

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

**I.A. 279 OF 2021**

Under Section 66 r/w Section 26 of  
Insolvency & Bankruptcy Code, 2016

**Mr. Kashyap Vaidya,**

**The Resolution Professional**

...Applicant

Vs.

**Mr. Harshad Thakkar & Others,**

...Respondents

In the matter of

C.P.(IB) No. 4488/MB/2018

IDFC First Bank

**Financial Creditor**

Vs.

Ashapura Intimates Fashion Limited

**Corporate Debtor**

*Order delivered on: 17.04.2024*

*Coram:*

**Shri Prabhat Kumar**

Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**

Hon'ble Member (Judicial)

*Appearances*

For the Liquidator : Ms. Mitali Bhatt, Advocate  
For the Respondent : Ex-parte on 15.01.2024

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This Application IA 279/2021 is filed under Section 66 r/w Section 26 of the Insolvency & Bankruptcy Code, 2016 (“Code”) by Mr. Kashyap Vaidya, the Resolution Professional (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of Ashapura Intimates Fashion Limited (“Corporate Debtor”), seeking direction against the Respondents as detailed in this application, to make such contributions in equal proportions to the assets of the Corporate Debtor equivalent to the sum of Rs. 620.70 crores as stated in this Application, in respect of benefits wrongfully availed by him from the Corporate Debtor.
2. The Applicant states that, the company petition was filed by Financial Creditor, IDFC First Bank Limited under the provisions of section 7 of the Insolvency and Bankruptcy Code 2016 (the “Code”). This Tribunal vide an Order dated 28 June, 2019 admitted the petition resulting into initiation of Corporate Insolvency Resolution Process (“CIRP”). Mr. Kashyap Vaidya (IBBI Reg. No. IBBI/IPA-001/IP01204/2018-19/11971) appointed as Interim Resolution Professional.
  - 2.1. The Applicant Resolution Professional (“RP”) states that during the course of CIRP and pursuant to approval and directions from the CoC, Transaction Auditor viz. BDO India

LLP (Chartered Accountants) (“**Transaction Auditor**”) were appointed to undertake the Transaction Audit of the books of the Corporate Debtor for the period from 01 April 2017 to 28 June 2019 (“**Review Period**”).

2.2. Subsequently, the Transaction Auditors have filed their report dated 21 April 2020 which provides sufficient reasons to believe that the Respondents had undertaken certain transactions with an intent to defraud the creditors which are covered under the provisions of Section 66 of the Code.

**3. Transaction 1 – Fictitious sale / purchase transactions aggregating to payment of 375.73 crores which ironically includes payments made to “customers”**

3.1. The Applicant RP submits that on perusal of the transactions during the review period and as per the findings of the Transaction Audit report it has been observed that a total of Rs. 375.73 crores have been paid to top 10 parties which consists of some vendors while others are “customers”.

3.2. The Transaction Audit report also highlights that upon physical visits to the locations of these parties it has been observed that most of them are either shut down or have minimal staff and operations which do not justify the size of transactions being undertaken by the Respondents with these parties.

3.3. The Applicant submits the below table shows the details of parties with whom transactions are undertaken which seems to be mere book entries and a clear attempt to siphon off monies borrowed from the secured lenders.

(INR in crores)

#	Party Name	Type	Op Bal	Sales	Receipts	Purchases	Payments	Adjustments	Clg Bal
1	Marshall Multiventures (I) Pvt Ltd	Vendor	0	0	42.57	58.98	93.47	0	-8.08
2	Mirage Multiventures Pvt Ltd (Credit Balance)	Customer	-0.04	45.98	65.02	0	31.98	-0.09	12.81
3	Aikya Infraprojects Pvt Ltd	Customer	0.57	39.06	57.22	0	19.26	0	1.67
4	Pioneer Trading Company (Credit Balance)	Customer	-0.28	44.52	80.25	0	31.04	0	-4.97
5	Acme Trade & Technology (Formerly know as Acme Trading Co)	Customer	0.11	21.78	32.94	0	15.87	0	4.82
6	Look And Like Fashionwear LLP	Customer	0	0	46.84	0	62.49	-8.5	7.15
7	Shiv Apparels (Firm)	Customer	0	0	52.23	0	65.44	0	13.21
8	Women's Next Loungeries Ltd (Debit Balance)	Vendor	15.44	0	9.97	0.59	6.68	46.79	58.35
9	Blue Sea Commodities Pvt Ltd	Vendor	-1	0	11.77	37.75	49.5	3.37	2.34
10	JSK Marketing Pvt Ltd	Customer	0	32.73	0	0	0	0	32.73
		<b>TOTAL</b>	<b>14.8</b>	<b>184.07</b>	<b>398.81</b>	<b>97.32</b>	<b>375.73</b>	<b>41.57</b>	<b>120.03</b>

3.4. The Applicant / RP submits that the Transaction Audit Report at *internal pages 26 through 41* provides details of each of the said ten entities and throws spot light on the *modus operandi* of the suspended Directors in dealing with entities whose offices are either shut or do not exist at the address as per the maintained of the Corporate Debtor. Some of them have minimal employees which do not justify the quantum of transactions which any prudent businessman even with a basic acumen would have undertaken with such entities while the Respondents failed to provide crucial documentary evidences to justify and support the genuineness of such dealings. In fact a few entities also had common directors or close nexus with the management of the other companies thereby evidencing that it was a closed network group with which such transactions were undertaken as mere “paper transactions”.

**4. Transaction 2 – Withdrawal of amount from the account of the Corporate Debtor by the Respondents without any justification aggregating to Rs. 167.40 crores during the Review Period**

- 4.1 It is submitted that on review of bank statements, there is clear siphoning of funds by the Respondents as they have withdrawn substantial funds from the Corporate Debtor without any valid justification or underlying transaction which would have benefitted the Corporate Debtor by making such payments to the Respondents in their individual capacity.
- 4.2 The Applicant submits that tally data and the personal bank statements of the Respondents clearly shows an aggregate amount of Rs. 167.40 crores being withdrawn from the account of the Corporate Debtor and transferred to their personal accounts.
- 4.3 The beneficiary of these substantial payments from the Corporate Debtor are the three Respondents to this application with each of them siphoning funds as under:
- Respondent No. 1 : beneficiary of Rs. 108.85 crores;  
Respondent No. 2 : beneficiary of Rs. 39.38 crores; and  
Respondent No. 3 : beneficiary of Rs. 19.17 crores
- 4.4 The Applicant submits that when the source of these funds were back-tracked, the cash trail led to a clear conclusion that these funds were paid out of the Cash Credit accounts maintained with:

Bank of Baroda CC A/c. No. 03910500000027;

State Bank of India CC A/c. No. 36192042240 and  
36026312903 (Vapi Branch)

- 4.5 Furthermore, on detailed analysis it was also found that Rs. 9 crores received by the Corporate Debtor as “Term Loan” from IFCI Venture Capital Funds Limited on 28 September 2018 were back-to-back transferred to the personal account of the Respondent No. 1 within two days of disbursement of these funds from the financial creditor. This was reported as “fraudulent transaction” by IFCI to RBI on 30 April 2019. This amount of Rs. 9 crores is part of the total siphoning of Rs. 108.85 crores by Respondent No. 1.
- 4.6 The Applicant / RP submits that the Respondent No. 1 has been absconding since 03 October 2018 when a FIR was lodged in the matter and as on the date of this application the police administration has not been able to trace Respondent No. 1 since then.
- 4.7 It is also interesting to note that after withdrawing such mammoth amount from the Corporate Debtor Respondent No. 2 and Respondent No. 3 completely and miserably failed in providing any valid justifications or supporting documents to show that the said amounts withdrawn from the Corporate Debtor were in any manner used for the purpose of the business or the purpose for which the same were borrowed from the lenders. For instance, Respondent No. 3 only provided credit card statements which aggregated to payments of Rs. 19.27 crores however, without any supporting documents to justify that the said amount was utilised for the benefit of the Corporate Debtor which would lead to “value enhancement” for its

business. This leaves no doubt that the entire withdrawal from the account of the Corporate Debtor is a clear evidence of siphoning money and violation of end-use restriction based on which the amounts would have been disbursed by the secured lenders.

4.8 Therefore, the Respondent herein be directed to make contributions of Rs. 167.40 crores to the account of the Corporate Debtor, to make good the losses incurred by the creditors due to the said transactions.

5. **Transaction 3** - Fraudulent transactions entering into circuitous transactions with closely controlled entities i.e. Ringos Apparels India Pvt Ltd and Royal Apparel & Co by mis-using funds by making payments of Rs. 77.57 crores out of the borrowed funds from secured lenders;

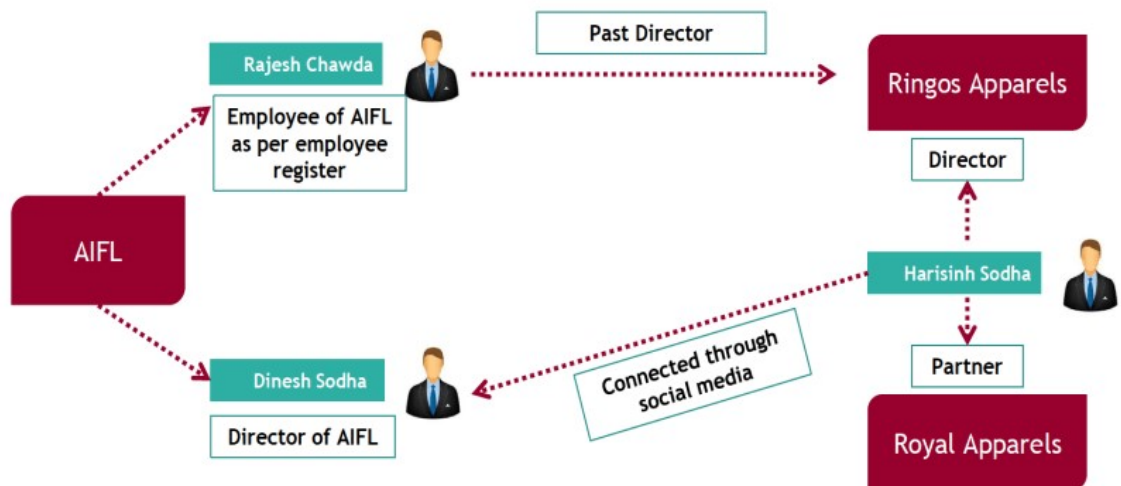
5.1 The Applicant submits that the Respondents that both the entities i.e. Ringos Apparels India Pvt Ltd (“**Ringos**”) and Royal Apparel & Co (“**Royal**”) were created by close friends and ex-employees of the Corporate Debtor on the behest of the Respondents.

5.2 The Applicant submits that on physical visits to the addresses of these entities it was found one of them turned out to be a residential building while the other was closed since a long time.

5.3 Reference is also made to the email dated 03 March 2020 received from one of the Partner of Royal i.e. Mr. Samatsinh Sodha, explained that the said entity was created due to the influence of Respondent No. 1. While the capital of Rs. 2.60

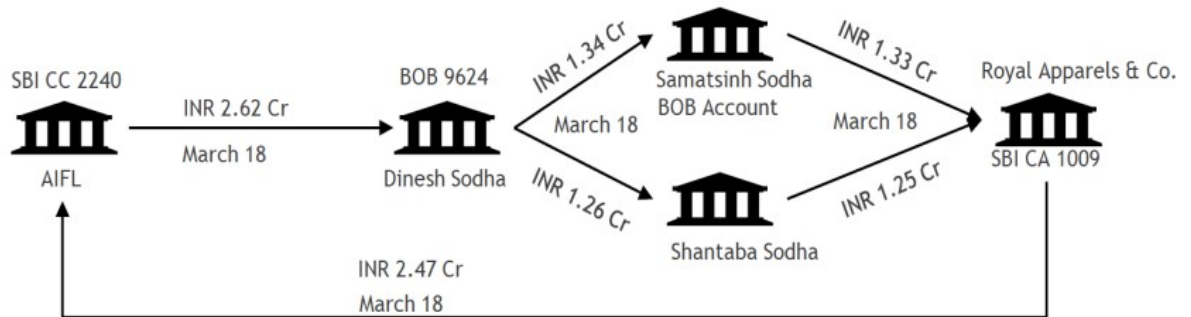
crores introduced in Royal was also sourced from the credit facilities availed by the Corporate Debtor as is also evident from the pictorial depiction as above, wherein the amount was withdrawn by Respondent No. 2 from the SBI CC account and transferred to the personal account of Mr. Samatsinh Sodha (Partner) of Royal for further infusion in Royal.

5.4 Following pictorial depiction highlights the inter-personal relationship between the Respondents and the key managerial personnel of Ringos and Royal.



Further detailed analysis of the cash trail showed that the funds infused in Royal was actually sourced from SBI CC account no. 36192042240. The following pictorial image clearly explains the cash trail





6. The Applicant submits that considering all the above transactions, the total exposure is approximately Rs. 620.70 crores as a result of aforementioned, circuitous transactions which have led to substantial financial loss to the secured lenders of the Corporate Debtor and could be the possible factors attributing to the financial downfall of the Corporate Debtor and eventual initiation of the insolvency resolution process which in fact is heading towards “liquidation”.
7. The Applicant further submits that the Respondent herein have visibly not honoured their duties to the Corporate Debtor and its various creditors and stakeholders vis-à-vis transactions contemplated herein and not borne the best interest of the Corporate Debtor in mind whilst undertaking the aforesaid transactions. The actions of the Respondent herein evidently demonstrate gross negligence, wilful misconduct and wilful default and showcase complete lack of exercise of due diligence as would be reasonably expected of a person carrying out the same functions.

8. Therefore, it is surmised that the Respondent herein have carried on the business of the Corporate Debtor with an intent to defraud creditors of the Corporate Debtor and for fraudulent purpose and were knowingly parties to the carrying on of the business in such manner.
9. Heard learned counsel and perused the materials available on record.

9.1. The Respondents have not filed any reply.

**9.2.** Section 66(1) of the Code deals with fraudulent or wrongful trading and provides that if the business of the Corporate Debtor is carried on with intent to defraud creditors or for any fraudulent purposes, this Tribunal may pass an order making the persons who were knowingly parties to carrying of the business in such manner to make such contributions to the assets of the Corporate Debtor as may deem fit. Section 66 (2) of the Code further vest the power to direct the Respondents to makes such contributions in case such director or partner knew that there was no reasonable prospect or avoidance commencement of CIRP and failed to exercise due diligence in minimizing the potential loss to the creditor of the Corporate Debtor.

The Applicant has arrayed the suspended Board of Directors as Respondent No.1 to 3 and has prayed relief against these Respondent Directors.

**9.3.** The Transaction No.1 pertains to alleged Fictitious sale / purchase transactions aggregating to payment of 375.73 crores. The transaction audit report as well as the Applicant has submitted that on detailed analysis into the line of business

(“LOB”) of each of these parties vis-à-vis that of the Corporate Debtor it is interesting to note that six out of these ten entities do not even operate in the same line of business as that of the Corporate debtor.

Below is a summary of the observations noted basis public domain searches conducted for these entities

#	Party Name	Similar LOB	Negative Site Visit	Inadequate supporting documents	Mismatch in Financials	Interrelated with each other	Linkage with AIFL	Minimum Share Capital
1	Marshall Multiventures (I) Private Limited	×	✓	✓	×	2,3,4,5	×	✓
2	Mirage Multiventures Private Limited	✓	✓	✓	×	1,3,4,5	×	✓
3	Aikya Infraprojects Private Limited	×	✓	✓	×	1,2,4,5	×	✓
4	Pioneer Trading Company	×	✓	✓	Not applicable	1,2,3,5	×	Not applicable
5	Acme Trade & Technology (Formerly know as Acme Trading Co)	×	✓	✓	Not applicable	1,2,3,4	×	Not applicable
6	Look And Like Fashionwear LLP	✓	✓	NA	Not applicable	×	×	Not applicable
7	Shiv Apparels (Firm)	✓	✓	NA	Not applicable	8	✓	Not applicable
8	Women's Next Loungeries Private Limited	✓	Not conducted	NA	✓	7	✓	×
9	Blue Sea Commodities Private Limited	×	✓	✓	×	×	×	✓
10	JSK Marketing Private Limited	×	Not conducted	✓	Not applicable	×	×	×

**Denotes Observations noted**

➤ The transactions between above entities are suspicious due to various factors such as:

- LOB of the suspicious parties were not in lines with AIFL
- As per source inquiries, Marshall Multiventure (I) Pvt Ltd, Aikya Infraprojects Pvt Ltd, Pioneer Trading Company & Acme Trading company were found on the registered addresses. However, there were no/minimal operations at their locations. Further, there were no sign boards at registered addresses of Mirage Multiventures Pvt Ltd, Look and Like Fashionwear LLP, Shiv Apparels and Blue Sea Commodities Pvt Ltd.
- Nominal amount of INR 1 lakhs as Share Capital, however having voluminous turnover with AIFL

9.3.1. The above table demonstrate connection giving the parties and is sufficient evidence to show that the Respondent’s action are squarely fall under the provisions of section 66(2) of the Code, whereby before the initiation of Corporate Insolvency and Resolution Process the Respondent was very well aware of deteriorating financial condition of the Corporate Debtor and knew that there is no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process and Respondents, i.e. suspended Directors, did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor. This leaves no iota of doubt that the

conduct of the Respondent was to defraud the creditors of the Corporate Debtor.

9.3.2. However, the Applicant has alleged the transaction with these 10 parties to be fictitious in nature. Accordingly, this amount of net loss caused to the Corporate Debtor on account of Transaction with these parties can only be called from the Suspended Board. We note that the net effect of sales plus payment made to these parties as reduced by the receipts and purchases from these parties amounts to Rs. 63.57 Crores being taken out of the Corporate Debtor in the form of stock/cash. The table also indicates one debit adjustment of Rs.46.79 Crores in the account of one of parties at Sr. No. 8 in the table, however, the pleadings do not explain the nature of such adjustment. The Transaction audit report also does not specify the affect of such adjustment on the other account in the books of Corporate Debtor. In the absence of such details, this Tribunal cannot pass an order directing the contribution in relation to this amount of Rs.46.79 Crores. However, a sum of Rs.63.57 Crores being the net affect of all the transactions taking together is directed to be refunded back to the Corporate Debtor by the Respondent Directors jointly or severally. Needless to say, the Respondents shall also contribute a sum of Rs.14.08 Crores being amount due from them as opening balance receivable from these parties taken together jointly or severally.

9.4. The Transaction No.2 pertains to the withdrawal of amount from the account of the Corporate Debtor by the Respondents without any justification aggregating to Rs. 167.40 crores

during the Review Period. The details of these transactions are as follows:

Sr. No.1	KMP Name	Receipts	Payments	Net
1	Harshad Thakkar (Current Director)	106.86	108.85	1.99
2	Dinesh Sodha (Current Director)	38.07	39.38	1.31
3	Hitesh Punjani (Current Director)	25.30	19.17	(-)6.13
	Total	170.23	167.40	(-)2.83

9.4.1. The above table shows that the Respondent parties have repaid the sums taken out from the Corporate Debtor. Accordingly, it cannot be said that whole of the amount paid to these parties are required to be refunded back without taken into consideration the amounts are already received by the Corporate Debtor by them. From the above table it is clear that the Respondent No.1 and 2 only were paid in excess, however, the excess amount was received back from the Respondent No.3. Accordingly, we consider it appropriate to direct Respondent No.1 and 2 to contribute a sum of Rs.1.99 Crore and Rs.1.31 Crores respectively to the Corporate Debtor jointly or severally.

9.5. The Transaction No.3 is alleged to be a Fraudulent transactions entering into circuitous transactions with closely controlled entities i.e. Ringos Apparels India Pvt Ltd and Royal Apparel & Co by mis-using funds by making payments of Rs. 77.57 crores out of the borrowed funds from secured lenders. The details of transactions are as below:

Sr. No.	Name	Type	Op Bal	Sales	Purchase	Payment	Adjust	Closing	Fictitious adjustments	Fictitious payment	Total fraud
1	Ringos	Linked to Royal	0	44.45	-39.92	12.58	11.02	15.89	11.02	12.58	28.13
2	Royal	Directly controlled company of AIFL	0	59.19	-9.8	3.7	0.05	47.7	0.05	0	49.44
<b>Total</b>											<b>77.57</b>

9.5.1. The Applicant has demonstrated the relationship with these homes and one money trail on sample basis. This clearly shows that these transactions were also in the domain of fictitious transactions as they were found to be non-existent at the stated address. The Transaction auditor has also commented that *We reviewed 10 sample invoices of INR 20.53 Crores out of 20 invoices received amount to INR 20.73 Crores to determine the genuines of the transactions. No third-party documents like lorry receipt, etc. were available for review. There were no sales invoices along with supporting documents made available for review. Out of the above 10 samples 3 high value sample amounting to INR 20.45 Crores has been considered as part of section 66 of IBC, 2016. However, considering the proximity of address of AIFL with Royal apparels & Co. there can be a possibility of third-party transporters not utilized for delivery. We had requested for inventory records and explanation to establish productions and subsequent sale from materials procured from Royal Apparels & Co.*

9.5.2. In view of these evidences, we hold that the transactions with these two parties are not genuine. However, we note that the Applicant has claimed the fraud to the extent of

Rs.77.57 Crores but a detail whereof is not understandable. Nonetheless on the basis of information placed before us, we find that a sum of Rs.63.59 Crore is receivable from these two parties. Accordingly, the Respondents are directed to contribute this amount to the Corporate Debtor jointly or severally.

9.6. These amounts shall be paid within 30 days from the date of order failing which the amount to the extent not paid shall carry interest @12% per annum compounding annually.

10. In view of the forgoing, the I.A. 279 of 2021 is partly allowed.

Sd/-

Sd/-

**Prabhat Kumar**  
Member (Technical)

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