

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
12-07-2024 AT 10:30 AM**

**CP(IB) No. 63/9/HDB/2022  
AND  
IA (IBC) 1212/2023 & IA (IBC) 1463/2024 in CP(IB) No. 63/9/HDB/2022  
u/s. 9 of IBC, 2016**

**IN THE MATTER OF:**

PMC YM-Pharma Pvt Ltd

**...Operational Creditor**

**AND**

Krishna Premium Care Services LLP

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER DICTATED IN THE OPEN COURT**

**IA (IBC) 1212/2023**

Learned Counsel Mr. Anil Mukherji for the Applicant/Liquidator and  
Learned Counsel Mr.Y.Suryanarayana along with Learned PCS Ms.Devangi for  
the Respondents No.1 to 4 present through Video Conference.

1. The Learned Counsel for the Applicant submitted that the Respondents No.1, 2, 3 & 4 are all members of the Suspended Management of the Corporate Debtor under CIRP, and were the Designated Partners of the

Corporate Debtor. The Respondents are all closely related to each other and belong to one family. They were all jointly and severally responsible for all the operations and management of the Corporate Debtor prior to its admission into CIRP.

2. It is further submitted that Corporate Debtor supplied the material (FQ Acid) worth Rs.2,67,41,750/- in aggregate to two of its customers – M/s. Sesa Chem India Private Limited, Hyderabad and M/s. Best Chem, Hyderabad, who are traders in industrial solvents & chemicals, during the period from 29.08.2018 till 28.03.2019 against the Purchase Orders placed by them on the Corporate Debtor. Barring the part payments of Rs.23 lacs in aggregate received from M/s. Sesa Chem India Private Limited, Hyderabad, no further payments were received from these two customers, and no follow up actions from the members of the suspended management of the Corporate Debtor were evidenced for recovery of these commercial dues, during the period prior to admission of Corporate Debtor into CIRP. Their inaction resulted in the CD getting saddled with bad debts aggregating Rs.2,44,41,750/- from two of its customers. Non-recovery of these dues has put the prospect of CIRP of the Corporate Debtor under jeopardy, as no Prospective Resolution Applicants (PRAs) has evinced any interest on the Corporate Debtor, as there are no other major tangible assets of the Corporate Debtor.

3. The Learned Counsel for the Respondent No.1 submitted that the instant application was filed by the erstwhile Resolution Professional of the Corporate Debtor under Section 66 read with Section 25(2) J and Section 60(5) of the Code seeking direction to the Respondent herein to contribute to the assets of the Corporate Debtor an amount of Rs.2,44,41,750/- along with the interest for making good the amount of possible losses of the Corporate Debtor that tantamount to transactions defrauding the creditors and or wrongful trading in Corporate Debtor. The said application is filed only on the contention and averment that the Respondents herein did not follow up with M/s. Sesa Chem India Private Limited and M/s. Best Chem (hereinafter referred as “the debtors”) for the payment of the debt amount and therefore the same is a fraudulent transactions conducted by the Respondent herein and the Respondent herein should be directed to the instant application is not maintainable and is filed with baseless and untenable averments, contentions and allegations as there is no fraudulent activity undertaken by the Respondents herein.
4. It is further stated that the debtors, i.e., M/s. Sesa Chem India Private Limited and M/s. Best Chem brought to the knowledge of Respondent No.1 herein that the goods supplied by the Corporate Debtor to the said debtors were of inferior quality. It was identified by the debtors that the operational creditor did not follow the specific route of synthesis as required to reduce

the target in impurities and manufactured the same with products/materials which were not in the acceptable limits because of which impurities were created and therefore the goods supplied by the Corporate Debtor were rejected by the said debtors. The debtors had also sought information regarding the route used by the Operational Creditor for manufacturing the FQ acid. The same information was also sought by the Corporate Debtor from the Operational Creditor. However, the same was not provided by the Operational Creditor/Petitioner Company.

5. It is further stated that the said rejection of the goods by the debtors was informed to the Operational Creditor through various telephonic calls with Mr.Y.Poornananda Sastry, Managing Director of the Hyderabad Unit of the Operational Creditor and also vide letters dated 10.10.2018 and 10.04.2019. The said letters were also brought to the knowledge of the erstwhile resolution professional while having discussion with him. The said letters were also brought on record of this Adjudicating Authority in the counter to the main Company Petition filed by the Corporate Debtor. This was one of the dispute that was raised before this Hon'ble Adjudicating Authority.
6. The Respondents No.2 to 4 filed memo dated 11.01.2024 adopting the counter filed by the Respondent No.1 to this Application.

7. Heard the Learned Counsels for both sides. In the light of the contest put forth the point for consideration is:

**Whether the acts complained of in the present application make out a case under Section 66 of the Insolvency and Bankruptcy Code, 2016? If so, for what relief?**

8. The Learned Counsel Mr.Anil Mukherji for the Applicant/Liquidator submits that, the present application which is filed under Section 66 of Insolvency and Bankruptcy Code, 2016, was initially filed by the Resolution Professional appointed by this Tribunal. However, as the resolution failed the Corporate Debtor is now under Liquidation, the Liquidator appointed by this Tribunal, is perusing the present application.
9. According to the Learned Counsel for the Applicant, the Respondents who are the members of the suspended board of the Corporate Debtor are closely related to each other and belongs to one family. It is further stated that the Corporate Debtor had supplied (FQ Acid) in all worth Rs.2,67,41,750/- to two of its customers – M/s. Sesa Chem India Pvt. Ltd., Hyderabad and M/s. Best Chem, Hyderabad, who are traders in industrial solvents & Chemicals, during the period from 29.08.2018 till 28.03.2019 against the Purchase Orders placed by them on the Corporate Debtor.

10. Learned Counsel further states that barring part payment of Rs. 23 lacs in aggregate, no further amounts were received, from the above said purchasers and in respect of this un-paid amount, the CD had not made any effort to recover, there trade receivables and the particular inaction resulted in writing off bad debts aggregating to Rs.2,44,41,750/- by the Corporate Debtor.
11. Therefore, according to the Learned Counsel, the in-action on the part of the Corporate Debtor, in not recovering the balance dues (trade receivables) from the purchasers, amounts to fraudulent act, falling within Section 66 of Insolvency and Bankruptcy Code, 2016 as such the Resolution Professional had filed the present application which is now being pursued by the Liquidator.
12. Per contra, Learned PCS Ms. Devangi, would contend that without admitting the contentions, even if one goes by the averments as made in the application, there can be no case under Section 66 of Insolvency and Bankruptcy Code, 2016, since mere non-recovery of assuming that the sum as claimed (trade receivables) is due from the purchasers, perse will not tantamount to a “fraudulent” act, in terms of Section 66 of Insolvency and Bankruptcy Code, 2016. As such, according to the learned counsel the application is deserves to dismissed at the threshold.

13. Learned Counsel further states that barring bald allegations of non-recovery of balance trade receivables, the details of alleged fraudulent intention on the part of the Corporate Debtor, has been pleaded so as to bring the case under the purview of Section 66 of Insolvency and Bankruptcy Code, 2016. Therefore, the application deserves to be dismissed on this ground as per law.
14. Both the learned counsels apart from making oral submissions also filed written submissions.
15. We have carefully perused the record, the written submission and the case law. At the outset in order to appreciate the point in controversy we wish to refer Section 66 of Insolvency and Bankruptcy Code, 2016 as below:

***“Section 66. Fraudulent trading or wrongful trading. –***

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

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

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

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

*(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]*

*Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.”*

16. A bare perusal of the above Section makes clear that every action or inaction on the part of the Corporate Debtor will not amount to or construed as “fraudulent” unless the said act is done “with an intent to defraud the creditors of the Corporate Debtor.”
17. Therefore, in the light of the provision as above, when the case of the application is tested, the only ‘act’ complained against the CD is that the CD failed to recover the balance trade receivables from the purchasers. The Petitioner is totally silent on “fraudulent intention” if any on the part of the members of the suspended board.
18. As such it constituted act of fraudulent trading or wrongful trading. Therefore, we have no hesitation to hold that, on the pleadings itself the present application shall fail.



19. Here we wish to state that the Resolution Professional who is expected to make proper enquiry before filing the present application had acted mechanically and thus the maximisation of the assets of the CD which is one of the objects of IB Code has been diluted.
20. With the above observations, **this application is dismissed**, however, under the circumstances of the case.

**IA (IBC) 1463/2024**

Learned Liquidator Mr. Nagaraja Chary Peddapata present. This is being 4<sup>th</sup> **Progress Report dated 09.07.2024 is taken on record.**

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

*Sridher*