

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**
**(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)**
(Through Physical/Video – Conferencing/Hybrid Mode)

IA No. 182 of 2021 in

C.P. (IB)No.304/BB/2019

U/s. 66 of the Insolvency and Bankruptcy Code, 2016

R/w Rule 11 of National Company Law Tribunal Rules, 2016

In the matter of:

Mr. Jugraj Singh Bedi

Resolution Professional of

M/s. Green Farm Tech Private Limited ... Applicant/Resolution Professional

Versus

1. Mr. Ramesh B. Gowda

Former Director of M/s Green Farm Tech Private Limited

Son of Mr. Bomme Gowda,

Aged Major, No. 325/1, RMV Extension,

5th Cross, 14th Main, Sadashivnagar,

Bangalore – 560080

... Respondent No.1

2. Mrs. Kaluvoy Madhavi

Former Director of M/s Green Farm Tech Private Limited

Wife of Ramesh B. Gowda,

Aged Major, No. 325/1.\, RMV Extension, 5th Cross, 14th Main,

Sadashivnagar, Bangalore, 560080

... Respondent No.2

Order Delivered on: 24.04.2024

Coram: 1. Hon'ble Shri. K.Biswal, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Resolution Professional

:

Shri Srinandan K

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 01.07.2021 by Mr. Jugraj Singh Bedi, Resolution Professional of M/s Green Farm Tech Private Limited (hereinafter referred to as "Applicant") under section 66(1) and (2) of the Insolvency and Bankruptcy Code,2016 (hereinafter referred to as the Code), *inter alia* making the following prayers:

(a) to pass an order declaring that the Respondents to jointly and severally liable for business of the Applicant to be carried on with the intention of defrauding the Creditors of the Corporate Debtor or for fraudulent purpose,

(b) to pass an order directing the Respondents to make payment of the entire amount of Rs. 38,00,00,000/- (Rs. Thirty Eight Crores Only) along with interest at 18% per annum from the date when transactions were made by the Respondents, and

(c) any other Order or Orders that this Hon'ble Authority may deem fit and proper in the interest of justice and equity.

2. The facts of the case are mentioned below:

- a) Vide order dated 20.02.2020, M3r. Jugraj Singh Bedi with Reg.No. IBBI/IPA-001/IP-P00731/2017-2018/11208 was appointed as the Interim Resolution Professional to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the corporate debtor, namely M/s. Green Farm Tech Private Limited, the Applicant herein.
- b) The Applicant after analysing the transactions in accordance with the provisions of the Code has arrived upon the conclusion that the avoidance transactions amounting to approximately Rs. 38 Crores (Rs. Thirty Eight Crores) have been transacted by the Respondents with the sole objective of defrauding the creditors of the Applicant. The Committee of Creditors ("CoC") meeting held on 14.05.2021, one of the Agenda was to discuss the Transactional Auditor's Report and it was resolved that the transactions of the Corporate Debtors are fit to fall under the scope of Sections 43, 45, 50 and 66 of the Code.
- c) Since the Applicant has been appointed as the Resolution Professional, the Applicant has been diligent in conducting the necessary affairs and in holding the necessary CoC meetings.
- d) It is submitted that there have been several occasions when the Respondents herein have been non-cooperative towards the Applicant and have tried to delay the process by making false

promises to cooperate and then have refused to provide the necessary documents to the Applicant.

- e) Further, the Applicant with the permission of the CoC had already filed C.A. No. 344/2020 under Section 19 of the Code read with Rule 11 of the NCLT, Rules, 2016 for direction against the Respondents to cooperate with the Applicant.
- f) Thereafter, while the above mentioned application was pending for adjudication, the Applicant with requisite resolution passed by the CoC initiated a Transactional Audit to be conducted for the accounts of the Corporate Debtor as per Sections 43, 45, 50 and 66 of the Code.
- g) It is submitted that M/s B.V Swami and Co, Chartered Accountants, submitted their Transaction Audit Report of the Applicant and the same was attached as Annexure – E to the application. The findings arrived at in the Transaction Audit Report as stated in the application are as follows:

(i) Cash amounting to Rs. 32,93,89,690/- was withdrawn by the Respondents and Rs. 2,32,12,925/- was deposited in the bank from 26.12.2014 to 31.07.2015, the number of workings days in which the transaction took place are 172 days. The Cash Book of the Corporate Debtor reflects that in the span of 172 days, **a total amount of Rs. 30,61,76,684 has been subjected to cash withdrawals. On an average the cash withdrawal of the Corporate Debtor amounts to Rs.17,49,581/- per day.** For such huge cash transactions on a daily basis the Respondents did not explain or provide any documents as to why these cash transactions were made instead of bank transfer, what was the purpose of these transactions and where the amount was utilised was never provided.

(ii) The Applicant also discovered that there was also a loan amounting to Rs. 10.64 Crores shown in the financial statements of the Corporate Debtor for the year 2019-2020, however, no corroborating documents such as the loan documents, terms of the

interest and purpose of loan or any other related documents had been disclosed or provided to the Transactional Auditor nor to the Applicant by the Respondents.

(iii) It is further submitted that, about Rs. 38.72 Crores has been given as Unsecured Loans/Advance by the Corporate Debtor to related parties as stated below:

<i>Sl. No.</i>	<i>Name of Related Party</i>	<i>Amount advanced (Rs Crores)</i>
1	<i>Avani Projects</i>	<i>16.21</i>
2	<i>Coffee Plantation</i>	<i>19.30</i>
3	<i>Mysore Livestock</i>	<i>3.21</i>
	<i>Total</i>	<i>38.72</i>

(iv) According to the Corporate Debtor's auditor all of these transactions were written off as unrecoverable in the book of accounts of the Corporate Debtor for the financial year 2019-2020 in violation of the Income Tax Act, 1961 and against the Accounting Policy and standards.

(v) It is submitted that the corporate debtor had issued debentures through its intermediary i.e., Karvy Capital Private Limited in the year 2014 and 2015. The CD further submitted that an investment proposal and plan to utilise the proceeds from debentures holders made their subscriptions through the intermediary Karvy Capital. A total of Rs. 43,53,62,526/- was raised by the CD through debentures. Subsequently, in the same year on an average of Rs. 17,49,581/- everyday was made as cash withdrawals for 172 days, totalling Rs. 30,61,76 684/-. Upon perusal of the available documents such as the Bank Statements, Audited Balance Sheet, statements given by the suspended directors and other information shared by trustee and debenture holders, the Applicant with the support of Transactional Auditor's Report prepared a report on these transactions. It is evident that Respondents resorted to a well-known method of fraud by first issuing debentures and subsequently withdraw large sums in cash on a daily basis out of the amount received from the debentures. These amounts withdrawn in cash are

huge sums, and they can't be written off in the books of account; when the creditors were yet to be paid back the amounts invested in the debentures. It is thus concluded that these huge cash withdrawal was effected only with the ulterior motive of defrauding the creditors and thus the respondents are liable under section 66 of IBC, 2016.

(vi) It is submitted that amidst such transactions, the Corporate Debtor had also issued loans to related parties and did not derive any benefit from such issuance.

(vii) It is pertinent to mention that first, the Respondents ensured that no agreement was executed to govern the term of the loans, second, despite the Applicant seeking for loan documents on many occasions, the Respondents have failed to submit any documents to substantiate the purpose of the loan advanced. As there was no business communication established between the Corporate Debtor and the Loanee, these transactions cannot be treated as under normal course of business. Huge monies were subject to cash withdrawal and no documents were furnished to justify such huge withdrawals and loans advanced to related parties.

(viii) It is clear that the transactions mentioned above come under the scope of Avoidance Transactions as they are done with an intention to defraud the Creditors/ Claimants, these transactions are made to related parties and are cash withdrawals, which have been written off, therefore this attracts section 66 of the Code. The applicant has adhered to the guidelines note on "Avoidance Transaction-Red Flags" published by IBBI and on the basis of the said guidelines the transactions above has been flagged red.

3. In spite of availing substantial time the respondents failed to file any reply/objections. The right to file reply/objections was forfeited on 07.10.2022, after giving multiple opportunities.
4. Heard Learned Counsel for the Applicant and perused the records available.

5. The Adjudicatory Authority has perused the Transaction Audit report attached along with the application. The observation and conclusion made by the Transaction Auditor is reproduced below for convenience:

Observation:

(a) *Cash withdrawn – we have sought clarifications from Mr. Ramesh Gowda because so much cash had been withdrawn (annexure-1). Even if it is meant for making Operational/business related transactions, it could have been issued through banking channels instead of cash withdrawal. We have not got any response from Mr Gowda as of the date of this report.*

(b) *We see advances to 3 parties as appearing in Note No 14 (Non-Current Investments) of Audited Financial Statements as of 31.03.2019 whom we understand from discussions with the RP are related parties.*

Sl. No.	Name of Related Party	Amount advanced (Rs Crores)
1	Avani Projects	16.21
2	Coffee Plantation	19.30
3	Mysore Livestock	3.21
	Total	38.72

In the Financial Year 2019-20 provisional balance sheet the above advances have been written off and charged to profit & loss as an exceptional item. To check if these advances were made with intent to defraud creditors, we need to get access to the books and banking records of these parties, which is not available to us.

To Prove a fraudulent intention/transaction are fraudulent, we have not received full information along with related party information.

Hence, we could not conclude that the above transactions are made with intent to defraud the creditors.

Conclusion

We have asked for clarifications from Mr Ramesh Gowda on the following questions and the answers/Reply given by him are reproduced below along with our observations:

Sl.No.	Clarifications Sort	Responses provided by Ramesh Gowda	Observation
1	Whether the	Yes the payment	Detailed breakup

	payments made to Milestone Trustee is towards payment of Principal or Interest or both to the Debenture holders of the Company	made to Milestone Trustee includes both Principal and Interest	for principal and interest not given with related documentary evidence.
2	What purpose the cash withdrawn from the company's bank accounts have been used for	<p>I have explained to our broad knowledge that nearly 60% of fund raised were in fact routed back in principal and interest pay-out to Debenture Trust Agent (DTA) which also includes nearly 12% of brokerage pay-out.</p> <p>By the time we realised that funds were not coming on time (initial promise was 3 months but took nearly 2 years), it was really pathetic that DTA was raising funds and then using to pay out interest and project really suffered.</p> <p>We in fact were forced to stop this cancerous borrowing even though our limits were nearly Rs 75 crores primarily since funds raised were routed back to pay interest quarterly.</p>	Required information is not received for this question because there is no cash payment to Debenture holders

3	If they are towards issuing advances to related parties, whether they are recoverable as on date and if yes since they represent Related Parties, the timeline within which they could be recovered	Most of the companies intra company which had given certain services and also took money are also going through debt restricting and settlements of debts. The management of these companies are also working towards solving the debt repayment due through one time settlement and other buy out options.	Unanswered question why cash has been withdrawn instead paying by cheque to related parties.
4	What is the status of funds paid to other parties – Rs 5 Cr	A detail of the queries you requested is explained in the attached excel sheet. If you have another specific queries kindly let us know. Most of these are brokerage pay out to the DTA and their sub broker agent who arranged NCD from Karvy Capital.	Excel reply also enclosed

6. The Resolution Professional has submitted his Report separately with reference to the transactions which have been specified to be covered under Section 66 of the IBC, 2016. The basic contention raised by him in the findings of the RP's report has been summarised in the facts of the case as discussed above. From the Report of the RP, it is noticed that the following final conclusion has been arrived at in the R.P.'s report:

- a. Not providing or giving access to the books of accounts for audit.*
- b. Not giving information of assets which the company is having for valuation.*

- c. *Details of huge amount of cash withdrawn from company account i.e., what was it used for and for what purpose along with necessary documents as evidence. Since cash was transferred to the related parties which eventually has been charged off as irrevocable in the books of the CD, it is in the nature of a gift due to the following:*
- *The payment is in cash*
 - *It is written off after 3 years*
 - *The CD has not got any benefits from the issuance of the loans to the related parties*
 - *The CD has parted with its property (Cash) and got zero in return. This could be inferred as transfer at a value considerably lower than what the CD has paid to acquire the property.*
- d. *Related Party transactions has been done which were later written off and following points were noted:*
- *The loanees are related parties*
 - *There is no agreement to govern the terms of the loan*
 - *The purpose of the loan and the objective of issuance of the loan is not known*
 - *The company is a land development company with no operating business transactions with the loanee related parties*
 - *Except for the loan, the business connection of the loanees with the CD is established. Hence, the loans could not be treated as those in the ordinary course of business of the CD.*
 - *The loans were issued in cash and were later written off after 3 years without any progress on what they did with the loan, interest payment of any part repayment of the principal loan.*
 - *The loanees are neither suppliers nor customers of the CD*
 - *The fact that they have been issued in cash and written off after 3 years gives rise to the conclusion that this is an avoidable undervalued transaction with an intent to:*
 - (a) keep assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or*
 - (b) in order to adversely affect the interests of such a person in relation to the claim.*
- e. *Lease land improvement which was shown under asset head before 2018-19 was written off in last year's balance sheet 2018-19. Reason why this was written off and necessary evidence was not there.*
- f. *Non-cooperation by suspended director even after filing non-cooperation application under section 19(2) with NCLT against the director. One of the duties of the Resolution Professional (RP)/ Liquidator (as the case may be) is to examine and identify if any transactions have been*

undertaken by the Corporate Debtor which qualify as preferential transaction, undervalued transaction, extortionate credit transactions or transactions with the intent of defrauding creditors or for any fraudulent purpose (together "Avoidance Transaction"). If the RP/liquidator is of the opinion that any Avoidance Transaction has occurred, then he is obligated to report the same to the Adjudicating Authority for necessary directions.

*The transactions with related parties undertaken deliberately for keeping assets of the corporate debtor beyond the reach of its claimants, and **transactions committed with the intent to defraud creditors or for any fraudulent purpose do not require the look back period of 2 years prior to commencement of CIRP.***

The current set of transactions visible from the bank transactions as listed in the Transaction Audit report are a fit case to come under sections 45, 49 and 66 of the IBC and provides the right opportunity to approach the Hon'ble NCLT for passing an order to restore in the books of the CD the amounts of the balance which has been written off as non-recoverable."

7. It is noticed that the basic issue involved is raising of Capital through Debentures by the Corporate Debtor to the tune of Rs.43,53,62,526/- between the period 24.12.2014 to 22.07.2015. However, out of this sum an amount of Rs.32,93,89,609/- was withdrawn by cash between 26th December, 2014 to 31st July, 2015 out of which, Rs.2,32,12,925 was deposited in the Bank. It is contended in the Application filed by the Applicant-RP that during the 172 working days comprised in this period between 26.12.2014 to 31.07.2015, a total amount of net cash withdrawal of Rs.30,61,76,684/- was made which works out to an average daily cash withdrawal of Rs.17,49,581/-. The Chartered Accountant (CA) who conducted the Transaction Audit had enquired from the Promoters of the Corporate Debtor regarding purpose of such cash withdrawal along with the requisite documents and also as to why the transactions were made in cash and not through cheques/Bank. However, the Respondents did not submit any satisfactory explanation nor any documents were given. The observation of Chartered Accountant have been incorporated above under the headings of 'Conclusion' at Para 5. It is noticed from the explanation given under the heading 'Conclusion' that the R-1 has merely explained that the funds were routed back to the Debenture Trust Agent for the principal and interest as well as brokerage by making such Cash withdrawals. The CA has given a

finding that the required information along with necessary documents for the explanation was not furnished to him and he has given a categorical comment that in fact there was no such payment in cash to the Debenture Holders. In respect of these cash withdrawals, the Applicant-RP has stated that it is a clear cut case of fraudulent transactions entered into by the Respondents. Firstly, they have raised huge sum to the tune of Rs.43,53,62,526/- by way of debentures during the period between 24.12.2014 till 22.07.2015 **in the following manner:**

Sl No.	Date	Amount (Rs.)	Cumulative Total (Rs.)
1	24.12.2014	6,99,95,200	6,99,95,200
2	07.01.2015	2,37,20,763	9,37,15,963
3	29.01.2015	4,81,46,372	14,18,62,335
4	13.02.2015	4,85,04,908	19,03,67,243
5	03.03.2015	4,89,32,340	23,92,99,583
6	13.03.2015	6,25,68,921	30,18,68,504
7	09.06.2015	4,52,89,427	34,71,57,931
8	08.07.2015	5,91,74,011	40,63,31,942
9	22.07.2015	2,90,30,584	43,53,62,526

8. Next, subsequent to the period of raising the aforementioned funds by issue of debentures, a total amount of Rs.32,93,89,609/- was withdrawn in cash between 26.12.2014 to 31.07.2015; while Rs.2,32,12,925 was also deposited in cash into the Bank Account, thus resulting in net cash withdrawal of Rs.30,61,76,684/- during this period. Such type of transactions is not in the normal course of business when a huge amount received by way of subscription of debentures is immediately withdrawn in cash in the subsequent period of next five to six days. The dates of receipt of the money through debentures and the immediate withdrawal in cash reveals a glaring pattern; which the Resolution Professional has

categorised to be fraudulent withdrawal of cash; which is subsequently written off in the Books of Accounts.

9. This pattern continued throughout the subscription period of December, 2014 to July, 2015, i.e., immediately after the money is received through debentures it was withdrawn in cash in huge sums. Therefore, the Applicant-RP has concluded that the Respondents have resorted to a well-known method of fraud by first raising a large sum of money through debentures and then immediately withdrawing extraordinarily large amounts to the tune of Rs.17,49,581/- in cash on daily basis from the Bank out of the funds which have been received. Subsequently, they have written off the cash withdrawn as unrecoverable in the Books of Accounts of the Corporate Debtor. It is therefore stated by the Applicant that since the amounts withdrawn as cash were not small amounts, these cannot be written off as Bad debts by the Respondents in such a manner. The Creditors who lent/invested the moneys in the debentures were yet to be paid back in so far as the principal/interest is concerned. Thus, the Applicant has concluded that the amounts withdrawn in cash was only with the ulterior motive of defrauding the creditors and for this very purpose the Respondents are clearly liable under the provisions of Section 66 of the Code.
10. By way of Annexure to the Report of the CA for the Transaction Audit, the details of cash withdrawn has been given for which the Respondents were asked to give specific explanations. However, the Respondents have not been able to properly explain the nature and purpose of such cash withdrawal and payments and there is no justification for these cash payment have been given. In the Transaction Audit Report reproduced above at Para 3, it is commented by the Auditor that question which remained unanswered as to why cash was withdrawn for making the advances to the related parties instead of giving them Cheques/through Bank. In this connection, the RP in his report has also commented upon these transactions as discussed in para 6 supra.
11. The second issue which has been raised by the Resolution Professional (RP) is regarding issuing of loans to the related parties for which no agreements were produced during the Transaction Audit. The Applicant's

contention is that since there are no agreements or other documents related to the loans granted to the related parties which was subsequently written-off without any information as to what purpose it was given and used and whether any interest was received or any part of the principal was recovered through any part payment. Further, just after a period of three years these loans to related parties were written-off in the books of accounts. Before the Transaction Auditor the Respondents did not deny that these loans were given to the related parties, and instead tried to defend these parties by stating that most of these companies were going through debt restructuring, and working towards one time settlement of their loans. Thus, these amounts raised through Debentures were siphoned-off by the Promoters; as Advances to related parties; who were themselves debt-ridden and striving for restructuring/settlement of their loans. This does not amount to any 'Business purpose' for the Corporate Debtor, but only a siphoning-off of funds to bail out the Promoters and their other related concerns. Subsequently, and most glaringly; the Respondents gone ahead and written-off these amounts as 'Bad debts', whereas these amounts do not qualify legally as 'Business debts' of the Corporate Debtor; thus can't be treated as 'Bad debts' at all. The CA while conducting the Transaction audit has also commented that the Respondents failed to explain as to why huge cash has been withdrawn for giving such loans to the related parties instead of paying by cheques.

12. In the report of the RP, the year wise granting of such loans to the related parties to the tune of Rs. 38.72 crores have been listed and it is stated that these amounts were written-off as Unrecoverable in the Books of Accounts of the Corporate Debtor in the F.Y 2019-2020. The year wise details of granting of loans to the related parties to an extent of Rs.38.72 crores is as under; which also shows "zero" against each of these parties when it was written-off in F.Y 2019-20

Rs.in Crores (cumulative)

sl. No.	Name	2014-15	2016-17	2017-18	2018-19	2019-2020
1.	Avani	11.88	14.12	16.21	16.21	0

	Projects					
2.	Coffee Plantation	10.74	16.81	19.30	19.30	0
3.	Mysore Livestock	2.37	2.81	3.20	3.20	0

13. Subsequently, the Corporate Debtor proceeded to write-off these amounts as un-recoverable in the books of accounts of the corporate debtor in F.Y 2019-20. It is noted that the Transaction Auditor asked for Bank details, books of accounts and also necessary details pertaining to the related parties for further analysis of the amounts advanced to them. However, the Respondents failed to provide the same to the Transaction Auditor. Therefore on account of not having the complete information, they did not give any categorical findings apart from pointing out to the discrepancies. The RP has relied upon the documents flagged in the report of the Auditor and also relied upon the guidance note issued by the IBBI on “Avoidance Transactions – Red Flags”, and concluded that these transactions have been accordingly classified as Fraudulent transaction. Such type of cash transactions including heavy cash withdrawals, advancing of loans to the related parties without having any documents, not explaining the purpose of the same, and writing off the same after three years are issues which have been flagged in the above mentioned guidance note issued by the IBBI also. It has been rightly concluded by the RP that these amounts could not be treated as those arising in the ordinary course of the business of the Corporate Debtor.

14. In this connection it is relevant to refer to the provisions of Section 66 of the IBC which reads as under:

“66(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business 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 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 contributions 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.”

15. Sub-Section (1) of Section 66 of the Code provides the ‘Intent to Default creditors of the Corporate Debtor’ or for any ‘Fraudulent Purpose’, and in case the persons who are knowingly parties to carrying on of the business in such manner will be hit by the provisions of Section 66. In such cases, the person responsible (the Respondents in this case) being part of the suspended management of the Corporate Debtor would be liable to make appropriate contribution to the assets of the Corporate Debtor. Sub-Section (2) of Section 66 of the IBC 2016 also specifies that such a Director or partner of the corporate Debtor is liable to make such contribution to the Corporate Debtor if they did not exercise the due diligence in minimising the potential loss to the creditors of the corporate Debtor.

16. In this case, there is clear cut pattern established which shows that instead of exercising due diligence in minimising the potential loss to the creditors, the Respondents herein were infact actively involved in facilitating to carry out the above referred fraudulent transactions, and causing grave losses to the creditor of the Corporate Debtor as well as the Corporate Debtor itself. There was no justification whatsoever in accumulating huge amounts of funds to the tune of Rs.43.53 crores by issuing debentures through an intermediary i.e., Karvy Capital Private Limited and immediately indulging in huge net withdrawal in cash to the

tune of Rs.30.62 crores in the immediate succeeding period from these funds. It has already been discussed above that the impugned amount was raised between 24.12.2014 to 22.07.2015 i.e. total period of seven months and immediately from 26.12.2015 onwards cash withdrawal started. By 31.07.2015 a total of Rs.32.92 crores was withdrawn out of which Rs. 2.2 crores was deposited into the bank. Thus, while the first tranche of debenture funds were received on 24.12.2024 in the bank, cash withdrawal from the Bank immediately started from 26.12.2024 itself. The entire amount of Rs. 43.54 crores through debentures were raised by 22.07.2015; and by 31.07.2015 i.e., within nine days this amount of Rs. 32.92 crores was already withdrawn in cash. Such abnormal withdrawal in cash out of the funds raised by the corporate debtor through debentures is a classic case which is squarely covered in the IBBI guidance note on “Avoidance Transactions” as discussed above.

17.It was logical on the part of the Transaction Auditor to look for the nature and purpose of such huge withdrawal which worked out to Rs.17,49,581/- on an average daily basis. However, the Respondents failed to provide the requisite details along with the documentary evidence to the Auditor. They also failed to explain to the Auditor as to why the withdrawals/lending were not made through cheques. It was only known by way of the study of financial statements of the Corporate Debtor as on 31.03.2019 and the transactions mentioned in the preceding years; Audited Balance Sheets that the above referred funds to the tune of Rs.38 crores were diverted to related parties. For example, from the Table mentioned in para 7 it is noticed that the funds raised through debentures started from 24.12.2014, and the total amount received between 24.12.2014 to 13.03.2015 was Rs. 30,18,68,504/-. On the other hand, the amount advanced to the related parties in the F.Y 2014-15 were: Rs. 11.88 crores to Avani Projects, Rs.10.74 crores to the Coffee Plantation and Rs. 2.37 crores to Mysore Livestock, thus totalling to Rs. 24.99 crores out of the above sum (Para 12). The matter was thus flagged by the Transaction Auditor as well as pointed out by the RP in particular when all these amounts were withdrawn in cash and paid to related parties and also subsequently written-off in the books of account

in F.Y 2019-2020 so that the amounts outstanding against these parties are shown as NIL in the Table mentioned in para 12 at the end of F.Y 2019-2020. It is therefore a glaring case of a fraud and siphoning-off of funds raised through issue of debentures. Therefore, such transaction would be squarely covered within the scope and meaning of the provisions of Section 66 of IBC and the Respondents would be liable to make contributions to the assets of the corporate Debtor as provided in that Section. There is no doubt in this case that the Respondents were 'knowingly parties" in carrying out such fraudulent transactions and instead of exercising due diligence as provided in Sub-Section (2) (b) of the said section 66 in minimising the potential loss to the creditors of the Corporate Debtor; they actually actively indulged in and contributed to causing such losses to the Creditors.

18. It is revealed from the facts and circumstances of the case that the Respondents had persistently indulged in non-cooperation to provide information both to the Transaction Auditor and to the RP with reference to such transactions. Moreover, during the course of hearing before this Tribunal also, they failed to respond even after being granted various opportunities. On 07.03.2022 one Counsel appeared on behalf of the Respondents, accepted the notice and sought three weeks time to file reply. It is noticed from the proceedings before this Bench that multiple opportunities were granted and finally the right to file reply was forfeited on 07.10.2022. On 24.11.2023 another Counsel Shri Abhijit Atur appeared and sought time to file reply, however the same was not granted since the right to file reply was already forfeited on 07.10.2022. Again Counsels kept appearing on subsequent occasions seeking time for settlement on 12.01.2023 onwards. Finally on 31.01.2024 the matter was reserved stating that the right to file reply by the Respondents was already forfeited. Thus, the Counsels had just been seeking frequent adjournments on one pretext or the other. This shows that the conduct and the response of the Respondents, which have not only failed to provide the necessary information and documents to the Transaction Auditor and to the RP; but also have been non-compliant before this Tribunal seeking more opportunities for a period of more than one year.

19. It is also relevant to place reliance on the judgement of the Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No.454 of 2022 in Mr. Nitin Bharal Ex-Director/Promoter and others vs Stockflow Express Private Limited through Liquidator Mr. Sanjay Gupta vide order dated 04.05.2022* reported in (2022) *ibclaw.in* 333 NCLAT in which the Adjudicating Authority had allowed the application of the IRP holding that the cash transactions and the amounts written-off as bad debts were squarely covered under the 'Fraudulent transactions' which had arisen during the tenure of Respondent Nos. 1 to 4 and thus the provisions of Section 66 of the IBC 2016 was held to be attracted. In that case the main objection of the Respondents was that no transaction audit was carried out and the IRP had given the report on the basis of his own conclusion. The Hon'ble NCLAT noticed that the IRP has consistently stated that there was no co-operation of the suspended Directors and the Promoters to provide any sort of information to the Transaction Auditor, so that he could have given his report pertaining to Section 66 of the IBC. The Hon'ble NCLAT after examining the Section 18 of the Code related to the duties of the IRP held that the IRP did have the authority and power to collect the information; and make detailed analysis with reference to such fraudulent transactions. Therefore, it was held that the IRP's report was squarely within the ambit of Section 66 (1) of the Code, and the business of the corporate debtor was carried on with intent to defraud the creditors. Hon'ble NCLAT finally concluded as under:

“23. Keeping in view the copy of the Bank Statements, amounts written off as bad debts during the Financial Year when the Appellant/Promoters were the Directors, the circuitous sale of shares, this Tribunal is of the earnest view that the contention of the Learned counsel for the Appellant that there was no Transaction Audit and hence the Adjudicating Authority ought not to have given a finding of fraudulent transaction under Section 66 of the Code is unsustainable. If the IRP/RP has prima facie suspicion of any fraudulent transactions, as defined under the code, have recourse to approach the Adjudicating Authority for necessary action. At the cost of repetition, it is specifically averred by the IRP that there was no cooperation from the

Appellant/Promoters and hence an affidavit was filed by him with a detailed analysis. We find merit in the submission that not having cooperated in giving information to the IRP, the contention of the Appellants that the Adjudicating Authority has in the absence of any Audit report, has given these findings, which cannot be relied upon, has no legs to stand.”

20. In this case also, though the Transaction Audit was duly carried on, the final conclusion could not be arrived at as discussed above due to the lack of cooperation on the part of the suspended Board of Directors. Therefore, the Transaction Auditor was just able to flag the huge withdrawal of cash amounting to Rs.30.62 crores (net) immediately after receipt of the money through debentures, and a link was also established that these funds were specifically utilised immediately in the subsequent period for giving of loans to related parties to the tune of Rs.38.72 crores. Another important fact highlighted from the Transaction audit report and RP's report is that subsequently after the period of three years the entire amount was written-off. Thus this is a fit case of siphoning-off of funds by the promoters/Respondents and Section 66 of the IBC Code 2016 is squarely applicable. Relying upon the ratio judgement of Hon'ble NCLAT (supra), the reports of the RP along with the CA are considered sufficient to establish that the provisions of Section 66 of the IBC are clearly attracted in this case. Therefore, the prayer (a) and (b) sought by the Applicant in the Application at (a) and (b) of para 6 are, hereby **allowed** with direction to the Respondents to make payment of the entire amount of Rs.38 Crores with interest 18% p.a from the date of Transaction within a period of 3 months to the bank account of the CD from the date of receipt of copy of this Order. In the result, **I.A No.182 of 2021** is disposed of on the above lines.

-Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd/-

(K.BISWAL)
MEMBER (JUDICIAL)