

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**M.A. 1265 OF 2018**

Under Section 43(1), 45(1), 66(1),  
35(1)(n) r/w Section 60(5) of Insolvency  
& Bankruptcy Code, 2016

**Mr. Anil Goel,  
The Liquidator**

...Applicant

Vs.

**M/s Bright Steel India & others**

...Respondents

In the matter of

C.P.(IB) No. 724/MB/2017

Bright Steel Advisors

**Operational Creditor**

Vs.

Loha Ispaat Limited

**Corporate Debtor**

*Order delivered on: 30.04.2024*

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant : Mr. Rohit Gupta a/w Ms. Prashansa Agarwal, Advocate

For the Respondent 6 : Mr. Nitin Gutka, PCS

For the Respondent 1, 2, 19 & 20: Mr. Sarvesh Sawant, Adv.

For the Respondent 25 to 28 : Ms. Anchal Garg, Adv.

For the Respondent 29 : Mr. Harihar Bhave, Adv.

For the remaining Respondent : None

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This application MA 1265/2018 was filed by Mr. Anil Goel, Liquidator, ("Applicant") in the CIRP proceedings of Loha Ispaat Limited (Corporate Debtor) under Section 43(1), 45(1), 66(1), 35(1)(n) r/w Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code") seeking following reliefs:
  - a. To allow the present application;
  - b. To pass an order that the Corporate Debtor through transactions explained in sub- para B.1 of Para 11.1 of the present application, has put its creditors - M/s Bright Steel India (R-1), M/s Marque Global (R-2), Loha International Limited (R-3), Loha Investments Pvt Ltd (R-4) and Loha Power and Infra Limited (R-5) in beneficial position than they would be in event

of distribution of assets as per section 53 of IBC of present Application and has transferred in F.Y. 2015-16 and F.Y. 2016-17 trade receivable of Rs. 48,17,33,151/- which is property of the Corporate Debtor on account of antecedent debts owed to these Respondents; and

- c. Pass an order under Section 44(1)(d) directing M/s Bright Steel India (R-1), M/s Marque Global (R-2), Loha International Limited (R-3), Loha Investments Pvt.Ltd (R-4) and Loha Power and Infra Limited (R-5), who are Beneficial Creditors of the Preferential Transactions explained in sub-para B.1 of Para 11.1 of present Application, to pay a sum of Rs. 48,17,33,151/- proportionate to the undue benefits received, to the Liquidator for inclusion in property of the Corporate; and
- d. Pass an order that writing-off Sundry Debtors of Rs. 6,24,15,645/- during the F.Y. 2016-17 by the Corporate Debtors is equivalent to a gift to the twelve Respondents mentioned in Table-B i.e. Respondent No.7 to Respondent No.18 of the Application and are undervalued transactions under section 45(2)(a) of IBC; and
- e. Pass an order under section 48(1)(c) of IBC directing the twelve Respondents R-6 to R-18 mentioned in Table-B i.e. Respondent No.7 to Respondent No.18 to pay a sum of Rs. 6,24,15,645/- in proportion to the benefits received by each of them through the Undervalued Transactions explained in sub-para B.1 of Para 11.2 of the present Application; and
- f. The officers of the Corporate Debtor i.e. Respondent No.28 to Respondent No.33 may be declared as contributories for the entire amount of INR 12.61 crores as the transaction with all

265 parties were not verifiable and was entered into with the fraudulent intent of siphoning off funds owned by the Corporate Debtor for the personal benefits of the officer.

- g. Pass an order that purported purchase returns made by Corporate Debtor to M/s Arihant International(R-19) , M/s Greenfield Overseas (R-20), Marque Global(R-2), M/s Jyoti Steels Industries(R-21), M/s Gopal Steel(R-22), M/s Sai Enterprise (R-23) and M/s Shree Durga Iron & Steel Co. Ltd (R-24) during F.Y 2015-16 and F.Y. 2016-17 at significantly less price at a total loss of Rs. 53,27,66,755/- (F.Y. 2015-16 – INR 18.61 crores and F.Y. 2016-17 – INR 34.67 crores.) is an undervalued transaction under section 45(2)(b) of IBC; and
- h. Pass an order under section 48(1)(c) of IBC directing M/s Arihant International(R-19) , M/s Greenfield Overseas (R-20), Marque Global(R-2), M/s Jyoti Steels Industries(R-21), M/s Gopal Steel(R-22), M/s Sai Enterprise (R-23) and M/s Shree Durga Iron & Steel Co. Ltd (R-24) to pay a sum of Rs. 53,27,66,755/- in proportion to the benefits received by each of them through the Undervalued Transactions which are Preferential Transaction too as explained in sub-para B.2 of Para 16.2 of the present Application; and
- i. Pass an order that purported purchase returns made by Corporate Debtor to M/s Arihant International(R-19) , M/s Greenfield Overseas (R-20), Marque Global(R-2), M/s Jyoti Steels Industries(R-21), M/s Gopal Steel(R-22), M/s Sai Enterprise (R-23) and M/s Shree Durga Iron & Steel Co. Ltd (R-24) during F.Y 2015-16 and F.Y. 2016-17 are Preferential payment to these creditors by way of transfer of stocks Rs.

104,96,43,856/- (Rupees one hundred four crore ninety-six lakh forty-three thousand eight hundred fifty-six only) (F.Y. 2015-16 – INR 67.93 crores and F.Y. 2016-17 – INR 37.03 crores.).

- j. Pass an order under section 44(1)(d) of IBC directing M/s Arihant International(R-19) , M/s Greenfield Overseas (R-20), Marque Global(R-2), M/s Jyoti Steels Industries(R-21), M/s Gopal Steel(R-22), M/s Sai Enterprise (R-23) and M/s Shree Durga Iron & Steel Co. Ltd (R-24) to pay a sum of Rs. 104,96,43,856/- (Rupees one hundred four crore ninety-six lakh forty-three thousand eight hundred fifty-six only) in proportion to the benefits received by each of them through the Undervalued Transactions which are Preferential Transaction too as explained in sub-para B.2 of Para 16.2 of the present Application; and
- k. Pass an order that purported purchase returns of a total amount of Rs. 104,69,02,954/- were made to Suspicious Suppliers i.e. M/s Marque Global (Respondent No.2), M/s Arihant International (Respondent No.7) and M/s. Greenfield Overseas (Respondent No.8) during F.Y. 2015-16 and 2016-17 with an intent to defraud creditors so as to keep the material out of reach of charge-holders; and
- l. Pass an order section 66(1) of IBC directing the officers of the Corporate Debtor during the F.Y. 2015-16 and 2016-17 i.e. Respondent No.29 to Respondent No.33 to contribute a sum of Rs. 158,22,79,577/- (Rupees one hundred Fifty Eight crore Twenty Two lakh Seventy Nine thousand Five hundred Seventy Seven only) to assets of the Corporate Debtors

- m. Pass an order that officers of Corporate Debtor have deliberately and with an intent to divert its inventory so as to keep them out of reach of secured creditors having charge over such finished products, undertook large volume of transactions with Suspicious Debtors mentioned in Table-E of present Application and by creating huge trade receivables of Rs. 798.58 crores also diverted moneys of the Corporate Debtor; and
- n. Pass an order under section 66(1) of IBC directing the officers of the Corporate Debtor during the F.Y. 2015-16 and 2016-17 i.e. Respondent No. 29 to Respondent No. 33 to contribute a sum of Rs. 877.41 crores to assets of the Corporate Debtors; and
- o. Pass an order that the transfer of significant sum of money and stocks amounting to receivables of Rs. 64,52,12,549/- to Loha Ispaat Middle East FCZO Sales, a related company during F.Y 2014-15 to F.Y. 2016-17, despite the knowledge of negative worth of the related company and its incapacity to repay the debt, was done with an intend to divert funds out of the Corporate Debtor thereby defrauding the creditors and the same attracts liability under section 66(1) of IBC;
- p. Pass an order under section 66(1) of IBC directing the officers of the Corporate Debtor during the F.Y. 2015-16 and 2016-17 i.e. Respondent No. 29 to Respondent No. 33 to contribute a sum of Rs. 64,52,12,549/- to assets of the Corporate Debtors which is owed from Loha Ispat Middle East FCZO Sales through fraudulent and wrongful transactions explained in sub-para D.3 of Para 16.3,
- q. Pass an order that the officers of the Corporate Debtor during the F.Y. 2014-15 to F.Y. opening the two bank accounts i.e.

A/C No. 000181300002135 with Yes Bank and A/c No. 665011016437 with ING Karur Vyasa Bank Limited (Now Kotak Mahindra Bank) outside the Consortium to divert funds from the cash flow of the Corporate Debtor and with an intend to defraud the creditors;

- r. Pass an order under section 60(5)(c) of IBC directing the officers of the Corporate Debtors i.e. Respondent No. 29 to Respondent No. 33 to give details of beneficiaries to whom payments amounting to Rs. 17.91 crores was made from the two accounts opened outside consortium;
- s. Pass an order under section 66(1) of IBC directing the officers of the Corporate Debtor i.e. Respondent No. 29 to Respondent No. 33 to contribute a sum of Rs. 17.91 crores to assets of the Corporate Debtor for opening account outside consortium and diverting such amount which was property of the Corporate Debtor;
- t. Pass an order under section 60(5)(c) of IBC that omission in stating the unapplied interest of Rs. 662.74 crores on borrowings of the Corporate Debtor in Financial Statements for F.Y. 2014-15 and 2015-16 was done with an intention to misrepresent the creditors with respect to actual liability of the Corporate Debtor;
- u. Pass an order that the officers of the Corporate Debtor during the F.Y. 2014-15, 2015-16 and 2016-17 i.e. Respondent No. 29 to Respondent No. 33 did not exercise due diligence in minimizing the potential loss to the creditors; and
- v. Pass an order referring the transactions identified in the present application to the Insolvency and Bankruptcy Board of India for taking necessary actions for cognizance of offence under

Chapter VII of IBC and its trial by a the Special Court in accordance with Section 236 of IBC;

2. The present application under section 35(1)(l), section 35(1)(n), section 43(1), section 45(1), section 66(1) of Insolvency and Bankruptcy Code, 2016 read with section 60 (5)(c) is filed by the Applicant (Mr. Anil Goel), Liquidator appointed by this Hon'ble Tribunal vide its order dated 26/04/2018 (received on 26/06/2018).

2.1. That Khandelwal Jain & Co. appointed during the CIRP for conducting forensic audit of the Corporate Debtor for review period of Financial Year 2015-16 and 2016-17 has made observation in its report dated 11/01/2018 various transactions which can be classified as Preferential transactions, undervalued transactions and transaction defrauding the creditors under section 43, section 45 and section 66(1) of IBC, 2016.

2.1.1. The present Application is filed by the Applicant Liquidator for seeking appropriate order with respect to following transactions in various categories under Chapter-III of Part II of IBC:

2.2. Transaction as Setting-Off of Sundry Creditors With Sundry Debtors of total amount of Rs. 48,17,33,151/- (Rupees Forty Eight Crores, Seventeen Lakhs Thirty Three Thousand One Hundred and Fifty One only) during F.Y 2015-16 and F.Y. 2016-17 and falling under preferential transaction under Section 43(1) of IBC;



- 2.3. Undervalued transactions in the manner of Sundry Debtors Written Off to Profit & Loss Account of total amount of Rs. 6,24,15,645/- (Rupees Six Crores, Twenty Four Lakhs, Fifteen Thousand Six Hundred and Forty Five only) falling under Section 45(2)(a) of IBC;
- 2.4. Undervalued transactions in the manner of purchase returns in F.Y. 2015-16 and F.Y. 2016-17 at significantly low prices amounting to a loss of Rs. 53,27,66,755/- (Rupees Fifty Three Crores, Twenty Seven Lakhs, Sixty Six Thousand Seven Hundred and Fifty Five only) falling under section 45(2)(b) of IBC;
- 2.5. Preferential payment to creditors by way of transfer of stocks as purchase returns amounting to Rs. 104,96,43,856/- (Rs. One hundred and four crores, ninety six lakhs, forty three thousand eight hundred and fifty six only) in preference to other creditors, liable for action under Section 43 of Insolvency and Bankruptcy Code, 2016.
- 2.6. Large Volume of transactions with suspicious suppliers undertaken during F.Y. 2015-16 and F.Y. 2016-17 involving a sum of Rs. 104,69,02,954/- (Rupees One Hundred and Four Crores, Sixty Nine Lakhs, Two Thousand Nine Hundred and Fifty Four only) for diverting property of the Corporate Debtor and defrauding the creditors falling under section 66(1) of IBC;
- 2.7. Large Volume of transaction undertaken with Suspicious Debtors during F.Y. 2015-16 and F.Y. 2016-17 creating doubtful debts of Rs. 798.58 crores (Rupees Seven Hundred and Ninety Eight point Five Eight crores) without due

- diligence to reduce the loss of the Corporate Debtor and falling under section 66(1) of IBC, 2016;
- 2.8. Transaction amounting to Rs.64,52,12,548/- (Rupees Sixty Four Crores, Fifty Two Lakhs Twelve Thousand Five Hundred and Forty Eight only) in form of large Volume of materials sold and receivables transferred to Loha Ispaat Middle East FCZO Sale, a related company, despite its degrading financial health and incapacity to repay the debts falls under section 66(1) of IBC;
- 2.9. The Corporate Debtor has omitted from disclosing in its financial statement unapplied interest of Rs. 662.74 crores on borrowings of the Corporate Debtor in Financial Statements for F.Y. 2014-15 and 2015-16 with an intention to misrepresent the creditors with respect to actual liability of the Corporate Debtor;
- 2.10. The Corporate Debtor has opened two bank accounts outside the Consortium i.e. A/C No. 000181300002135 with Yes Bank having address at 9th Floor, Nehru Centre Discovery of India Building, Dr. A B Nair Road, Worli, Mumbai-400018 and A/c No. 665011016437 with ING Karur Vyasa Bank Limited (Now Kotak Mahindra Bank) Meena Mehta Road, Ballard Estate, Fort, Mumbai- 400001 despite express bar on operating cash flows of the Corporate Debtor through any account outside the Consortium and made payments of Rs. 17.91 crores.
3. Respondent No. 2, 16, 19, 20, 25, 26, 27, 28, 29 & 32 filed Affidavit in Replies besides that Respondent No. 6 has filed an Affidavit of Mr. Vijay Joshi, Managing Director of the Respondent. Respondent Nos. 29 to 33 are Suspended Board of Directors while

Respondent Nos. 1 to 28 & 34 are other Parties of which Respondent Nos. 2 to 4 and Respondent No. 34 are related Parties.

3.1. The Respondents Parties arrayed as Suspended Board have placed reliance on the decision of the Hon'ble Supreme Court in the case of *Gluckrich Capital Pvt. Ltd. V. State of West Bengal and Ors.* wherein, the Hon'ble Supreme Court while upholding *Usha AnanthaSubramanian v/s Union of India* held that this Tribunal has not been conferred with the power to pass an order against any such other organisation or entity for carrying out business transaction of the Corporate Debtor. Respondents has also relied upon the decision of the Hon'ble Supreme Court in the case of *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. Vs Axis Bank Ltd.* wherein it was held that the parameters and the requisite enquiries as also the consequences in relation to these aspects (being Preferential transaction, under valued transaction and Fraudulent transaction) are different and such difference is explicit in the related provisions. While transactions falling within the purview Section 43, do not require an enquiry into the component of 'intent', the said enquiry is of pertinence to adjudicate upon the transactions which fall within the purview of Section 45 or Section 66 of the Code, 2016. It was further held that given the distinct nature, differences in adjudicatory thresholds and consequences, Sections 43, 45 & 66 of the Code, 2016, should have been dealt with separately by the Hon'ble National Company Law Tribunal, and not in a composite manner.

3.2. Besides this Respondent has pleaded that these transactions were carried out in ordinary course of business. Respondent

No. 29 being one of the Suspended Board Member have placed on record Affidavit in Reply, thereby placing on record some facts which does not demonstrate other transactions were in ordinary course of business except providing the deals about the nature of transaction and how it took place.

3.3. Respondent No. 32 has pleaded that he was director of the Corporate Debtor during the period from 17.9.2015 to 21.3.2016 and these transactions took place beyond the period of him being director thereof. Further, there has been no role of the applicant in any of the alleged transactions or write offs whatsoever entered even during this period.

4. Heard learned counsel for both sides and perused the records.

4.1. The Liquidator has contended that Central Bureau of Investigation (CBI) and Ministry of Corporate Affairs (MCA) have undertaken against the Corporate Debtor, its Directors, Guarantors and others for entering into a Criminal Conspiracy during the period from 2012 to 2017, for cheating SBI and five Consortium Member by fictitious sales/purchase transactions, fudging of accounts resulting into non payment of outstanding loans. The said investigations are stated to be pending. Nonetheless, this Tribunal is of the view that the alleged transactions are to be looked into with reference to specific provisions embodied in the Code for avoidance of those transactions and the scope of enquiry by CBI & MCA would lead to independent findings and consequences under the relevant statute for the alleged fabrication of books and misappropriation of funds, if any. It is clarified that the

discussion herein below shall not prejudice or have any bearing on the investigation and consequent action by the Investigating Agencies against the accused Persons.

4.2. Broadly, this Application deals with the following Transactions:

- a. Setting off Sundry Creditors with Sundry Debtors amounting to Rs. 4817,33,151/- alleged to be a Preferential Transaction;
- b. Preferential payments to purchase returns alleged to be a Preferential Transaction;
- c. Writing off Sundry Debtors amounting to Rs. 12.61 Crores alleged to be Undervalued Transaction in nature of Gift;
- d. Losses on Purported Purchase Returns amounting to Rs. 53,26,35,721/- in the F.Y. 2015-16 & 2016-17 alleged to be an Undervalued Transaction;
- e. Transaction with suspicious suppliers amounting to Rs. 104,96,43,856/- in the F.Y. 2015-16 alleged to be Undervalued Transaction undertaken with intent to defraud Creditors;
- f. Transaction with suspicious debtors by creating huge trade receivables amounting to Rs. 798.58 Crores alleged to be Fraudulent Transaction with intent to defraud Creditors;
- g. Transaction with related Company amounting to Rs. 6452,12,549/- with Respondent No. 34 alleged to be falling u/s 66 of Code

4.3. On careful consideration of the decision of the Hon'ble Supreme Court in the case of *Anuj Jain (supra)*, we note that *Specific material facts are required to be pleaded if a transaction is*

*sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority.* This clearly lays down that each Section has distinct ingredients and same has to be pleaded in relation to case sought to be made out by the Resolution Professional in each of such section; however, it does not hold that a combined Application in relation to transactions falling under more than one Section cannot be prosecuted by the Resolution Professional by way of combined Application provided such Application pleads meeting out of ingredients of each Section in relation to each of such transaction. Accordingly, we do not find any merit in the contention of the Respondents that the Combined Application is not maintainable.

4.4. As regards Respondent's reliance in the case of Gluckrich Capital (Supra), we note that such decision was rendered in the context of Section 66 of the Code, and accordingly third persons cannot seek immunity in so far as transactions falling u/s 43,45,49 & 51 of the Code are concerned. More so, each of these Sections contain distinct scenario and create a deeming fiction whereby a transaction satisfying the ingredients of the particular section is deemed to be that transaction without any further enquiry and Parties affected by such deeming fiction have to necessarily comply with the restored position if ordered by this Tribunal.

4.5. Having said so, we shall now examine whether the transactions stated in the present Application satisfy the ingredient of relevant Section in the light of prayer made in relation to that transaction which has been prayed for by the Applicant.

4.5.1. Section 43(2) of the Code provides that –

*A corporate debtor shall be deemed to have given a preference, if—*

*(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and*

*(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.*

**4.5.1.1. Setting off Sundry Creditors with Sundry Debtors amounting to Rs. 48,17,33,151/- alleged to be a Preferential Transaction :** In this case, the amount receivable from Respondent Nos. 2, 6 & 28 have been set off against the amount payable to R1 to R5. This set off has resulted into discharge of liabilities to the Creditors of the Corporate Debtor in relation to the Antecedent Debt and has put them in beneficial position over other Creditors in the case of distribution and Section 53 of the Code. On careful reading of the pleadings, we note that the Applicant has pleaded his case specifically to be failing under a Preferential

Transaction and this Transaction meets out the ingredients of Section 43(2) of the Code. CIRP commenced on 28.04.2017. The date of transaction with Respondent No. 1 for an amount of Rs. 2740,50,047/- was undertaken on 31.03.2016 which is beyond the lookback period of One Year, accordingly no order could be passed in relation to this Transaction. As regards remaining transactions, which were carried out on 31.03.2017, this Tribunal is satisfied that these Transactions Respondents Nos. 2 to 5 putting them in beneficial position are within the lookback period and meets the ingredients of Section 43 of the Code, as the transfer of receivables to the Creditors involved the transfer of an assets for the benefit of Creditor and said transfer cannot said to be in ordinary course of business of both the Parties. Hence, the following transactions are set aside as being preferential in Nature. Since no benefit has been derived by Respondent Nos. 29 to 33, no order can be passed against them in terms of Section 44 of the Code.

**4.5.2. Preferential payments to purchase returns alleged to be a Preferential Transaction :** The Applicant has alleged the purchased returns to the Parties has preferential in nature, these purchase returns having carrying cost of Rs. 158,22,79,577/-are stated to be made at substantially reduced price i.e. 104,96,43,856/- which resulted into causing a loss of Rs. 53,26,35,721/- return of in the Books of accounts of the Corporate Debtor. These Transactions



have been entered into with related parties in the year 2015-16 & 2016-17. The transactions undertaken in the year 2015-16 are beyond the lookback period; accordingly, no order could be passed in terms of Section 43 or 45 of the Code in relation to those Transactions. The Applicant has made out a case of Preferential payments in so far as purchase return value is concerned and for the remaining loss value the Applicant has sought order in terms of Section 45. We are of the considered view that, this Transaction in so far as purchase return is concerned, the inventory has already been taken out by Respective Creditors who otherwise also have a lien as unpaid seller in terms of sale of goods act; accordingly, we are of the view that purchase return *per se* is a transaction in ordinary course of business. However, purchase return at a heavy discounted price is certainly a transaction in nature of Undervalued Transactions and calls for order and requires to be set aside. In this case, the return of inventory has already taken place; accordingly, we are of the view that calling the property back may not be in the interest of the Corporate Debtor. Under Section 48(1)(c), this Tribunal can pass an order requiring any person to pay such sums in respect of benefit received by such person to Liquidator/Resolution Professional. Accordingly, we direct Respondent No. 2, Respondent No. 19 & Respondent No. 20 to pay an amount of Rs. 26,76,91,364/- Rs. 2,37,81,057/- & Rs. 5,49,23,112/- to the Corporate Debtor.

**4.5.3. Transaction with suspicious suppliers amounting to Rs. 104,96,43,856/- in the F.Y. 2015-16 alleged to be Undervalued Transaction undertaken with intent to defraud Creditors :** As held in the preceding para that transfer of Stock in form of Purchase Return to the Creditors was in ordinary course of business of both the Parties and the loss caused to the Corporate Debtor on such Transfer in the form of discount as separately been ordered to be contributed by the beneficiary Respondent, we are of the considered view that no separate order is called for in terms of Section 49 of the Code more so the Applicant has failed to bring on record necessary element of “intent to defraud” in the Application.

**4.5.4. Writing off Sundry Debtors amounting to Rs. 12.61 Crores alleged to be Undervalued Transaction in nature of Gift :** The Applicant has provided party wise details of Rs Rs. 624,15,645/- and for the remaining Rs. 6.37 Crores, it is stated that these balances are recoverable from 265 Parties. These 265 Parties are not arrayed as Party Respondents and the Applicant has stated that only Top 12 Parties have been considered as beneficial Parties and impleaded as Respondents. The Applicant has made a bald statement of intention behind writing off sundry debtors was Fraudulent; however, has not brought on record how such intent could be said to be Fraudulent. The Applicant has also expressed opinion that “*the accounts with these Parties could have been fake ab initio or may have been settled with*”

*them out of books by promoters*” but has not placed on record any evidence to substantiate this opinion.

4.5.4.1. Mere write off of the Receivables is an accounting entry and does not discharge a debtor from obligation to pay. Respondent No. 29 in his Reply has stated that the such write off was genuinely part of slow down of economy which in spite of 2 to 3 years of recovery process in form of legal notices and legal suits could not be recovered; thus, necessitating board resolution dt. 31.03.2017 to account for the bad debts. We are conscious of the fact that writing of amount as bad debt is in nature of Gift in the absence of sufficient material having been placed on record by the Respondent Nos. 29 to 33 about the Genuineness of efforts made in the recovery made by them. Accordingly, we have no hesitation to hold that this Transaction of Rs. 624,15,645/- is Undervalued and Respondent No. 7 to 18 are directed to make contribution to the Corporate Debtor.

**4.5.5. Transaction with suspicious debtors i.e. Respondent Nos. 25 & 28 by creating huge trade receivables amounting to Rs. 798.58 Crores alleged to be Fraudulent Transaction with intent to defraud Creditors:** The Applicant has submitted that the Parties are seemingly fake based upon the observations of Two Forensic Auditors i.e. Amit Ray & Co. and Khandelwal Jain & Co. It is the case of the Applicant that the Corporate Debtor has been engaged into transaction of sale and purchase with Arihant

International, Marque Global, Greenfield Overseas and Bright Steel Processors. While Arihant International and Bright Steel Processors have the address in the same building as the Respondent No. 26 has, Greenfield Overseas has office address in the Building Respondent No. 25 & 27 have. It is alleged that these parties do not have proper place of business. The Applicant has observed that sale to Respondent Nos. 26, 27 & 28 constituted about 91.3% to total sale in the F.Y. 2014-15. However, we find that transactions with these parties in the F.Y. 2012-13 & 2013-14 are stated to be 74.80% and 74.86%, respectively. It is also alleged that recovery suits by the Corporate Debtor against the suspicious parties were filed on the same date through the same lawyer and is presently pending at the same Court. These facts clearly demonstrate the manner in which the affairs of the Corporate Debtor were being conducted. We are conscious of the fact that a Resolution Professional/Liquidator has limited information and the manner in which transactions are alleged to have been undertaken requires a thorough investigation/examination which may not have been carried out by the Forensic Auditor. We note that investigation by SBI and MCA is pending and Section 339 of the Companies Act, 2013 is somewhat taken to relief provided in Section 66 of the Code, it would be appropriate to have the final findings of investigations by these agencies and take appropriate decisions in these relations. As we have noted that no order can be passed qua third parties in

view of decision in Gluckrich case (supra), we are of the considered view that the suspended board can be made liable for contribution, if any, after the final investigation report is made available.

**4.5.6. Transaction with related Company amounting to Rs. 6452,12,549/- with Respondent No. 34 alleged to be falling u/s 66 of Code :** The Applicant has stated the Respondent No. 34 is a related party and the Corporate Debtor entered into certain transactions from the F.Y. 2014-2015 to 2017-18 and the following findings are evident:

- i. The Corporate Debtor owed a sum of Rs. 1,15,36,292/- to Related Company in F.Y. 2014-15;
- ii. The Corporate Debtor has sold stocks of Rs. 41,16,01,70/- to the Related Company in F.Y. 2014-15;
- iii. Further, the Corporate Debtor has made net payments of Rs. 21,61,47,131/- to the Related Company from Bank Account of the Corporate Debtor being maintained with ICICI Bank Ltd.
- iv. The Corporate Debtor has transferred Trade Receivables of a sum of Rs. 2,90,00,000/- due from AUM Impex to the Related Company in F.Y. 2015-16;
- v. Therefore, by the aforementioned transactions entered by Corporate Debtor

with the Related Company a net amount of Rs. 64,52,12,548/- becomes due from the Related Company.

4.5.6.1. The Applicant has alleged that these moneys and stocks were transferred being aware of degraded financial health of the Corporate Debtor. We note that the Corporate Debtor's account was classified as NPA on 31.08.2014 and Forensic Audit Report was obtained on 02.06.2015 by one of the Financial Creditor. The CIRP commenced on 28.04.2017. Section 66(2) provides that the director shall be liable to make contribution to the assets of the Corporate Debtor if such director ought to have known that there was no reasonable prospect to avoid commencement of CIRP and such director did not exercise due diligence in minimising potential loss. We note that Insolvency and Bankruptcy Code came into force in 2016 and sum of these transactions are stated to have been taken place when provisions of Section 66(2) were not in place. Accordingly, it cannot be said that the Directors ought to have known that there was no reasonable prospect to avoid the commencement of Resolution Process prior to F.Y. 2016-17 when the concept of such Resolution Process was not in existence. As regards Section 66(1) no order can be made against Third Parties as held in *Gluckrich* and the Applicant has not made any averment in terms of

Section 66(1) qua suspended board; accordingly, no order can be passed.

4.6. The Applicant has also sought relief in relation to non provision of the interest on the working capital loan and term loan in the books of the Corporate Debtor thereby misrepresenting and distorting the Financial Position of the Corporate Debtor, however, the Applicant has not stated as to whether the fact of non provision of the interest was stated in the Audited Financial Statement of the Corporate Debtor. The Application has made prayer in terms of Section 72 & 73. Section 72 provide for punishment for wilful and material omissions from statement relating to the affairs of the Corporate Debtor and Section 73(b) provides punishment for any false representation or commission of any fraud. In the absence of specific pleading and material on record evidencing the mis-statement of non provision of the interest on Loans in the Financial Statements itself, we do not find the case is fit for reference to IBBI, in terms of Section 72 & 73 (b).

4.7. The Applicant has also alleged that the Corporate Debtor has opened Two Bank Accounts in June, 2014 in addition to TRA account with SBI and these accounts were operated in breach of covenant contained in facility Section documents. It is alleged that the payments of net amount of RS. 17.91 Crores received in these accounts have been diverted; however, the Application does not provide the details of the beneficiary. We are conscious of the fact that the SBI had appointed a forensic auditor who submitted report dt. 02.06.2015 and it cannot be said that existence of these accounts were not brought the

knowledge of the lending bank at that time. If any, violation of the terms of Credit Sanction has happened the same can be dealt with by the lender, which they have taken up by institution of CBI Investigation. It is not the case of the Applicant that these accounts were not reflecting in the books of the Corporate Debtor and the deposits/withdrawals were not duly accounted for in the books. Accordingly, we are of the considered view that no reference is required in terms of Section 72 & 73(b) of the Code.

5. In view of the aforesaid, the Miscellaneous Application bearing MA. No. 1265 of 2018 is disposed of as Partly Allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)