispute the advances or provide a satisfactory explanation regarding their purpose and utilisation may be taken into consideration while assessing the evidence

VI. These circumstances, when read with the findings recorded in the Transaction-cum-Forensic Auditor's Report and the material concerning the roles of the persons involved, lend support to the Applicant's allegations. The Respondents have not placed sufficient material on record to satisfactorily explain the commercial purpose of the transactions or to rebut the circumstances relied upon by the Applicant. The absence of such an explanation, considered together with the other material, weighs against the Respondents' defence.

VII. One of the objection of respondents is that the liquidator has no locus standi to file this application under section 66(1) of IBC. Though the word "Liquidator is added after amendment, it is clearly stated that during the CIRP liquidation process, an application u/s 66 can be filed

which means that either RP or liquidator can file the application The liquidator relied upon the Forensic Audit report and made his opinion based upon it Therefore antecedent o erstwhile liquidator has no barring on the content of the application.

VIII. The applicant relied upon the Ruling in *Sanjay Gupta Prahalad Agarwal and Ors in CA 56 of 2020, NCLT Cuttak* dated 26.09.2022 wherein it was observed that this section as well as section 35(1)(n) of IBC also empowers the liquidator to apply before NCLT. Thus this objection of the respondents has no merits and liquidator is empowered to file application u/s 66 before this Tribunal.

IX. Another objection on the point of law was taken by the respondent is that respondent No. 2 is undergoing Personal insolvency and therefore moratorium comes into place and no legal action can be taken against him. In this regard the Hon'ble NCLAT in *Ashok Mahendru & Anr. v. Vivek Parti, Company Appeal (AT) (Insolvency) No. 1324 of 2022,* held that an interim moratorium under Section 96 does not, by itself, bar proceedings under Sections 19(2), 66 and 67 of the Code. Accordingly, the commencement

of an interim moratorium, by itself, does not constitute a ground for dismissal of the present application. The effect and subsistence of the moratorium in the individual proceedings, if relevant, are to be considered in light of the orders passed therein.

X. As regards the disciplinary order dated 28.09.2022 passed by the Insolvency and Bankruptcy Board of India against Mr. Sundaresh Bhat, suspending his registration for a period of two years, it is observed that the said order does not, by itself, determine the merits of the allegations concerning the impugned transactions. The disciplinary order alone does not establish that the transactions were bona fide or that the allegations made in the present application are untenable.

XI. In view of the foregoing discussion, the Liquidator's opinion, the Transaction-cum-Forensic Auditor's Report, the nature and circumstances of the impugned transactions, the absence of a specific denial of the advances and the failure of the Respondents to satisfactorily explain the circumstances surrounding the transactions have been considered collectively. Upon

being satisfied that the material on record establishes the fraudulent purpose of the transactions and the knowing participation of the Respondents against whom relief is sought, the Tribunal finds that the ingredients of Section 66(1) of the Code stand established. Accordingly, the application is allowed, and the persons found liable shall contribute to the assets of the Corporate Debtor in accordance with the findings on record and the extent of their respective liability.

27. Hence we pass the following order.

ORDER

1 Application is allowed.

2 Respondent Nos. 2 to 5 are directed to jointly and severally make contribution of Rs. 203.36 Cr to the account of the CD within two months from the date of this order.

-SD-	**-SD -**
DR. V. G. VENKATA CHALAPATHY	**CHITRA HANKARE**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

KJ-LRA