

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 3rd JULY, 2024, 10:30 A.M.

**IA (IBC)/41/GB/2022
In CP (IB)/4/GB/2021**

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

In the Matter of	NK Power and Infrastructure Pvt. Ltd., RA Vs Nanda Rangsa Marak, 2. Franklin Rangsa Marak, 3. Vivek Agarwal, 4. Kamal Kumar Harlalka
Under Section	U/s 66 of IBC, 2016

For Petitioner (s) : Mr. N. Goenka, Adv.

For Respondent (s) : Mr. Mukesh Sharma, Adv. for R-1, 2 & 3

ORDER

Order pronounced in the open court *vide* separate sheets.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

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In the matter of:

An Application under Section 66 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the matter of:

An Application under Rule 11 of the NCLT Rules, 2016;

-And-

In the matter of:

NK Power and Infrastructure Limited, a private limited company incorporated under the Companies Act, 1956, having registered office at 1st Floor, Plaza Building, G.S Road, Ganeshguri Chariali, Guwahati, Assam- 781006;

...Applicant/SRA

-Versus-

Nanda Rangsa Marak, Suspended Director of the Corporate Debtor having address at Village Marakdani, P.S Jorabat, Guwahati, Assam- 781023;

...Respondent No. 1

-And-

Frankline Rangsa Marak, Erstwhile Director of the Corporate Debtor having address at Amber Umpher, Near Ambher LP School, 12th Mile, Bymihat, Meghalaya- 793101;

...Respondent No. 2

-And-

Vivek Agarwal, Promoter and Erstwhile Director of the Corporate Debtor having address at Shreyan Enclave, Flat No-4A, GMCH Road, Guwahati, Assam- 781005;

...Respondent No. 3

-And-

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Kamal Kumar Harlalka, Suspended Director of the Corporate Debtor having address at 3rd Floor, Shree Sadan, B.R. Phookan Road, Kumarpara, Guwahati, Assam-781001;

...Respondent No. 4

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Applicant : Mr. Nirmal Goenka and Vidhushi Chokhani (Adv.)

For Respondent : Mr. Ravi Shankar Mishra (Adv.)

Order pronounced on: 03.07.2024

ORDER

1. The instant Interlocutory Application i.e. **IA(IBC)/41/GB/2023** is filed by Mr. Purshotam Gaggar, the Resolution Professional of the **Navya Agro Products Pvt Ltd (NAPPL)** (“**Corporate Debtor or CD**”), a private limited company engaged in the business of Manufacturing of Pet Bottles, Trading of Paddy, Mustard Oil, etc. under Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**IBC or the Code**”), but taken over through substitution by the Successful Resolution Application (“**SRA**”), NK Power and Infrastructure Pvt Ltd, praying for the following reliefs:-

a) *Pass an order declaring that the transactions as stated in the Application are fraudulent in terms of Section 66 (1) and (2) of the Insolvency and Bankruptcy Code, 2016;*

b) *Pass an order thereby directing the Respondents being the suspended board of directors/ promoters/ related party to make such contributions to the assets of the corporate debtor as this Hon'ble Tribunal may deem fit on account of fraudulent and wrongful trading in terms of Section 66 of the Code;*

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- c) For such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*
2. This Tribunal, *vide* order dated 26.08.2021, allowed the Application filed by the Corporate Debtor under Section 10 of the Code, thereby initiating Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor and appointed Mr. Vakati Balasubramanyam Reddy as Interim Resolution Professional (“IRP”) of the Corporate Debtor.
 3. The Committee of Creditors (“CoC”) in its 3rd meeting, resolved to replace Mr. Vakati Balasubramanyam Reddy and appoint Mr. Purshotam Gaggar (hereinafter referred to as the Applicant) as Resolution Professional (“RP”) of the Corporate Debtor. This Hon'ble Tribunal *vide* Order dated 01.04.2022 confirmed the aforesaid appointment of RP.
 4. After perusing the documents and information received from the IRP, the RP formed an opinion that the functioning of the Corporate Debtor had been carried out with an intent to defraud its creditor, thereafter, on 30.04.2022, RP appointed a Transaction Auditor to undertake transaction audit of the Corporate Debtor. Following the same, on 17.05.2022, the RP received the transaction audit report, wherein, it was indicated that that several transactions have been carried which are fraudulent in nature it has also been found that the business of the Corporate Debtor was carried out with the intent to defraud its creditors in terms of Section 66 of the Code.
 5. The RP *vide* letter dated 18.05.2022 sought clarification from the suspended board *vis a vis* the numerous transactions flagged in the report of the Transaction Auditor. The letter was responded to by Respondent No. 4 *vide* e-mails dated 27.05.2022 and 07.06,2022 and not being satisfied by the received responses, the RP filed the present Application under Section 66 of the IBC. Subsequently, this Tribunal approved the Resolution Plan submitted by the SRA for the revival of the CD on 12.08.2022 by allowing IA No 43 of 2022. In natural course, this Tribunal *vide* order dated 03.03.2023 in IA No. 11 of 2023 allowed the application for substitution of RP with the SRA as the applicant.

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6. The relevant submissions of the Applicant made *vide* their Petition and Written Notes are extracted hereunder:

- a) The application under Section 10 of IBC for initiating CIRP of the CD was filed by the CD on 09.01.2021, which was finally admitted on 26.08.2021. In between this period, the Respondents withdrew an amount of Rs. 2.47 Crores from the account of the Corporate Debtor maintained in ICICI Bank and made cash payments, which have not been made in the ordinary course of business. These payments are unsubstantiated and made to keep the aforementioned amount out of the hands of the creditors.
- b) The Respondents made cash payments of Rs. 10 Lakh to each alleged unsecured creditor (a total of Rs. 30 lakh) by way of continuous cash payment of Rs. 10,000/- almost on a daily basis:
 - i. From 01.04.2021 to 21.08.2021 to MOMIN COAL AGENCY.
 - ii. From 01.04.2021 to 20.08.2021 to M.R. COAL AGENCY.
 - iii. From 01.04.2021 to 25.08.2021 to PIONEER COAL TRADERS.

These alleged unsecured loans have not been substantiated by any written agreement, nor has any document been provided to show that any demand whatsoever was raised by the abovementioned parties.

- c) Respondent No. 1 (Suspended Director), Respondent No. 2 (Suspended Director) and Respondent No. 3 (Ex-Director) and their related parties were also paid Rs 10,000/- almost on a daily basis without providing any cogent reasons for the same:
 - i. From 25.04.2021 to 25.08.2021 to Respondent No. 1.
 - ii. From 25.04.2021 to 25.08.2021 to Respondent No. 2.
 - iii. From 15.04.2021 to 17.07.2021 to Respondent No. 3.

Moreover, Respondent No. 3 ceased to be a director of the Corporate Debtor on 25.01.2021, however, payments (as director remuneration) were made to him during the period 15.04.2021 to 17.07.2021.

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- d) Following cash payments to sundry creditors have been made without providing any cogent reasons for the same:
- i. From 25.04.2021 to 17.05.2021, Payment of Rs. 2.07 Lakh have been made to A.G. Cement Pvt. Ltd.
 - ii. From 16.08.2021 to 25.08.2021, Payment of Rs. 75,000/- have been made to Mr. Pradeep Singh Deka.
 - iii. From 16.08.2021 to 25.08.2021, Payment of Rs. 75,000/- have been made to Mr. Pratap Singh Deka.
- e) Further, admittedly, *vide* lease deed dated 07.05.2021, the Corporate Debtor had already leased out the factory premises to NK Agro & Foods and in accordance with Clause 2(e) and Clause 5 of the lease deed, the CD was not to be responsible for repair, maintenance and labor costs of the premises. However, siphoning off of funds *via* dummy cash payments have been incurred on Labour and Repair as below:
- i. From 10.08.2021 to 20.08.2021 of Rs. 1.13 Lakh towards Labour Expenses.
 - ii. From 01.04.2021 to 21.08.2021 of Rs. 6.50 Lakh towards repair and Maintenance.
- f) The Transaction Auditor observed that Directors of CD and Harlalka family group holds directorship/membership/partnership in other related concerns and huge sums amounting to Rs. 1.04 Crores was advanced, inter-alia, to its related parties and these receivables were conveniently written off which in turn established mala fide intention on behalf of these stakeholders to siphon off the funds of the CD.
- i. Admittedly, the Corporate Debtor advanced a sum of Rs. 63,74,364/- to its related party i.e. Hemant Industries in which Smt. Sarda Devi Harlalka (belonging to Harlalka Group) is one of the partners. From the response of the Respondents, it appears that the money was routed to Respondent No. 4 through Hemant Industries. Hence, Respondent No. 4 had been

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- misutilising the fund of the Corporate Debtor as his own private asset and for his own personal interests.
- ii. Admittedly, the Corporate Debtor advanced a sum of Rs. 20 Lakh to JSB Drums, which is a Partnership firm, in which Respondent No. 4 and Mr. Hemant Harlalka s/o Respondent No. 4 are partners.
 - iii. Also, the CD advanced a sum of Rs 14 Lakh and 7 Lakh to Shri Pratap Singh Deka and Ms. Rupa Talukdar respectively, however, no documentation has been placed on record to substantiate the purpose of these advances.
- g) Further, In FY 2021-22, the Corporate Debtor made entries amounting to Rs. 77,90,470/- as compensation for Life Insurance Corporation (LIC) policies encashed by Punjab National Bank (PNB) for Mrs. Nisha Harlalka (Rs. 35.62 Lakh) (shareholder of the Corporate Debtor and wife of Respondent No. 4) and Ms. Anupriya Harlalka (Rs. 42.28 Lakh) (shareholder of the Corporate Debtor).
- i. The Corporate Debtor allegedly entered into unregistered agreements dated 05.05.2018 and 07.05.2018 with Mrs. Nisha Harlalka and mortgaged one of its immovable properties in order to secure an alleged debt owed to her. It agreed to compensate her with Rs. 40 Lakh in case the Corporate Debtor defaults in making payments to PNB, and PNB encashes the LIC Policy in her name, as a collateral, that is assigned to the Bank. The said LIC policy was subsequently encashed by PNB on 24.12.2020 for Rs. 9.21 Lakh.
 - ii. Corporate Debtor also allegedly entered into unregistered agreement dated 12.02.2018 with Ms. Anupriya Harlalka, whereby the Corporate Debtor agreed to compensate Rs. 50 Lakh in case the Corporate Debtor defaults in making payments to PNB and PNB encashes the LIC Policy in the name of Mrs. Nisha Harlalka that was assigned to the Bank. The LIC policy was subsequently encashed by PNB on 28.07.2021 for Rs. 13.31 Lakh.

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- iii. The Corporate Debtor agreeing to compensate the above-mentioned parties for a sum of Rs. 90 Lakh towards surrender value of the LIC Policies (Rs. 15 Lakh) at the time of agreement do not appear to have been made in ordinary course of business.
 - iv. The abovementioned transactions and agreements points towards a plan of unjustly enriching the related parties of the CD and aided in siphoning off of funds of the CD. This is highlighted by the fact that while PNB being the secured creditor could recover only Rs 22.52 Lakh from encashing LIC policies, the CD compensated the provider of such security for a sum amounting to more than 3 times the said amount recovered by PNB.
- h) The entire burden of paying for the common approach road fell upon the CD as is reflected through the following instances:
- i. The plot of land, on which the factory premises of the Corporate Debtor is situated, shares a common approach road with its sister concerns namely RSH Agro Products Ltd and JSB Entrade Pvt Ltd. The common approach road is owned by directors/ promoters and related parties of the Corporate Debtor.
 - ii. Respondent No. 4 vide two separate letters dated 28.02.2017 and 01.03.2017 agreed to compensate the Respondent No. 1 with a sum of Rs. 40 Lakh, and vide letters dated 06.12.2019 and 07.12.2019 agreed to compensate one Mr. Amiyo Ishlary a sum of Rs. 50 Lakh totaling to a sum of Rs. 90 Lakh for the use of such common approach road.
 - iii. While the common approach road would be utilized by the sister concerns of the Corporate Debtor as well, there was no requirement for these sister concerns to contribute towards the compensation for its use, nor was any compensation contemplated to be paid to the Corporate Debtor from its sister concerns for this purpose. No reason has been accorded as to why only the Corporate Debtor was required to bear the entire burden of such

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compensation especially when the common approach road was proposed to be used for the benefit of three companies comprising the Corporate Debtor and its sister concerns.

i) The trade of Paddy Rice by the CD and several underlying transactions cast aspersions on the intent with which they were carried out:

i. In the FY 2019-2020, the CD operated at negative gross margin, where the cost incurred in procuring the paddy rice exceeded the sale value. Majority of the cash proceeds from the sale of paddy Rice was not deposited in the Bank, rather the same was used primarily for Cash Purchases of Paddy Rice, as evident from the below chart:

Particulars	FY 2019-20	FY 2020-21
Opening Stock	Rs. 2,67,64,275	Rs. 18,752,960
Cash Purchase	Rs. 1,01,82,901	Rs. 1,89,00,000
Cash Sales	Rs. 1,60,32,560	Rs. 17,30,920

ii. The CD has no Purchase Bills, evidence of Stock receipt, transportation proof of stock dispatches etc. and it failed to produce the same even upon request by the Applicant. Respondents merely shared sample purchase vouchers for Paddy Rice which were undated and signed either by pen or thumb impression for some of the farmers only.

iii. The Security at the Entrance Gate maintains entry and exit records for all Commercial Vehicles/ Trucks, however the registers pertaining to the F.Y. 2019-20 and F.Y. 2020-21 were not provided for verification of the movement of Paddy Rice for the purchases and sales made and hence, the transactions of Paddy Sale and Mustard Seed purchases seem fictitious due to the unavailability of vehicle and stock movement registers. Further the Corporate Debtor has not incurred any loading and unloading charges in the said financial year.

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- iv. Additionally, sale transactions with MK Traders and Kalang Kapili Trading Pvt. Ltd. Furthermore, the sale made to MK Traders is at a price which is less than half at which the rice paddy was purchased, whereas the Corporate Debtor sold the rice paddy to Kalang Kapili Trading Pvt. Ltd. for a minor profit. However, thereafter, the entire material sold to them were returned back and then sold at a very low price in cash, casting doubts on the transaction.
- v. Therefore, it is evident that the Corporate Debtor was incurring heavy losses in the trade of rice paddy, however, it continued with the said trade. Moreover, the entire transactions were carried out in cash and that too with related parties. Furthermore, lack of requisite documents casts serious doubts with respect to genuineness of the aforesaid transactions. It is evident that the Corporate Debtor's business was conducted fraudulently, with transactions done intentionally to divert funds to related parties, negatively impacting creditors.
- j) It is stated that prior to the insolvency commencement date, Respondents knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP in respect of the Corporate Debtor. They purportedly failed to exercise due diligence in minimizing potential losses to the creditors of the Corporate Debtor. Hence, in view of the above, Respondent Nos. 1 to 4 are not only liable under Section 66(1) but also under Section 66(2) of the Code, 2016.
- k) The beneficiaries at the cost of the CD are Respondent No.1 to Respondent No.4 and therefore are jointly and severally liable to contribute to the assets of the corporate debtor to the extent of unsatisfied claim along with the fees and expenses incurred by the ex-RP. The Respondents No 1 to 4 are knowingly parties to the carrying on of the business of the corporate debtor with a fraudulent intent and therefore are jointly and severally liable to contribute to the assets of the corporate under Section 66(1) of the Code. The Suspended Directors, i.e. Respondent No.1

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- and Respondent No.2 are also guilty of wrongful trading under Section 66(2) of the Code.
- 1) The timelines under Regulation 35A of CIRP Regulations 2016 is directory and not mandatory and thus cannot benefit the wrong doer as held by the Hon'ble NCLAT in *Comp App (AT) (Ins) No. 869 of 2022* in the matter of *Prashant Chandra Rath and Ors. vs Surya Kant Satapathy and Ors.* Therefore, though the said application was filed beyond 135th day of the insolvency commencement date, the same was filed on 17.06.2022, *i.e.* at the earliest opportunity from receiving the transaction audit report on 17.05.2022, as well as reply by Respondent no. 4 dated 27.05.2022 & 07.06.2022, instead of the suspended board of directors (Respondent no. 1 to 2), which shows the lack of cooperation by the suspended board of Directors of the Corporate Debtor, making the defence of Regulations 35A unavailable to them.
 - m) It is a settled law that there is no specified look back period for fraudulent trading u/s 66 of the IBC. Section 66 of the Code does not provide for any 'look back period' as far as fraudulent transactions are concerned. (*Mr. Thomas George vs K. Easwara Pillai and Ors, NCLAT Chennai, CompApp (AT) (CH) (Ins.) No. 293 of 2021*).
7. Shorn of unnecessary details, the submissions by Respondent No. 1 and 2 *vide* their reply and written submissions are produced hereinafter:
- a) Regulation 35A of the Insolvency Resolution Process for Corporate Persons Regulations, 2016 ("CIRP Regulations") prescribes that within the 115th day of the CIRP, the RP has to form an opinion as to whether the Corporate Debtor has been subjected to any fraudulent transaction/ trading covered under Section 66; and within the 135th day of the CIRP, the RP has to file an application under Section 66 seeking reversal of such a transaction. Further no genuine reason was cited for such delay thus the application was beyond 135th day without any cogent reason

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- for delay and as such the application is liable to be dismissed for want of limitation and jurisdiction.
- b) The records of the Corporate Debtor, including the accounts and minutes, were taken into the custody of the Applicant, who subsequently appointed the Transaction Auditor. The Transaction Auditor demanded a reply within a limited period. As the business was closed for a long period, there was a lack of staff and the papers were scattered. Hence, the auditors could not be provided with all the records readily. The transaction auditor report dated 17.05.2022 was full of surmises and did not contain a single event of fraudulent trading or wrongful trading.
- c) Further, the audit was carried out on the basis of a letter of appointment dated 30.04.2022 which was not supported by proper resolution hence it is a case where Applicant had defaulted in taking proper resolution. Hence, the instant application is liable to be dismissed.
- d) Moreover, a review of the minutes of the 8th meeting of the CoC, specifically agenda No. 3, shows that it is regarding the appraisal to the CoC regarding the appointment of Transaction Auditor dated 17.05.2022. Hence, the Applicant had a predetermined intention to file this instant application under Section 66 of the Code and made a deliberate attempt of misleading this Hon'ble Bench about the facts of the matter and only on this count the application filed by the applicant is liable to be dismissed as the applicant has placed misleading facts upon which no order can be passed.
- e) The Application is devoid of merit as the pleadings of the application are not supported by the correct documents or the documentary evidence attached with the petition. Specifically, in paragraphs 4.4, 4.5, and 4.6, the Applicant mentioned that during the 7th CoC meeting held on 12.04.2022, the applicant informed the CoC members that he was yet to receive all documents pertaining to the CIRP of the Corporate Debtor. However, the RP, after reviewing limited documents,

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- formed an opinion that the corporate debtor had been operating with the intent to defraud its creditors. In support of this opinion, the Applicant attached Annexure A5, which is merely a letter to the Transaction Auditor without anything about mentioning his opinion. Hence, no independent opinion was formed by the RP.
- f) The Applicant has covered such transactions as fraudulent that were not originally flagged as fraudulent in the report of the Transaction Auditor such as the sale of plot of land section, bad debts, compensation to directors, compensation to Related Party and booking of Director's Remuneration.
- g) The Corporate Debtor *vide* email dated 27.05.2022 informed the RP that -
- i. The records were maintained in the tally system for every transaction and not manually. Further, the weighment slips of paddy rice purchased were also not maintained separately since the weights are mentioned in vouchers itself and paddy is purchased from farmers. Rice sales were also duly recorded with the voucher numbers from page nos. 196-208.
 - ii. Few of the purchase invoices of Paddy Rice purchased in cash for F.Y. 2019-20 and F.Y 2020-21 were enclosed. The purchases were made from various farmers who brought the materials to the godowns of the Corporate Debtor themselves and it is normally a cash transaction, for which no transportation receipt was taken. While, the purchaser themselves managed to carry the material through their own transport vehicle from our godowns and the sales we made in cash. Many sales were made, in cash, to small business firms. The paddy rice sales were made in cash on an ex-factory basis and the buyer themselves managed to carry the material through their own transport vehicle from our godowns, for which no transportation receipt was needed to be maintained. The specific allegation regarding the vehicle number was addressed with the documentation attached from page numbers 213 to 280.

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- iii. There was no rate contract with R.S.H. Agro Products Ltd. for supply of Pet Bottles since it was directly sold to them. The rates were competitive and remunerative for both the parties.
 - iv. Any agreement without consideration involved. is void ab-initio, hence, a tentative offer was made on 07.12.2019 to Mrs. Nanda Rangsa Marak and Mr. Amiyo Ishlary for the usage of the approach road. It was not incorporated in the approach road agreement since their acceptance was awaited. On 20.11.2020, they gave their respective acceptance letters to our tentative offer made to them.
 - v. The Corporate Debtor agreed for reasonable compensation to Mrs. Nanda Rangsa Marak and Mr. Amiyo Ishlary, as till F.Y 2017-18, the group companies were doing very well. Had the loan sanctioned for RSH Agro Unit II on 29.12.2018 been disbursed, all the 3 company's viz. RSH Agro Products Ltd., Navya Agro Products Pvt. Ltd. and JSB Entrade Pvt. Ltd. would still be doing well. Needless to mention, it is non-disbursement of the loan on whimsical grounds imposed by the bank, rather than the compensation, which has only been agreed and not paid yet.
- h) *Vide* email dated 07.06.2022 the Respondent no. 4 stated that
- i. The Transaction Auditor's opinion is biased. They have not gone into the stress faced by this company and the group company, the negligent behaviour of the bank in not disbursing the sanctioned loan of RSH Agro Unit II. They have also ignored the fact that we have submitted our Restructuring Proposal to bank in March 2020 due to losses incurred in manufacturing activity and unilaterally arrived at the conclusion that these transactions are fraudulent.

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- ii. All the agreements were made with the Corporate Debtor's bright future in mind, not anticipating default in bank repayments or that the accounts would become Non-Performing Assets in normal course of business. The situation worsened due to the non-disbursement of the RSH Agro Unit II sanctioned loan and the non-restructuring of Group Company accounts.
- iii. Regarding the allegation of cash payment amounting to Rs. 30 Lakh to unsecured creditors, it is submitted that the creditors are not unsecured. The loans from these creditors were received in the bank account of the Corporate Debtor. The loan amount was duly reflected in the audited balance sheet of the Corporate Debtor. When the application was filed in this Tribunal, all parties had started creating more pressure for payments and daily small amounts were paid to avoid nuisance.
- iv. No efforts were made by the Applicant to check the receipt with the parties and Applicant has concluded on the basis of assumptions only. It was informed *vide* email dated 14.05.2022 to the Transaction Auditor that the Corporate Debtor has never followed the practice of maintaining money receipts either for loans advanced to any party or for loans taken from any party. Hence, the Corporate Debtor had no records of money receipts.
- v. The repayment of unsecured loan in cash was done under extraordinary circumstances/ situations. These parties had given the Corporate Debtor an interest free loan of Rs. 1.25 Crore, and a repayment of Rs. 30 Lakh is reasonable, considering that the Corporate Debtor still needs to pay them Rs. 95 Lakh.
- vi. Regarding the cash payments amounting to Rs. 11.70 Lakh to the Directors and Related Parties, it is submitted that the payments are made against the amount payable as on 01.04.2021. The director remuneration was Rs. 50,000/- per month. Nominal payments were made to the Directors during

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the previous year as compared to total amount payable to them, in the normal course of business. Additionally, the amount paid to Respondent no. 3 is for the period prior to his resignation, *i.e.* Rs 3.60 Lakh payable for 2019-2020 and Rs 3.00 Lakh from 01.04.2021 to 31.01.2021.

- vii. Regarding the cash payment to Sundry Creditors amounting to Rs. 3.75 Lakh, it is submitted that the payments are made against the amount payable as on 01.04.2021, which are nominal amounts. The payment to A.G. Cement Pvt. Ltd. was done as the company had been purchased and taken over by another promoter for which the existing promoter was in urgent need of cash for settlement of its own dues.
- i) As far as transaction with Ms. Rupa Talukdar is concerned, the landlady of the CD, it is submitted that she was suffering from old age ailments with only one person to run her family. Hence, it was broadly thought on humanitarian grounds not to institute any case against her and decided to write it off from books of the CD.
- j) Furthermore, it is stated that in the Agenda Item No. 3 of the 11th meeting of CoC dated 21.06.2022, M/s NK Power & Infrastructure Pvt. Ltd. (NK Power) revised its bid to Rs. 2.92 Crores in view of the increase of bid by another bidder to Rs. 2.90 Crore from Rs. 2.75 Crore. A reasonable opportunity was not provided to the second bidder to submit its revised bid. The Resolution plan was approved in the absence of 2nd bidder, suggesting malafide intention on the part of the RP in collusion with the Financial Creditor, Punjab National Bank, and NK Power. NK Power also maintained credit facilities with the Financial Creditor, while approving the Resolution plan
- k) The Corporate Debtor had purchased land at Ambher village, Sonapur in 2017. In 2018, the land was transferred in the name of Respondent no. 1 by deed of rectification. It is submitted that Purchase of land was from the funds of promoters/directors. It was registered in the name of directors in the year 2018 much before CIRP date and even

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sanction of Bank's loan and only because as per local law the company can't hold the land in its name.

- l) With respect to the LIC policy issue; it is submitted that pledging/ assigning the LIC policy of Mrs. Nisha Harlalka against security of two lands, the Corporate Debtor received the benefit of obtaining a loan of Rs. 520.00 Lakh from the bank. The two lands given as security to Mrs. Nisha Harlalka belonged to Respondent no.1, and not the Corporate Debtor. The necessary supporting papers were given to the Transaction Auditors. The LIC policy if it would have matured in its normal course without its premature encashment by bank, then Mrs. Nisha Harlalka would have received an amount of Rs. 40.00 Lakh. Considering the same, this compensation was agreed and offered to her. LIC policies are excluded assets according to the Code and its Rules.
- m) For creating an equitable mortgage, deposit of title deed is only required and it was not a registered mortgage. The equitable mortgage transpired between Respondent no. 1 i.e Mrs. Nanda Rangsa Marak and Mrs. Nisha Harlalka and the Corporate Debtor was not a party. The land mortgaged was purchased for Rs. 5.25 Lakh, and the surrender value of the LIC policy was Rs.15.00 Lakh, which would have increased over time. This makes the transaction neither preferential nor an extortionate credit transactions.
- n) Even after registration, the land was used in the business of the Corporate Debtor, and the Corporate Debtor has availed loan against the same. The credit facility obtained using the mortgaged land was used in the business. With a personal guarantee of Respondent no. 1 and the land mortgaged to the bank, there is no fraudulent transaction evident in the journal entry. Further the land upon which the question has been raised is not the mortgaged land with the bank, shifting the burden of proof to the Financial Creditor to demonstrate due diligence prior to the mortgage.
- o) Regarding the entries passed amounting to Rs. 77,90,470/- as compensation for LIC policy encashed by Bank, we have specifically shown it as contingent liability and

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- commented upon it in a footnote to the provisional balance sheet dated 26.08.2021. This includes the compensation amount, plus the interest, and minus the LIC encashed amount as agreed upon in the agreements dated 07.05.2018 between the CD and Mrs Nisha Harlalka and Mrs Anupriya Haralka. The Agreement to assign LIC policies to the Financial Creditor was made on 05.05.2018 much prior to the date of CIRP. The sum assured on the policies amounts to Rs. 30 Lakh and Rs. 12 Lakh. Based on these agreements and assignment of policies, the Corporate Debtor could avail the credit facility for the business. Therefore, it cannot be said that the transaction was for fraudulent purposes.
- p) The compensation was based on the potential future value of these policies, which would have exceeded Rs. 40 Lakh if not prematurely encashed. This is not a preferential transaction, as the company had pledged their LIC policies to obtain a loan of Rs. 520.00 Lakh, demonstrating significant value received by the Corporate Debtor against the LIC policies. The Corporate Debtor offered compensation in lieu. No actual compensation was paid and it was only accounted for in the books to reflect the actual liabilities of the Corporate Debtor. It is also submitted that these transactions occurred before the period covered by the Transaction Auditors' review, which, according to the defined Scope of Work, covers FY 2019-20, FY 2020-21, and FY 2021-22 up to 26.08.2021. Thus, the auditor has exceeded the scope of review.
- q) The damage to Paddy Rice and subsequent loss in trade is attributable to general negligence and human error on the part of the staff of the CD. A total of 1600 MT of paddy rice stock deteriorated. Of this, 1450 MT was sold to Kalang Kapili Trading Pvt. Ltd. and M.K. Traders, who later returned the entire amount, leaving 150 MT still in stock. The total damaged stock included 1050 MT purchased recently and 550 MT that had been in the warehouse since FY 2019-20. The old stock, which developed fungus and rotted over time, caused the newly purchased stock to also get destroyed.

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- r) A proper resolution was passed against 1450 MT Rice being returned by the debtors. In this context, certified true copy of the resolution passed at the meeting of the board of Directors of the Corporate Debtor held on 30.01.2021 at the registered office of the Corporate Debtor whereby it was “*Resolved that the Company have received a letter from the Management stating the reasons for the return of the 1450 MT Paddy rice from its Debtors. Debtors stated the paddy rice is of inferior quality, unfit for human consumption, bad quality and has almost deteriorated. Company negotiated with the local buyers to use the paddy as fertilizers, manure and for fishery use at best available rate. As the Company was not in the position to intimate the authorities and bear expenses so the Company choose to sale out the product to local buyer and to sustain in the market lot some more time.*
- s) The Corporate Debtor has taken working capital loan of Rs. 300.00 Lakh out of which, losses occurred under Manufacturing Activity from F.Y 2018-19 to F.Y 2021-22 (till 26.08.2021) –

F.Y.	Manufacturing Loss (INR in Lakh)
2018-19 (ABS 2018-19)	43.66
2019-20 (As per your Chart deducting Trading Loss)	95.90
2020-21 (As per your Chart deducting Trading Loss)	50.54
2021-22 (upto 26.08.2021) (excluding Bad-debts w/off, Compensation for LIC policy encashed and Compensation for usage of common approach road)	97.51
Gross Loss	287.61

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Thus, working capital given by banks was lost in the manufacturing sector only due to Disbursement of RSH Agro Unit II not done. It was very amply known to the bank that the business of the Corporate Debtor has been set up to cater to the needs of RSH Agro only. So, the unit could not have made any profits without getting an adequate amount of business from RSH Agro. It was the financial creditor only who initially granted sanction and disbursed the loan to parent company RSH Agro Products Ltd. However, when the corporate debtor required funds for further expansion, it was wrongfully and maliciously denied by the financial creditor, even after sanction to its mother company RSH Agro, which was under resolution process. The loss in trading activity was sustained from other sources of the company and not from the bank finance. So, it is not the case that bank finance is exhausted in trading activity. This aspect was ignored by the Transaction Auditor/ Applicant, suggesting a malafide intention.

- t) The Corporate Debtor had taken Term Loan of Rs. 220.00 Lakh from bank and as per the Corporate Debtor the current fixed asset value and subsidy already adjusted by bank is as under:-

Particulars	INR in Lakh
Land, Building and Plant & Machineries	360.00
Subsidy amount adjusted by bank	82.54
LIC Policy encashed by bank	22.52
Total	465.06

Hence, against a Term Loan of Rs. 220.00 Lakh, there are still fixed assets worth Rs. 360.00 Lakh. The business margin *viz* profit & loss is a function of market, quality, demand, supply etc. and despite best efforts and intentions to grow the business, sometimes profit may not be achieved for which management may not be held responsible.

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u) The Corporate Debtor has created Fixed Assets, which even after 5 years of installation, is valued at Rs. 470.00 Lakh (as per highest bid received by R.A. in Resolution Plan submitted), offering Financial Creditor a positive recovery of Rs.250.00 Lakh (Rs.470.00 - Rs. 220.00) apart from the subsidy already received and adjusted by the bank of Rs. 82.54 Lakh and LIC policy encashment done of Rs. 22.52 Lakh, as shown above. Additionally, the bank has earned interest and other income from the Corporate Debtor of Rs. 97.75 Lakh till date totaling Rs. 202.81 Lakh. To sum up the recovery by bank is as follows-

Liabilities	INR in Lakh	Assets/ Recovery by Financial Creditor	INR in Lakh
Term Loan	220.00	Highest Valuation as per Resolution Plan submitted	470.00
Cash Credit	300.00	Subsidy adjusted by bank	82.54
		LIC Policy encashed by bank	22.52
		Interest & other income	97.75
Total	520.00	Total	672.81
Less: Loss in Manufacturing Activity	287.00		
Net Balance	233.00		

From the above, it is clear that despite losses in manufacturing activity, the available assets are Rs. 233.00 Lakh, against which the bank's total recovery is Rs. 672.81 Lakh, i.e., 288.75%.

Analysis of Averments and Conclusion

8. Heard the Ld. Counsel and perused the entire material available on record. At the outset, the issue of filing the Application beyond the 135th day of insolvency commencement will not be to the disadvantage of the Applicant, as the same was filed at the earliest

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opportunity from receiving the Transaction Audit Report on 17.05.2022, as well as reply dated 27.05.2022 & 07.06.2022 (sent by Respondent No. 4). The timelines under Regulation 35A of CIRP Regulations 2016 is directory and not mandatory and thus cannot benefit the wrong doer as held by the Hon'ble NCLAT in *Comp App (AT) (Ins) No. 869 of 2022* in the matter of *Prashant Chandra Rath and Ors. vs Surya Kant Satapathy and Ors.*

9. The Respondents have also argued that the Transaction Audit Report has travelled beyond the scope of Section 66 of IBC *vis-a-vis* the look-back period. However, it is now a settled law that there is no specified look back period for fraudulent trading u/s 66 of the IBC. Section 66 of the Code does not provide for any 'look back period' as far as fraudulent transactions are concerned. Reliance for the aforementioned has been placed on *Mr. Thomas George vs K. Easwara Pillai and Ors, NCLAT Chennai, CompApp (AT) (CH) (Ins.) No. 293 of 2021*.
10. It is the allegation of the Applicant that the Respondents withdrew Rs 2.47 Crore between 15.06.2020 and admittance of Section 10 application on 26.08.2021, out of which Rs. 61,90,000 were withdrawn by the CD between the filing of application on 09.01.2021 and its admittance on 26.08.2021, to keep the assets of the CD out of the reach of the creditors. Further, to accomplish this feat, the Respondents made several unsubstantiated cash payments without any proper documentations just short of a few days before the admittance of the CD into the CIRP to ensure that the money lying in the bank account of CD is unavailable to the creditors of the CD. Therefore, it has further alleged that these transactions are not only fraudulent in terms of Section 66(1) but are also wrongful in terms of Section 66 (2) of IB Code, 2016.
11. Now, before delving into an assessment of transactions through the lens of Section 66 of the Code, it is pertinent to understand the essentials of Section 66 and the prerequisites contained therein. A careful reading of the provisions reveal that there are two types of transactions under Section 66:
 - a) 'Fraudulent Trading' under Section 66(1)

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b) 'Wrongful Trading' under Section 66(2)

Essentials of Section 66(1) of IBC are laid down as under:

- a) Liability can be fixed upon 'any person' including but not limited to the Directors
- b) Business of the CD undergoing insolvency and the underlying transactions have to be carried out with a dishonest intention to defraud the creditors or for any other fraudulent purposes; and
- c) The said persons have participated in the carrying on of business of the Corporate Debtor knowingly i.e., with the knowledge that the transactions they were participating in were intended to defraud the creditors of the company or were in some other way fraudulent.

Ingredients of Section 66(2) of IBC are as follows:

- a) The act in question has taken place before the insolvency commencement date.
- b) The directors of the CD knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP.
- c) The directors did not exercise the due diligence in minimizing, the potential loss to the creditors of the Corporate Debtor.
- d) A director of the Corporate Debtor shall be deemed to have exercised due diligence, if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such Director in relation to the Corporate Debtor.

12. There are points of distinction between Section 66(1) and Section 66(2), particularly in their scope of operation and the nature of acts they penalize. Section 66(1) imposes a liability on 'any person' including outsiders, while on the other hand, Section 66(2) imposes a liability only on the director or partner of a company. Further, Section 66(1) deals with fraudulent trading during the time period when the business is functioning normally, however, Section 66(2) deals with the liability on the behalf of the directors and partners during the twilight period.

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13. Before we attempt to scrutinize the transactions under suspicion, this Bench thinks it is pertinent to understand the objectives behind Section 66. The Report of the Insolvency Law Review Committee, Insolvency Law and Practice (“**The Cork Committee Report**”) on Insolvency on UK Insolvency Act, 1986 noted that the law already penalized directors who had intention to defraud creditors, but there was a requirement to also hold directors liable for their failure in mitigation of creditor losses when there is reasonable apprehension or anticipation of insolvency.
14. It is paramount to understand that the directors and parties to the transaction or trading arrangement, whose fraudulent, reckless and negligent actions during financial distress, affects the interest of creditors, have to be made liable to make contributions to the assets of the CD to make good the opportunity to recover that has been snatched from the creditors. In *Grantham v R*, it was held that the law does not require the accused person(s) to believe that there is no reasonable prospect of ever paying the creditor, rather the test is that such person(s) believed that the debt could not be paid when it became due or shortly thereafter. At this juncture, it would be pertinent to establish that there is no exhaustive list of what constitutes as “Fraudulent” or “Wrongful” Trading under Section 66 of the Code. As the IBC has taken inspiration for these provisions from the UK Insolvency Act, 1986, hence instances of trading that would be caught by the provisions of Section 66 can be derived from some of the decisions of the English Courts. The following acts have been held as “Wrongful Trading” by the English Courts:
- i. Repaying the director loan made to the company while other creditors were not paid;
 - ii. Repayment of a loan to a family member;
 - iii. A director paying his own salary while the salary for the employees was not paid;
 - iv. Buying goods on credit when there is no means to pay for them;
 - v. Using customer deposits for cash-flow purposes with no means of supplying goods;
 - vi. Not keeping proper accounting records
 - vii. Falsification of company records; and

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- viii. Any transfer or sale of assets at anything less than a fair and reasonable commercial value
15. Section 66(2) is peculiar in the sense that it imposes a liability on the directors to take prudent decisions during the times of financial distress and conduct sufficient “due diligence” in their trading actions. The liability is fastened not on the basis of dishonest intention, but negligent and reckless decisions taken without conducting adequate due diligence exercises. The objective of the aforesaid provisions is to ensure that the CD does not incur additional debts or impact the ability of the creditors to recover by taking reckless and negligent measures during the twilight period.
16. The twilight zone is the period between when a director realizes or should realize that insolvency is inevitable and the actual commencement of CIRP is impending. During this time, directors have an added responsibility to minimize losses to creditors by exercising due diligence. They must carefully consider how their actions could impact the company's asset value and the outcome of insolvency proceedings. Directors should prioritize protecting creditors' interests over shareholders' interests, avoiding negligence in their decisions and actions.
17. The Hon’ble NCLAT in *Shri Baiju Trading and Investment Private Limited v. Mr. Arihant Nenawati and Others [Company Appeal (AT)(Ins.) No. 699 of 2021]* held that Regulation 35A of the CIRP Regulations require the resolution professional to form an opinion on whether the corporate debtor has been subjected to transactions under Section 66 of the IBC and where such opinion has been formed, the resolution professional can make a determination and is subsequently required to apply to the adjudicating authority for appropriate relief. In this same case, there was discussion on what constitutes fraud under Section 66 and in tune with the facts of the case, it was laid down that ‘fraud’ can, inter alia, consist of money lent by a corporate debtor which the corporate debtor has no intent of receiving back. This observation reflects that fraud, in the IBC landscape encapsulates assets voluntary leaving CD with no intent of coming back, such that it is

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outside the sphere of influence of creditors when the CD enters CIRP. The case also emphasized on a landmark ruling in *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311]* (“**Ram Preeti Yadav Case**”) wherein, the Hon’ble Supreme Court examined the nature of ‘fraud’ and held that beneficiaries of a fraud must be presumed to be a party to the fraud.

I. Cash Payments of Rs 30 Lakh to Alleged Unsecured Creditors

18. The application under Section 10 of IBC for initiating CIRP of the CD was filed by the CD on 09.01.2021, which was finally admitted on 26.08.2021. Now, it is an established position that, in between this period, the Respondents withdrew an amount of Rs. 2.47 Crores from the account of the Corporate Debtor maintained in ICICI Bank and made cash payments. The Ex-RP, placing reliance on the Transaction Audit Report dated 18.05.2022 has identified cash payments to the tune of Rs. 30 Lakh to three different unsecured creditors, made during the period between filing of Section 10 application on 09.01.2021 and admittance of the application on 26.08.2021.
19. It is to be noted that it is conceded by the CD’s officials that the CD has no records of money receipts with them and that they do not follow the practice of maintaining money receipts either for loans advanced to any party or loan taken from any party. This Bench notices that the timing and nature of these transactions raise concerns about their legitimacy and purpose. These payments reflect dishonest intention on the behalf of the suspended directors to keeps the funds and assets of the CD out of the hands of the creditors and would fall within the ambit of Section 66(1). Further, Respondents' actions appear to contravene the principles of due diligence mandated under Section 66(2) of the IBC. Knowing that the CD was in the process of insolvency resolution, the Respondents had a fiduciary duty to preserve the company's assets for equitable distribution among all creditors.
20. Another important aspect is to analyse whether such transactions occurred during the “ordinary course of business”. Ordinary course of business and financial affairs are such

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terms which are nowhere defined in the IBC, however, the Hon'ble Supreme Court has referred to the judgement of the Australian High Court in *Downs Distributing Co Pty Ltd v Associated Blue Star Stores Pty Ltd (in liq)* wherein, a guiding definition has been provided. The Australian High Court defined "ordinary course of business" as transactions that are part of regular flow of business, unremarkable, and arising from no special circumstances. Now, as far as the abovementioned issue of cash payments of Rs 30 Lakh to alleged unsecured creditors is concerned, we opine that it does not seem to have been conducted in ordinary course of business in the light of absence of written agreements, documents to establish demand raised by the said creditors and failure on the part of the Respondents to provide any concrete information on such creditors and the payments.

II. Cash Payments of Rs 11.70 Lakh to Directors and Related Parties

21. The CD filed an application under Section 10 of the IBC on 09.01.2021, this implies that the suspended board was well aware of the financial position of the CD in its inability to payback debts. The decision to make cash payments to Respondent No.1, Respondent No.2 and Respondent No.3, during the interim period between the filing and admission of the CIRP application may indicate an intent to defraud creditors, as per Section 66(1) of the IBC. These actions raise serious concerns about their legitimacy and purpose, suggesting that the directors have been attempting to secure personal gains at the expense of the CD's creditors. A serious irregularity that is observed by the Bench with respect to the aforesaid transaction is the fact that Respondent No.3 ceased to be a director of the CD on 25.01.2021, yet payments in the form of director remuneration were made to him during the period of 15.04.2021 to 17.07.2021 and no valid justification has been given by the Respondents to legitimize these payments.

III. Cash Payments of Rs 3.57 Lakh to Alleged Sundry Creditors

22. The same pattern of making cash payments, in this case to sundry creditors, has been repeated by the CD in this instance. The payments were made between the interval of

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filing of application under Section 10 of the IBC on 09.01.2021 and its consequent admittance on 26.08.2021.

Sundry Creditor	Amount Paid
A.G Cement Pvt Ltd	Rs. 2.07 Lakh
Mr. Pradeep Singh Deka	Rs. 75,000/-
Mr. Pratap Singh Deka	Rs 75,000/-
Total	Rs. 3.57 Lakh

The Suspended Board has failed to place on record any agreement, document or demand to justify making these payments during the critical period for the CD. Therefore, in absence of any cogent reasoning substantiating these payments or providing any rhyme or reasons for the same, it would be caught under the provisions of Section 66 of the IBC.

IV. Dummy Expenses on Labour and Repair

23. It is submitted by the Applicant that *vide* lease deed dated 07.05.2021, the Corporate Debtor had already leased out the factory premises to NK Agro & Foods and in accordance with Clause 2(e) and Clause 5 of the lease deed, the CD was not to be responsible for repair, maintenance and labor costs of the premises. However, siphoning off of funds *via* dummy cash payments have been incurred on Labour and Repair as below:

- i. From 10.08.2021 to 20.08.2021 of Rs. 1.13 Lakh towards Labour Expenses.
- ii. From 01.04.2021 to 21.08.2021 of Rs. 6.50 Lakh towards repair and Maintenance.
- iii. Therefore, it is evident from above that an aggregate of Rs. 7.63 Lakh was spent by CD on Labour and Repair.

The Respondents have not rebutted the validity of the above quoted lease and the clauses relied upon by the Applicant. *Prima facie*, the clause of the lease appears to be standard in nature wherein the lessee assumes the responsibility for the costs incurred in maintenance and repair of the premises. However, the CD has incurred expenses for such repair and

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labor costs by stepping out of its ordinary duties under the lease deed. This misuse of the funds of the CD hints towards the dishonest intention of the suspended board to siphon the funds of the CD. The Respondents have argued that such costs were necessary to preserve the value of the assets of the CD even after they have been let out. This argument cannot be sustained in the light of the fact that the Respondents have placed nothing on record to establish as to why the lessee was not able to pay for these costs in the first place and the CD had to step in.

V. Fictitious Sale and Purchase Transactions

24. It is an admitted position that the CD was running business at negative gross margin which translates to procurement of Paddy Rice at cost higher than the sale value. The Respondents have failed to produce on record any Purchase Bills, Evidence of Stock Receipts, and Transportation Proof of Stock Dispatches. Sample purchase vouchers have been shared by the Respondents but they are either undated or signed only by pen or thumb impression by a small number of farmers only. There is also no proof that movement of Paddy Rice took place from the premises of the CD as Vehicle Movement Register at the Security junction of the premises has not been provided or the FY 2019-20 and FY 2020-21. Though, there have also been transactions with MK Traders and Kalang Kapili Trading Pvt Ltd incurring loss and minor profit respectively, the Applicant has cast suspicion on these transactions as fraudulent as well.
25. On the other hand, the Respondents rebutted by stating that the damage to Paddy Rice and subsequent loss in trade is attributable to general negligence and human error on the part of the staff of the CD. A total of 1600 MT of paddy rice stock deteriorated. Of this, 1450 MT was sold to Kalang Kapili Trading Pvt. Ltd. and M.K. Traders, who later returned the entire amount, leaving 150 MT still in stock. The total damaged stock included 1050 MT purchased recently and 550 MT that had been in the warehouse since FY 2019-20. The old stock, which developed fungus and rotted over time, caused the newly purchased stock to also get destroyed. The Applicant has argued that no documentary evidence has been provided to substantiate these claims.

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26. Albeit, the Bench views the above-mentioned transaction with suspicion, however there does not seem to be dishonest intention on behalf of the Suspended Board to incur losses on sale of agriculture produce, especially when viewed with the lens of the reality of the industry in which the CD operates. Rejection of orders due to quality issues and deterioration of stock is fairly ordinary and can happen due to general negligence of staff and workers engaged in operations. Moreover, we observe that this Ex-RP has not been able to firmly determine with quantum as to what is the net loss that the so-called fictitious sale and purchase transactions have brought upon the CD. Further, it cannot be said that due-diligence exercises of the standard expected by them were not carried out by the suspended board and erstwhile directors before carrying out these transactions, therefore both Section 66(1) and 66(2) is *prima facie* not attracted in this case.
27. Now, as far as the issue of loans and advances to related parties, compensation to related parties for the LIC policies assigned with Punjab National Bank, compensation to directors and related parties for common approach road is concerned, this Bench is of the opinion that as this is an application under Section 66 and the facts pleaded for the aforementioned transactions fall within the ambit of Section 43, 49, and 50 of the IBC, rendering us unable to rule on the outcome of these transactions and bring them within the ambit of Section 66. This position stands correct in the light of the judgement of the Hon'ble Supreme Court in *Jaypee Infratech Ltd. Interim Resolution Professional v Axis Bank Ltd (2020) 8 SCC 401* and the fact that the present application before us is not in the form of a composite application asking for relief under Section 43, 49 and 50 as well.
28. Therefore, in light of the above-made observations, Respondent No. 1 and Respondent No.2 are jointly and severally liable for Transaction No.1, Transaction No.3 and Transaction No. 4, to an aggregate tune of Rs. 41.20 Lakh while Respondent No.1, Respondent No.2 and Respondent No.3 are jointly and severally liable for Transaction No.2, to the tune of Rs. 11.70 Lakh.

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29. A perusal of the Application, Transaction Audit Report and its contents, relevant Tally entries of the books of the corporate debtor showing payments to related entities, Statement of the Corporate Debtor, will squarely attract the provisions of Section 66 of the Code, 2016 to the extent of following counts.
- a) The Respondent No. 1 and Respondent No. 2 of the Corporate Debtor shall jointly and severally be liable to pay a sum of Rs. 41.20 Lakh (Rs. Forty-One Lakh and Twenty Thousand Only) to SRA within 15 days from the date of this Order. For any delay in payment beyond 15 days as aforesaid, simple interest at the rate of 12% shall also become payable.
 - b) The Respondent No. 1, Respondent No.2 and Respondent No.3 of the Corporate Debtor shall jointly and severally be liable to pay a sum of Rs. 11.70 Lakh (Rs. Eleven Lakh and Seventy Thousand Only) to SRA within 15 days from the date of this Order. For any delay in payment beyond 15 days as aforesaid, simple interest at the rate of 12% shall also become payable.
 - c) The amounts so received by SRA shall be transferred/disbursed immediately by SRA strictly in accordance with the relevant provisions made in the approved Resolution Plan, in this regard.
30. With the above directions this **IA (IBC)/41/GB/2022** in CP (IB)/3/GB/2020 shall stand disposed of.
31. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
32. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
33. File be consigned to records.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

Signed this on 3rd day of July, 2024