

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 09.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.568/2019 in CP(IB) No.172/10/HDB/2017
NAME OF THE COMPANY	Super Agri Seeds Pvt Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

ORDER

IA No.568/2019

Orders pronounced, vide separate sheets. In the result, this application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

0IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

IA No.568 of 2019 in
CP(IB) No.172/10/HDB/2017

In the matter of M/s. Super Agri Seeds Pvt. Ltd.

Between:

Dr. K.V. Srinivas (Liquidator),
M/s. Super Agri Seeds Pvt Ltd,
1-8-304 to 307, 4th Floor, Kamala Towers,
Pattigadda Road, Begumpet, Hyderabad
Telangana-500003

....Applicant/ Liquidator

And.

1. Mr. Ravi Srinivas,
Managing Director of Suspended Board of
Directors, M/s Super Agri Seeds Pvt. Ltd.
ravisrinivas_s@yahoo.co.in.
2. Mr. Vijaya Bhaskar Yenamandla,
Director of Suspended Board of Directors,
M/s Super Agri Seeds Pvt. Ltd
Flat C Prajwal Bhagirath, No. 23,
Bhagirathi Ammal Street, T Nagar, Chennai.
3. India Agri Business Fund Ltd.,
EbeneExplanade, 24 Bank Street,
Cybercity, Ebene, Mauritius.
Rep. by its Authorised Representative
Mr. Rajesh Srivastava.
4. Real Trust, 12, Paschimi Marg,
VasanthVihar, Delhi-110 021,
Rep. by its Authorised Representative
Mr. Rajesh Srivastava.

5. Mr. Mallikarjun Gupta,
M/s Bhaskar Agro Agencies,
Godown Road, Nizamabad.
6. M/s Chakradhar&Nandhan,
Chartered Accountants Rep. by
Mr. K.S. Nandan, 201, Shrinath Residential Complex,
Secunderabad- 500003.
7. Mr. Venkateswarlu Kari,
Flat No. 406, Aditya Enclave,
Ameerpet, Hyderabad-038.

....Respondents

Date of order: 09.05.2024

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

- For the Applicant : Mr. Y. Suryanarayana.
- For the Respondent No.1 : Mr. G. Manish, Advocate.
- For the Respondent No.2 : N. Harinath & K. Prashant, Advocates.
- For the Respondent No.3 & 4 : L. Aravind Reddy.
- For the Respondent No.5 : Lakshmikumaran & Sridharan Advocates.
- For the Respondent No.6 : K. Sumitra Nandan.
- For the Respondent No.7 : Mr. Venkateswarlu Kari.

Per: Sanjay Puri, Member (Technical)

ORDER

1. The Applicant has filed the present application under section 66 (1) r/w sections 18, 68, 69, 70(1), 71 and 72 of Insolvency and Bankruptcy Code, 2016 (**IBC**) and section 213 of Companies Act, 2013., r/w Rule 11 of the NCLT rules, 2016, seeking various reliefs including directions to direct Respondent No.s 1 & 2 to contribute a sum of Rs. 206,39,88,341/- to the assets of the CD (CD) which has been illegally siphoned off from the coffers of the CD and to direct the Respondent No. 3 to repay the outstanding dues of Rs.4.23 Crores as on 31.03.2017 and other reliefs as under

- a) To pass appropriate orders holding Respondent No.s 4 & 5 for their misconduct during the CIRP and Liquidation process;
- b) To direct the Central Govt. to initiate proceedings U/s 68, 69, 70, 71 and 72 of IBC against the Respondents before the special court.
- c) To direct the Central Government to refer the matter to SFIO for further investigation into fraudulent activities of the Respondents.

2. **Applicant's Case**

- i. The Respondent No. 1 filed an application under section 10 of the IBC before this Authority. Subsequently vide order dated 06.09.2017 this Authority in C.P. (IB) No. 172/10/HDB/2017 admitted the Corporate Debtor (CD) into Corporate Insolvency Resolution Process (**CIRP**). Later, Dr. K.V. Srinivas was appointed as the Resolution Professional (**RP/Applicant**) on 28.11.2017.

- ii. Throughout the CIRP, the Respondents were not cooperative towards the Applicant. They did not give physical possession of any of the updated books of accounts, usernames, passwords, original records, data, or information related to the CD and other necessary details for filing statutory returns with government agencies. For this reason, the Applicant was unable to file statutory returns for the financial year 2017-18 onwards.
- iii. On December 16, 2017, Respondent No. 1 handed over physical possession of the factory land, building, and some plant and machinery to the Applicant through a signed Pachnama (*Annexure 1*) but earlier the same was not handed over to IRP. It is strange that while the asset was still under the possession of Respondent No. 1, the then IRP had the assets valued. This discrepancy in the handling of assets raises suspicions of collusion between Respondent No. 7 (**IRP**) and Respondent No. 1.
- iv. Thereafter, the RP filed an application under section 19 of the IBC, 2016 vide CA No. 56 of 2018 dated 12.02.2018, seeking appropriate directions to the Respondent No. 1 to Respondent No. 3 and the said application was disposed of by this Authority along with the Order of Liquidation on 21.03.2018. Aggrieved by the said order, the Respondent No. 1 filed an appeal before the Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No. 124 of 2018, which was dismissed vide an Order dated 11.07.2018. The Respondent No. 3, who is one of the purported Resolution Applicants, with a malicious intention of misleading the Hon'ble Appellate Tribunal, filed an appeal before Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No. 380 of 2018 and the same was also dismissed on 23.07.2018.

- v. The Respondent No. 1 and 3 have carried the matter further to the Apex Court vide Civil Appeal Nos. 11243 of 2018 & 11244 of 2018. The Apex Court, vide a common Order dated 07.12.2018, dismissed the both appeals. Thus, the CIRP of the CD had come to an end, and the Liquidation Orders passed by this Authority had attained its finality.
- vi. Respondent No. 1, along with their family members, holds the controlling stake in the Company. Respondent No. 3 and 4 are Investors who jointly invested an amount of Rs. 75,75,00,000/- (Rupees Seventy Five Crores Seventy Five Lakhs Only) and are included as pro-forma respondents.
- vii. The Applicant in compliance with Regulation 35 of the IBBI Regulations, procured valuation reports from two Registered Valuers for the auctioning of the Plant & Machinery. These valuers assessed the Plant & Machinery separately, providing a comprehensive list of items present at the Factory Building, along with photographs for each machinery in their report. During valuation it is noticed that, physically, there were 63 additional items beyond what was documented, along with certain Lab Equipment, the specifics of which were not disclosed by the Respondents to the Applicant. According to the list of items enclosed with the Application filed under section 10 of the IBC, 2016, and the valuation report obtained by Respondent No. 7 (*Annexure-2*), there were a total of 180 items.
- viii. The liquidator auctioned the Plant & Machinery, as detailed in the Valuation Report acquired during the liquidation process, along with the Factory Land and Building. The auction was conducted on an "as is where is" basis, with a reserve price set at Rs. 6.15 Cr.
- ix. The Applicant, in accordance with the provisions of the Code, distributed an amount of Rs. 16,16,00,000/- (Sixteen Crore Sixteen Lakhs Only) to the Stakeholders as stipulated. However, it has come to light that Respondent

No. 1 & 2 have withheld the remaining properties of the CD, as specified in the Audited Balance Sheet as of 31.03.2017. Despite repeated requests from the Applicant, Respondent No. 1 & 2 have persistently neglected to surrender physical possession of the remaining assets belonging to the CD. The details of these assets and their corresponding values, as indicated in the Audited Financial Statements of the Company, have been deceitfully concealed by them which attracts the penal provisions of Section 68 of the IBC.

x. The Applicant is reported to have appointed J Singh & Associates, a Chartered Account firm, as the 'Forensic Auditor' to conduct a forensic audit of the CD from April 1, 2013 to March 31, 2017, based on the limited data and information provided by the Respondents during the CIRP period. The Forensic Auditors observed “several irregularities/fraudulent activities” in the business of the CD and reported that:

- There is a discrepancy of Rs. 1,69,446/- in reporting of Block of Fixed Assets for the year ending 31.03.2017. It implies that CD has done balance adjustment in some other accounts to match the balance sheet.
- The CD initially reported a stock of Rs. 12.09 crore in the provisional financial statement for the period ending 9th August 2017 filed before the NCLT. However, in the provisional financial statement for the period ending 30th November 2017, the stock was reduced to Rs. 2.28 crore. This decrease in stock could be due to either sale or reduction in the value of the stock neither of which are reflected in the books of accounts.
- CD was dealing heavily in cash and was making heavy cash payments to its employees/organizers for incurring the expenditure

on behalf of the company indicating misappropriation of cash by the CD.

- In routing of transactions through Bhaskar Agro Agencies (Stockist/Distributor), The Respondent No. 1 diverted the assets of the Corporate Debtor by transferring stock to the distributor's account and then utilizing the funds from there, thus defrauding the company's creditors.
 - During the Financial Year 2014-15, the company provisioned for slow-moving inventory amounting to Rs. 41.50 crore, which is 74% of the opening stock of finished goods. This sudden provision, after showing profits in earlier financial years, shows “either the Corporate Debtor is used to over value its inventory/stock [or it] has been moved out” without proper booking of the revenue. Once the total limit of the bank was utilized, the inventory value was re-stated by reducing the same. It indicates fraudulent intent by Respondent Nos.1 to defraud creditors.
 - Respondent No.1 had filed the last three years' pending returns by manipulating financial statements, passing entries in backdate, and adjusting stocks and liabilities before auditing and filing them.
- xi. It is pointed out by the Applicant that in the financial year ending 31.03.2017, there were huge debt in the form of trade receivables, security deposits, and advance receivables in cash or in kind, amounting to Rs. 99,92,84,640, 55,92,385, and 5,43,43,311 respectively. Respondent No. 1 showed questionable urgency in filing a malicious application under Section 10 of the IBC, 2016, before the Tribunal for the initiation of CIRP. Subsequently, the Respondents conveniently either wrote off the

significant debts or showed stock returns, thus deflating the large debtors/trade receivables/stocks. It is essential to note that these debtors/trade receivables/stocks were charged to the financial creditor, State Bank of India, and by writing them off, the Respondents committed fraud against the financial creditors.

- xii. The Respondents misused the provisions of IBC 2016 by filing an application under section 10 before this Authority, aiming to commence CIRP. Their hidden agenda was to prevent State Bank of India from recovering its dues under SARFAESI, evade tax dues owed to the Government, and defraud creditors. Further, the Respondents did not fully cooperate. The Respondents' conduct throughout indicates malicious intent to defraud creditors, rather than resolving the CD's financial stress, thus attracting provisions of Section 65. Additionally, Respondent No. 1 & 2 falsified the CD's books by submitting incomplete Tally Data differing from the Financial Statements filed with the Section 10 application under IBC 2016, violating Section 71.
- xiii. The Applicant requested Respondent No. 7 to clarify whether he fulfilled all duties as an IRP from his appointment until handing over to the Resolution Professional. Respondent No. 7 explicitly confirmed via email dated 09.10.2018 that he received all cooperation necessary for his duties under section 19(1) of IBC 2016.
- xiv. It is submitted that Respondent Nos. 1 & 2 induced M/s State Bank of India, by leveraging inflated sales and substantial Trade Receivables of the CD for the grant finance of Rs. 40.80 Crores over time. Furthermore, in subsequent years, Respondents 1 & 2 secured loans in the names of 38 farmers amounting to Rs. 20.00 Crores from M/s ICICI Bank and Rs. 8.00

Crores from RBL Bank through a Corporate Arrangement, offering the Corporate Guarantee of the CD.

- xv. These loans, taken in the names of poor farmers by Respondent No. 1, were later adjusted against the farmers' dues. However, upon default, ICICI Bank and RBL Bank initiated recovery proceedings. As on 31st March 2017, the CD's total dues, including Statutory dues, amounted to a staggering Rs. 126,81,26,189/- (One Hundred & Twenty Six Crores Eighty One lakhs Twenty Six Thousand One Hundred & Eighty Nine Only). State Bank of India classified the CD's account as NPA and initiated recovery proceedings under SARFAESI, while RBL and ICICI Banks invoked Corporate Guarantees.
- xvi. Subsequently, the loan amounts of Rs. 28 Crores were adjusted against the payables to the 38 poor farmers thereby cheating and defrauding them. Notably, ICICI Bank and RBL Bank have initiated recovery proceedings before DRT against all the poor farmers, who are now seeking justice. It clearly shows the misconduct of Respondents which attracts provisions under section 70(1) of IBC, 2016.
- xvii. It clearly shows that Respondent No. 1 conducted business with the intention of defrauding creditors and numerous poor farmers by artificially inflating the CD's sales through credit sales to fictitious or non-existent dealers, stockists, and agents, thus inflating Debtors Trade Receivables. Respondent No. 1 & 2 secured significant investments from foreign entities, M/s India Agri Business Fund Mauritius (IABF) and M/s REAL Trust. The Liquidator discovered that IABF and REAL Trust disputed with Respondents 1 & 2 over CD management. Interestingly, despite raising a mismanagement dispute, the Funds had settled the dispute

over the Investment of a huge amount of Rs. 75,75,00,000/- (Rupees Seventy Five Crore Seventy Five Lakhs Only) for a meagre amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) with the Respondent No. 1 and his family members. The timing and manner of this settlement, just months before filing the application under section 10 of IBC, 2016, raises suspicion. The Applicant had made several requests to the representative of Respondent No. 3 & 4 for the information pertaining to the CD such as the minutes of the meetings, Share Holder Agreement (SHA), the copy of the Arbitration proceedings initiated by them etc. which were completely ignored, thereby raising concern of collusion with the Respondent Nos. 1 & 2 to defraud the Creditors of the Company.

- xviii. The Respondent No. 1 submitted an affidavit during admission of Section 10 Application of the CD. Where, he disclosed that sales amounting to approximately 4.72 Crores were conducted outside the books of accounts due to the freezing of the Company's accounts. This action was taken in the public interest and for the benefit of farmers. Subsequently, the Applicant observed that the Respondent No. 1, in an attempt to secure the application's admission by any means, filed an Affidavit dated 15.09.2018 before this Authority. Where, the Respondent No. 1 declared significantly inflated sales figures. The Independent Chartered Account's report, (*Annexure-10*), provides an explanation for the variations in turnover.
- xix. The Applicant avers that the Respondents, through their actions and conduct both before the initiation of the Corporate Insolvency Resolution Process (CIRP) and subsequently during the liquidation proceedings, appear to be hand in glove. Collectively, they are responsible for defrauding Creditors and Investors to the staggering amount of **Rs. 207,14,88,341** (Rupees Two Hundred and Seven Crores Fourteen Lakhs

Eighty Eight Thousand Three Hundred and Forty One Only).Considering the seriousness of fraud, Applicant seeks direction for investigation by SFIO from this Authority in the interest of Justice.

3. Respondent No.1's Case:

- i. Respondent No. 1 denies all averments of the petition and stated that he served as the Managing Director of the Suspended Board of Directors of CD.
- ii. CD obtained a loan of Rs. 45 Crores from the State Bank of India (SBI) and an incremental increases over five years since 2011, payable interest rates of 13% to 14%. In 2015-16, due to losses faced by the CD and the invocation of Corporate Guarantees given against loans sought by Seed Organizers from ICICI & RBL, the CD the loan was classified as a Non-Performing Asset (NPA). The CD requested time from SBI to regularize its accounts. Initially, SBI agreed to a settlement, instructing the CD to deposit Rs. 1.17 Crores, which was paid in May 2016.
- iii. Respondent No. 1, acting on behalf of the CD, deposited Rs. 25 lakhs for an OTS (One Time Settlement) in May 2017. However, due to the inability to obtain IT clearance for property transfers to prospective buyers (known to the bankers), the OTS did not materialize. Shockingly, on July 28, 2017, the State Bank of India (SBI) initiated proceedings under the SARFAESI Act 2002, before the Debt Recovery Tribunal, Hyderabad (DRT). An e-auction was planned to systematically sell the CD assets, and the final auction held on September 8, 2017.
- iv. Aggrieved by SBI's actions, the CD, represented by Respondent No. 1, filed an application under Section 10 of the IBC which was admitted by this Authority.

- v. During the CoC's first meeting on October 20, 2017, the Committee proposed appointing a new Resolution Professional to replace Respondent No. 7 (IRP). However, during the second CoC meeting on November 22, 2017 which was conducted illegally by one Mr. Guru Prasad Deshpande (Chief Manager, State Bank of India) and Mr. K.V. Srinivas replaced the RP without following the process prescribed by IBBI.
- vi. Since his appointment as RP, Applicant in collusion with SBI, sole member of CoC, has consistently harmed the CIRP process and acted contrary to the CD's interests. He neglected the Information Memorandum prepared by Respondent No. 7 and mishandled meetings and resolution plan presentations before the CoC. M/s. Bhaskar Agro Agencies (Respondent No. 5) proposed a resolution plan that benefited all CoC members and the CD but Applicant suppressed this resolution plan. Subsequently pushed the CD into liquidation by misleading this Authority which is contrary to the spirit of the IBC.
- vii. In this regard Respondent No. 1 filed a complaint before IBBI for the illegal acts of the Applicant during the CIRP and liquidation. The IBBI acknowledged the complaint and conducted inquiry and further requested for the details of Respondent No. 1's bank account for refund of fees paid.

4. **Respondent No. 2's Case:**

- i. Respondent No. 2 denies all averments of the petition, and states that he was Director of suspended board of directors of the CD. He was never called to any CoC meetings throughout the CIRP and subsequent liquidation proceedings and further Applicant made baseless allegations

- of non-cooperation against the Respondent No. 2 to conceal his own misconduct.
- ii. It is averred that the Applicant maintained a team of professionals during the CIRP. One Chartered Accountant Mr. G. Madhusudhan Rao, demanded an initial amount of Rs. 2,00,000/- and a subsequent “success fee” of 0.75% from the resolution applicant Bhaskara Agro Agencies. This demand was for facilitating the approval of the resolution plan by the CoC. Such actions clearly show the extortion of the Applicant through his team members.
 - iii. The applicant took possession of the CD’s assets on 16th December, 2017, as evidenced by a panchanama. He auctioned the assets, realizing Rs. 18,65,00,000/- from the sale of agricultural land, factory land, and building of 3.1 acres including plant and machinery. He distributed Rs. 16,16,00,000/- to the State Bank of India. However, a residuary amount of Rs. 2,49,00,000/- was never mentioned by Applicant in his progress Report. Notably, the Applicant never made aforementioned allegations against the Respondent No.2 during the eight-month period from the auction date (03/09/2018) to the filing of this application.
 - iv. The Applicant’s vendetta against all Respondents started from a complaint filed by the Respondent No.1 against the Applicant before IBBI. Additionally, the Respondent No.1 filed a complaint with the Central Bureau of Investigation (CBI) against the Applicant and Mr. Guruprasad Deshpande for their alleged conspiracy during CIRP and liquidation proceedings. This matter is pending before the Hon’ble High Court of Judicature at Hyderabad (W.P. 20156 of 2019).
 - v. The present application appears to be a counter-blast tactic by the Applicant to intimidate respondents from reporting his alleged crimes and

misdeeds. However, the application lacks evidence to substantiate the allegations against the Respondent No.2. Thus, Respondent No.2 prays to dismiss the application.

5. Respondent No 3 & 4's Case:

- i. Respondent No. 3 & 4 denies all the averments of the petition and further states that Respondent No. 3, is a Mauritius-based company, has been investing in Indian agricultural companies since 2009 while Respondent No. 4 is a trust formed under the Indian Trusts Act of 1881, having its objective to grow capital by Co-investing in Indian companies along with Respondent No. 3
- ii. In 2011, Respondents 3 and 4 were invited by Respondent No. 1 to invest in business of CD. So, from 2012 to 2016, they invested a total of Rs. 76 crores in the CD's business. The details of these investments and changes to the CD's constitutional documents were properly filed with the Registrar of Companies, as per the Companies Act and they are available on the Ministry of Corporate Affairs' website.
- iii. Respondent No. 4 only possesses a minority stake in the CD and has no control over the management. Financial records from 2015-2016 indicate that the CD was financially distressed subsequently Respondents 3 and 4 invested additional funds in 2015 and 2016 to safeguard the interests of creditors and farmers.
- iv. In the year 2016 disputes arose between the company's promoters and Respondents 3 and 4, with regard to the company's revival, financial mismanagement, undisclosed liabilities, and unauthorized transactions. This led to the filing of an arbitration petition vide Arb. P. no. 600 of 2016 at High Court of Delhi by Respondents 3 and 4 for dispute resolution.

During the arbitration, Respondent Nos. 3 and 4 found that their investment in the CD had become worthless due to its significant debts.

- v. Thereafter, Respondent No. 1 approached Respondents 3 & 4 with a settlement offer, promising to revive the CD and settle its debts in exchange for their stake. After careful consideration, Respondent Nos. 3 and 4 agreed to the settlement, transferring their shares to the promoters, prioritizing the creditors' interests. This settlement was recorded by the Delhi High Court on July 27, 2017.
- vi. Respondent Nos. 3 and 4 asserts that they received no compensation for the transfer of their stake but have lost their entire investment of Rs.76crores. From the date of their exit, Respondent Nos. 3 and 4 have had no involvement with the CD or its promoters.
- vii. Respondent Nos. 3 and 4 asserts that as they neither participated in the CIRP nor aware of subsequent liquidation proceedings of CD. The Applicant did not contact Respondent Nos. 3 and 4 during the CIRP but is now seeking information from them post-liquidation as such allegations of their misconduct strongly refuted. Further Respondent Nos. 3 and 4 asserts that they have been wrongfully implicated in this case with malicious intent for causing undue harassment to their management and stakeholders.

6. Respondent No. 5's Case:

- i. Respondent No. 5 denies all the averments of the petition and further states that the Applicant filed the present application with a malafide intention just to harass him. Respondent No. 5 averred that he is a well-known distributor of pesticides and agricultural products. He procure seeds from manufacturers and sell them to farmers; similarly they procure seeds with

- CD. All payments for seeds purchased from the CD were made promptly by Respondent No. 5.
- ii. In 2017, Respondent No. 5 learned that the CD's bank account was frozen due to it being classified as a Non-Performing Asset (NPA). Then, Respondent No. 1 approached Respondent No. 5 seeking business assistance. In order to safeguard the interests of farmers and creditors, Respondent No. 5 supported CD. Importantly, all transactions between Respondent No. 5 and the CD were conducted at arm's length and these details were also presented to this Authority during the admission of the S. 10 petition.
 - iii. During the CIRP, Respondent No. 5 proposed a resolution plan to benefit all stakeholders, including financial and operational creditors based on the Information Memorandum (IM) received from Respondent No. 7. In this regard they promptly arranged INR 2 Crores in their bank accounts and provided an Undertaking to invest INR 7 Crores for purchasing the CD's seed processing facility but the Applicant/Liquidator, in collusion with some creditors, disregarded Respondent No. 5's Resolution Plan and hurriedly insisted this Authority for liquidation of CD which is contrary to the spirit of the Code. Consequently, this Authority ordered liquidation, appointing the Applicant as the liquidator for the process.
 - iv. Respondent No. 5 averred that the Applicant filed the present application against him with a malicious intent to avoid repaying the debts owed by the CD to him and further stated that the alleged provisions of the Code do not directly apply to Respondent No. 5, as he was a third-party distributor before CIRP. Additionally, the Applicant/Liquidator failed to provide substantial evidence which shows the alleged misconduct of Respondent

No. 5 during the CIRP. Thus, Respondent No. 5 prays for the dismissal of the Applicant.

7. Respondent No. 6's Case:

- i. Respondent No. 6, is the Statutory Auditor of the CD, audited the CD's accounts for the financial years 2014-15, 2015-16, and 2016-17. They issued audit reports during their tenure fairly. Respondent No. 6 asserts that the Applicant filed present against Respondent No. 6, alleging that they owe debts to the CD. But, Respondent No. 6 denies these claims of the Applicant and asserts that they have shared audited financials and relevant information of CD with the Applicant/Liquidator via emails.
- ii. It is averred as a Statutory Auditor the role of Respondent No. 6 is very limited and unnecessary the Applicant leveled baseless and false allegations against Respondents No.6 just to harass them. Thus, prays this Authority to discharge him from the proceedings of present Application.

8. Respondent No. 7's Case:

- i. Respondent No. 7 (i.e., IRP) denies all the averments in the present petition and further states that the present application lacks legal merit and factual basis. Respondent No. 7 asserts that during the tenure of the Interim Resolution Professional (IRP), no fraudulent trading activities occurred.
- ii. Respondent No. 7 further asserts that possession of all pertinent information, including a detailed Information Memorandum of assets and liabilities of CD was transferred to him by Respondent No. 1 on an "as is where is" basis. Subsequently, no trading occurred, and there after it is handed over to the Applicant on an "as is where is" basis.

- iii. The Applicant did not seek clarification or report discrepancies regarding asset shortages or accounting records until after the sale of the land, building, and machinery and further conducted an inventory (panchnama) with the assistance of Respondent No. 1 without informing to the 7th Respondent. Even the Applicant did not raise any deficiencies or objections during the CIRP.
- iv. Allegations have been made against the IRP for not transferring intangible assets and vehicles. In this regard 7th Respondent states that he was responsible for assets listed in the balance sheet only but the information on intangible assets not listed in the balance sheet at the time of commencement of CIRP.

The Decision

9. After hearing the counsels and going through the records presented before us in connection with the present application, the issues before us are
 - a) Whether the acts of the Respondents fall within the purview of Section 66, 68, 69, 70, 71 and section 72 of IBC, 2016.
 - b) Whether the acts of Respondents require investigation into the company's affairs in accordance with section 213 of the Companies Act.
 - c) Whether the prayer of the Applicant to direct the Central Government to file complaint before the Special Court for initiation of proceedings under section 68, 69, 70, 71 and section 72 of IBC is maintainable?
10. In the instant case the Applicant made several allegations against Respondents. Among all the allegations one of the main allegation includes the alleged illegal siphoning of Rs 207,14,88,341 (in the reliefs sought the amount is Rs 206,39,88,341, there is no explanation of why there is such a difference in the amount) which are detailed hereunder:

- a. India Agri Business Fund Mauritius – Rs 70,75,00,000/-
- b. State Bank of India - Rs 48,80,00,000/-
- c. 52 poor Farmers - Rs 28,00,00,000/-
- d. Trade Payables - Rs 59,59,88,341/-

11. In reply to the above allegations the Respondent No.1 states that India Agri Business Fund Ltd. has been a shareholder of the CD from 2012-17 where under they were a part of the Board of the CD from 2012-17 and a part of the Management Committee (MC) between 2015-17. It is in this capacity as a shareholder and investor in the Corporate Debtor that they infused funds into the Corporate Debtor. It is averred that, in return for the infusion of funds, a settlement was recorded in 2017, for their exit as investors from the Corporate Debtor as well. In relation to the amounts shown as accruable to SBI, it is submitted that the same is inclusive of the amounts payable after the invocation of the Corporate Guarantee legally given by the Corporate Debtor against the loans taken by the Seed Organizers from SBI. The amounts shown as accruable to the Seed Organizers are the amounts owed to RBL Bank and ICICI Bank after invocation of the Corporate Guarantee legally given by the Corporate Debtor against the loans taken by the Seed Organizers from the aforementioned Banks. The amounts shown as Trade Payables' are to the tune of Rs. 30 Crores approx. and not Rs.59 Crores approx. as wrongfully shown by the Applicant. Such Trade Payables are as a result of business loss and there is no fraud, by any stretch of imagination, linked to the same.
12. Based on the information provided, neither the Applicant nor the Respondents were able to support their claims with evidence. The burden of proving the fraudulent intention of the Respondents falls on the Applicant; however, they failed to present substantial evidence beyond the Forensic Audit Report, which was conducted by an auditor appointed by

the Applicant. Furthermore, the Applicant acknowledges that the audit report was based on limited data and information. In the absence of compelling evidence, we cannot consider the Forensic Audit report alone as substantive evidence to determine the fraudulent intention of the Respondents.

13. Further, it is important for us to look into the provisions of section 66 of IBC. Section 66 of IBC is produced below for ready reference:

Section 66: Fraudulent trading or wrongful trading.

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

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

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

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

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14. On a bare reading of section 66 of IBC it is clear that the wording “if found” that any business of the corporate debtor has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose indicates that there should be some findings or evidence to show that the business of the CD was carried on with intent to defraud the creditors.
15. The Hon’ble NCLAT in the case of ***Mr. Tenny Jose vs Mr. Prathap Pillai Resolution Professional of M/s. Tenny Jose Limited Company Appeal***

(AT) (CH) (INS.) No. 95 / 2023, explained fraudulent trading, relevant para is extracted below for a ready reference.

Fraudulent Trading: 21. The 'Offence of Fraudulent Trading', unlike 'Fraudulent Preference', involves an 'element of blame'. When whole 'business' of a 'Company', is being carried on, with an 'intent to Defraud', then, Section 66 of the I& B Code, 2016, is breached, as opined by this 'Tribunal'.

22. A pre-ponderance of probability, will suffice, in respect of an 'Offence of Fraudulent Trading', under Section 66 of the 'Code', is sufficient, but, the 'probability, must be such that, it must 'satisfy', the 'subjective conscience of the 'Adjudicating Authority' / 'Tribunal'

16. We are of view that the scope of Section 66 of IBC is to demonstrate that the business of Corporate Debtor has been carried on with the “intent to defraud” its creditor or for “any fraudulent purpose”. The proof might even be a pre-ponderance of probability but in the instant case nothing can be derived from the mere allegations without sufficient evidence.
17. The Hon’ble Apex Court of India in the matters of *Svenska Handels Bunken vs. Indian Charge Chrome and Ors. [(1994) 1 SCC 504]* and *Anil Rishi vs. Gurbaksh Singh [(2006) SCC 558]* held that the allegations of fraud are grave in nature and cannot be ipsi dixit of the person raising such allegations and such allegations of fraud cannot be merely on suspicion but need to be pleaded with strong evidence.
18. The decision of the Hon’ble Supreme Court of India, *in Union of India v. Chaturbhai M Patel & Co., reported in (1976) 1 SCC 747*, wherein, it is observed that Fraud, must be established beyond reasonable doubt and the mere suspicion, however may be the circumstances however strange the coincidences, and however grave the doubt, suspicion alone can never take place of proof.
19. The NCLT Mumbai Bench, in *RTIL Limited v. Nitin Kasliwal [M.A. 05/2019, in C.P. No. 382/I&BP/MB/2018]* had the occasion to consider

the provision of Section 66 in detail and passed a judgment dated 29 November 2021 wherein it was acknowledged that the management may have taken certain decisions which did not work out as intended by the management and eventually resulted into hefty monetary losses. Having acknowledged this, the Bench held that such bad commercial business decisions cannot be considered to be fraudulent or wrongful trading under the provisions of Section 66 of the IBC.

20. Upon examining the factual background and above observations it is clear that all the allegations made by the Applicant are mainly based on the Forensic Audit Report dated 31.05.2019 which clearly indicates only the opinion of the auditor and does not provide any evidence to prove that there was a fraudulent transaction. Consequently, the Forensic Auditor has merely expressed suspicions regarding the existence of fraud in the commercial activities of the CD, without providing conclusive evidence of fraudulent intent on the part of the Respondents. The Applicant merely stated that the Respondents are collectively responsible for defrauding the Creditors and the Investors to the tune of Rs 207,14,88,341 but did not provide any evidence to prove the same and moreover the Applicant himself is not sure on the exact amount that has been alleged to be siphoned off.
21. The other allegations levelled by the Applicant are under the provisions of Section 68 'punishment for concealment of property'; Section 70 'punishment for misconduct in course of CIRP; Section 71 'punishment for falsification of books of corporate debtor'; Section 72 'punishment for wilful and material omissions from statements relating to affairs of CD'. To attract the above sections the allegations made by the Applicant could not provide any substantial evidence to show that the Respondents are liable under these sections.

22. The next issue is whether the acts of Respondents require investigation into the company's affairs in accordance with section 213 of the Companies Act.
23. Investigation into affairs of company at the instance of the Tribunal has been prescribed under Section 213 and reads as follows:

The Tribunal may,—

(a) on an application made by—

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power , in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct;

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful

*purpose, or that the company was formed for any fraudulent or unlawful purpose;
or*

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

24. It is relevant to look into the judgement of the Hon'ble NCLAT in the case of ***Mr. Lagadapati Ramesh Vs. Mrs. Ramanathan Bhuvaneshwari Company Appeal (AT) (Insolvency) No. 574 of 2019*** where in it was held that if the Adjudicating Authority is satisfied that there are circumstances suggesting that defraud has been committed, may refer the matter to Central Government for investigation by an Inspector or Inspectors as may be appointed by the Central government and thereafter the Central Government shall refer the matter to special court if any defraud is found. The relevant part of the judgement is extracted below for a ready reference

“34. In terms of clause (b) of Section 213, on an application made to it by any other person ('Resolution Professional') or otherwise (suomotu), if the National Company Law Tribunal is satisfied that there are circumstances suggesting that (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose as alleged by the 'Resolution Professional' in the present case and or by; (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members etc., (which is also the allegation made by the 'Resolution Professional'), in such case, the Tribunal after giving a “reasonable opportunity” of being heard to the parties concerned, that the affairs of the company ought to be investigated by an 'Inspector' or 'Inspectors' appointed by the Central Government and where such an order is passed, in such case, the Central Government is bound to appoint one or more competent persons as Inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

*37. In view of the aforesaid position of law, we hold that the Tribunal/ Adjudicating Authority, on receipt of application/complaint of alleged violation of the aforesaid provisions and on such consideration and **being satisfied that there are circumstances suggesting that defraud etc. has been committed, may refer the matter to the Central Government for investigation by an Inspector or Inspectors***

as may be appointed by the Central Government. On such investigation, if the investigating authority reports that a person has committed any offence punishable under Section 213 read with Section 447 of the Companies Act, 2013 or Sections 68, 69, 70, 71, 72 and 73 of the 'I&B Code', in such case, the Central Government is competent to refer the matter to the Special Court itself or may ask the Insolvency and Bankruptcy Board of India or may authorise any person in terms of sub-section (2) of Section 236 of the 'I&B Code' to file complaint.

25. Section 236 of IBC, 2016 deals with Trial of Offences by Special Court, which is extracted as follows;

236. Trial of offences by Special Court.-

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), offences under of this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013 (18 of 2013).

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorized by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

26. In the instant case, based on the Forensic report and citing the lack of cooperation from the Respondents, the Applicant has raised suspicions about the affairs of the CD in the pre-CIRP period. However, suspicion alone, without clear finding about any wrongdoing, cannot establish the likelihood of such wrongdoing. The Forensic Audit Report alone could not establish any fraudulent transaction but it has merely reported the symptoms of a malaise that might have been present in the affairs of the CD.
27. The burden of proving fraudulent intent is upon the Applicant, who is expected to provide evidence, rather than mere conjecture regarding any misconduct by the respondents. Any such evidence could then be evaluated against the allegations, and preponderance of probability measured for any wrongdoing if more likely than not true. Such evidence could include

instances of unrecorded cash sales, false claims to banks, or any independent document giving details contrary to the claims made by the Respondents. We are presented with no such evidence. Therefore, we are unable to assess the likelihood of fraudulent conduct. Consequently, we are unable to find satisfaction regarding any circumstances suggesting fraudulent intent.

The application is therefore dismissed.

SD/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

SD/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**