NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2355 of 2024

[Arising out of the Order dated 10.12.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kolkata Bench) in IA(I.B.C.)/466(KB)2020 in CP(IB)/980(KB)2018)]

IN THE MATTER OF:
Swapan Kumar Saha
Suspended Director of PKS Limited
Address: 7, Camac Street, Azimganj House,
4th Floor, Kolkata, West Bengal,
PIN – 700 017 **...Appellant**

Versus

Ashok Kumar Agarwal
Resolution Professional, PKS Limited,
Office Address: Raja Chamber,
Room No. 19, Mezz Floor, 4,
Kiran Shankar Roy Road,
Kolkata – 700 001 **...Respondent**

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Santosh Kumar, Advocates.

For Respondent : Mr. Krishnendu Datta Sr. Advocate with Mr. Santosh Kumar Ray, Ms. Zeba Khan, Mr. Ishan Roy Chowdhury, Ms. Shrishti Mahana and Mr. Yash Tandon, Advocates for Liquidator.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short hereinafter referred to as "IBC, 2016") by the Appellant challenging the judgment and/or order dated December 10, 2024 passed by the National Company Law Tribunal, Kolkata Bench in C.P. (IB) (No.

980/(KB)/2018, I.A. (I.B.)/466(KB)/2020. AA vide the Impugned Order had partly allowed IA No. 466/2020, filed by the RP / Liquidator of the CD, thereby issuing an IA No. 466/2020 was filed by the erstwhile Resolution Professional (***RP***) of the CD, before the AA, under Section 66(2) of the Insolvency and Bankruptcy Code, 2016 (***IBC / Code***) alleging that the Appellant, in the year 2013-14, had acquired 88,000 equity shares of a related party namely Orient Exports Pvt. Ltd. (***Orient Exports***), from the CD (*which was acquired by the CD in the year 2011-12 for a sum of* ₹ *8.80 crores*) at an undervalued rate of ₹ 8.80 lakhs, thereby causing loss of ₹ 871.20 lakhs to the CD. Accordingly, the RP had prayed, to the AA, for a direction to be issued to the Appellant to make contribution of ₹ 871.20 lakhs, along with interest @ 15% from the date of the investment.

Main Grounds of the Appeal/ Submissions of the Appellant

2. Appellant claims that in the application i.e., IA No. 466/2020 filed by the erstwhile RP, the only pleading is based on the balance sheet. There is neither any pleading:

i. in relation to the business of the company / CD;

ii. any alleged fraudulent conduct of business of the company / CD;

iii. such alleged fraudulent conduct of business of the company / CD was carried on with the intent to defraud the creditors of the company / CD;

iv. the director of the company / CD i.e., the Appellant did not exercise due diligence in minimising the potential loss to the creditors of the company / CD.

3. Appellant further contends that no pleading was made in IA No. 466/2020 which satisfies the mandatory requirements to maintain an application under Section 66 of the Code. The application was filed by the RP of the CD on the basis of balance sheet of the CD. No other documents were relied upon by the RP of the CD in IA No. 466/2020. In IA No. 466/2020, filed by the RP before the AA, there is no pleading, which are essential / mandatory for the purposes of maintaining an application Section 66 of the Code, as follows:

a. The business of the company / CD had been carried on with the intent to defraud creditors of the CD or for any fraudulent purpose;

b. Before the initiation of CIRP against the CD, the Appellant knew or ought to have known that there was no reasonable prospect of avoiding CIRP of the CD;

c. The Appellant did not exercise due diligence in minimizing the potential loss to the creditors.

The only argument advanced to deal with lack of pleadings was that Section 66(1) and Section 66(2) of the Code require different tests to be met. Even assuming that to be correct, there is neither any pleading directed towards any ingredients of Section 66(1) nor Section 66(2) of the Code.

4. The Appellant relies on various judgements[1] of this Tribunal that the aforesaid requirements are necessary for invoking the provision of Section 66 of

[1] *Nalinesh Kumar Paurush & Ors. v. Arvind Mittal (RP) & Anr* (CA) (AT) (Ins) No. 346 of 2024 – Para 33, 35 & 41 :

the Code. In view thereof, the tests as enumerated in Section 66 of the Code ought to be satisfied before any order of contribution could have been passed by the AA against the Appellant. In IA No. 466/2020 filed by the RP of the CD, the aforesaid tests have not been satisfied and / or established. Appellant claims that test / requirement of high standard of proof for proving fraudulent trading was not met in IA No. 466/2020. The RP had taken into consideration only an isolated transaction to allege that business of the CD had been carried on in a manner to defraud the creditors of the CD. On the basis of an isolated transaction, fraud cannot be alleged under Section 66 of the Code, as the whole period of the transaction is significantly relevant. The RP / Liquidator has failed to appreciate that the transaction in question was not fraudulent, in order to attract the provisions of Section 66 of the Code, for the following reasons:

(a) It was also disclosed that Orient Exports had allotted shares, in the year 2010-11, in the name of the Appellant.

(b) Documents available in the portal of the Ministry of Corporate Affairs were disclosed to show that the CD, in the year 2013-14, had suffered loss to the extent of Rs. 8.71 crores on account of loss of sale of assets.

5. The Appellant having acquired the shares of Orient Exports from the CD at a time when the CD was a loss-making entity cannot be said to be fraudulent or done with the intent of defrauding the creditors of the CD but was aimed at

Gopal Kalra v Akhilesh Kumar Gupta CA (AT) (Ins) No. 567 of 2024 – Para 32 :
Sangeeta Jatinder Mehta & Anr. v Kailash Shah (RP) CA (AT) (Ins) No. 104 of 2024 – Para 7 :
Shailesh Bhalchandra Desi (Liquidator of EMI Transmission Ltd. v. Sanjiv Sheth & Anr. CA (AT) (Ins) No. 814 of 2022 – Para 13

minimizing losses of the CD. The CD having suffered loss in 2013-14 itself cannot be a ground on the basis whereof it can be alleged that the Appellant knew or ought to have known that the CIRP of the CD was imminent. Furthermore, IA No. 466/2020 fails to demonstrate that despite such loss on sale of assets, the Appellant knew that the CD would become a loss-making entity and that it would eventually suffer an order of CIRP in the future, as a result of the impugned transaction, after a period of 6 years approximately. Thus it is clear that the RP of the CD failed to meet the threshold of High Level of Proof required for proving a fraudulent transaction in order to come to the conclusion that:

a) The Appellant knowingly carried on the business of the CD with a dishonest intent;

b) Such dishonest intent, on the part of the Appellant, was with the intent to defraud the creditors of the CD.

6. The obligatory duty on the part of the RP / Liquidator of the CD to prove the subjective satisfaction of the Tribunal of the aforesaid requirements have also been laid down / reiterated in a catena of judgements passed by this AT.[2] On the contrary, the obligatory duty on the part of the RP / Liquidator of the CD to prove the alleged fraudulent transaction to the subjective satisfaction of the Tribunal, of the aforesaid requirement, is found missing in the present case.

[2] *Nalinesh Kumar Paurush & Ors. v. Arvind Mittal (RP) & Anr* (CA) (AT) (Ins) No. 346 of 2024 – Para 44: *Renuka Devi Rangaswamy (RP) v Regen Powertech Pvt. Ltd.* CA (AT) (CH) (Ins) No. 357 of 2022 – Para 30 – 36: *Renuka Devi Rangaswamy (IRP) v Mr. Madhusudhan Kemka* CA (AT) (Ins) No. 358 of 2022 – Para 33 - 38

7. Appellant claims that RP / Liquidator has in-correctly interpreted the scheme of Section 66 IBC. It has been strongly argued by the RP / Liquidator before this AT that the provisions of Section 66(1) and Section 66(2) of the Code, operate in different fields. While it is true that the provisions of Section 66(1) and Section 66(2) of the Code, operate in different fields, yet it is equally important to note that Section 66(1) of the Code cannot be interpreted / made operational without recourse to Section 66(2) of the Code, especially in the case of corporate debtor which is a company undergoing CIRP / liquidation. While, Section 66(1) of the Code operates in a wider spectrum in order to be made applicable to, not only the CIRP / liquidation of a company, but also to, proceedings initiated against personal guarantors and bankruptcy provisions under Chapter III and Chapter IV of the Code. On the other hand, the scope of applicability of Section 66(2) of the Code, is narrower as it is made applicable only to CIRP / liquidation proceedings initiated against a company. Therefore, the provisions of Section 66(1) and Section 66(2) of the Code must be read together in order to give a meaning as to how and when the provision of Section 66 of the Code can be made applicable for CIRP / liquidation proceedings initiated against a company, under the Code.

8. RP / Liquidator of the CD has also strongly contended that IA No. 466/20200 was filed by the RP / Liquidator under Section 66(1) and not under Section 66(2) of the Code. However, the same is contrary to the records of the present case. The RP / Liquidator of the CD although having filed IA No. 466/2020 before the AA under Section 66(1) of the Code, however, the RP /

Liquidator of the CD has sought for issuance of necessary directions from the AA against the Appellant under Section 66(2) of the Code. The aforesaid demonstrates the understanding of the RP / Liquidator of the CD itself that while Section 66(1) and Section 66(2) of the Code operate in different areas, however in cases of CIRP / liquidation proceedings initiated against a company, the provisions of Section 66(1) and Section 66(2) of the Code, are inseparable and operate conjunctively.

9. RP / Liquidator of the CD has placed heavy reliance on the Charge-Sheet filed by the Central Bureau of Investigation (*CBI*) before the Court of 3rd Special Judge, CBI, Bankshall Court Complex, Kolkata. However, no reliance can be placed on the Charge-sheet for several reasons. Firstly, the Charge-sheet has been produced for the first time, in the present proceedings, before the appellate forum. Appellant never had the opportunity to deal with the Charge-sheet, on merits, before the AA. Furthermore, the charge sheet is not relevant for the adjudication of the present proceedings. The proceedings before the Court of 3rd Special Judge, CBI, Bankshall Court Complex, Kolkata is currently pending adjudication and till date there has been no adverse orders passed against the Appellant imposing any liability / punishment.

10. Appellant also questions the biased conduct of Kanakabha Ray, the erstwhile resolution professional, who was later on substituted. Appellant contends that Kanakabha Ray was an erstwhile employee of the financial creditor, Union Bank of India at whose instance the CIRP of the Corporate Debtor

commenced by the order dated August 8, 2019. Kanakabha Ray made scurrilous remarks not only against the members of the Suspended Board of Directors, but also against the Learned Advocates representing the Suspended Board of Directors. Kanakabha Ray was extremely biased and even threatened the members of the Suspended Board of Directors with dire consequences. As a result, thereof, he was removed and was disallowed from continuing as the Resolution Professional of the Corporate Debtor by the order dated July 3, 2020 passed by the Hon'ble NCLT, Kolkata. The order of the Hon'ble NCLT was affirmed by this Hon'ble Appellate Tribunal by the order dated August 18, 2020. The order of this Appellate Tribunal was affirmed by the Hon'ble Supreme Court of India by the order dated September 30, 2020.

11. In light of what has been stated hereinabove, the present appeal should be allowed and the Impugned Order dated 10.12.2024 passed by the AA in IA No. 466/2020 should be set aside.

Submissions of the Liquidator

12. Respondent liquidator while explaining the transactions undertaken by the appellant to be fraudulent outlines that during the financial year 2011 – 2012, the Corporate Debtor invested INR 8.80 Crores (Indian Rupees Eight Crores Eighty Lakhs Only) in the equity shareholding of Orient Exports, a related party of the Corporate Debtor by purchasing 88000 equity shares. The investment of INR 8,80,00,000/- Crores (Indian Rupees Eight Crores Eighty Lakhs Only) is clearly reflected in the audited accounts of Orient Exports for the financial year 2011 – 2012, as per the documents available on the Ministry of

Corporate Affairs ('MCA') website.

13. As evidenced from the balance sheet of Orient Exports, the par value of the shares of Orient Exports was only INR 10/- (Indian Rupees Ten) per share in the financial year 2011 – 2012. Further, the book value of the shares of Orient Exports was INR 8.50 (Indian Rupees Eight and Fifty Paise) as on 31.03.2011, as per the audited accounts. Despite this, in that same year, the Corporate Debtor subscribed to 88000 equity shares at a price of INR 1000 (Indian Rupees One Thousand) per share. This fact was a highly unusual transaction defying general business sensibilities, and is further bolstered by the fact that during the immediately preceding financial year 2010 – 2011, there was a subscription of equity shares in Orient Exports at the price of INR 10 (Indian Rupees Ten) per share to only the key managerial personnel i.e. the Appellant herein. At this juncture, it is crucial to point out that the Appellant was a director in the Corporate Debtor as well as Orient Exports. It is inconceivable to consider or assume that the shares of a company can see an increase in share price by 9,900% (Nine Thousand Nine Hundred Percent) i.e. from INR 10/- to INR 1,000/- per share in the span of only 1 (one) year. Shockingly thereafter, in financial year 2013 – 2014, the Corporate Debtor sells the entire 88000 shares held in Orient Exports to the Appellant herein, at a price of INR 10/- per share i.e. total value of INR 8,80,000/- (Indian Rupees Eight Lakhs Eighty Thousand), thereby causing a net loss to the Corporate Debtor for an amount of INR 8,71,20,000/- (Indian Rupees Eight Crores Seventy-One Lakh Twenty Thousand). It is a brazen case of fraud and all of this stems from the fact that the bank account of the Corporate

Debtor held with Union Bank of India became NPA on 30.06.2010 for an amount of INR 250.01 Crores (Indian Rupees Two Hundred and Fifty Crores), at that time, exclusive of interest. This fact has been conveniently suppressed throughout the proceedings, but clearly finds mention in the CBI chargesheet filed against the Corporate Debtor and attached to the Reply filed by the Respondent herein. Given the size of the debt and the clear inability to repay the amounts due, the Corporate Debtor resorted to diverting funds through fraudulent transactions at the cost of the numerous creditors of the Corporate Debtor (as can be evidenced by the long-term borrowings heading in the balance sheet of the Corporate Debtor). These are the undisputed facts that have necessitated the filing of IA No. 466/2020 and inviting the AA to pass necessary directions to recover the diverted funds.

14. Respondent-Liquidator has also elaborated in detail as to how Sections 66(1) and 66(2) of IBC are to be seen whether in individual and standalone manner or in a holistic manner. Respondent Liquidator claims that an argument has been sought to be raised for the first time by this Appellant before the Appellate Tribunal (that finds no mention in the Impugned Order), that the provisions of Section 66 of the IBC must be read as a whole and for any application to succeed under Section 66 of the IBC, the tests laid out under Section 66(1) and Section 66(2) must both be satisfied. This has been the focal thrust of the Appellant's argument. Respondent-Liquidator brings to our notice that the language of Section 66(1) and Section 66(2) of the IBC both lay forth clear criteria for invoking each sub-section, as demonstrated by the table below:

Requirements	Sec 66(1)	Sec 66(2)
When can it be invoked?	During the CIRP or liquidation process.	During the CIRP process.
Who can initiate?	On an application filed by the RP.	On an application filed by the RP.
Cause for invocation?	If during CIRP or liquidation process it is found that any business of CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose.	If before the insolvency commencement date, a director or partner knew or ought to have known that CIRP could not have been avoided and failed to exercise due diligence in minimising potential loss to the creditors.
Consequence of invocation/Directions that may be issued by Ld. AA	AA may direct persons who were knowingly parties to the carrying on of the business in a fraudulent manner to be liable and make such contributions to the assets of the CD as it may deem fit.	AA may direct the erring director or partner to be liable and make such contributions to the assets of the CD as it may deem fit.

15. It is clear that Section 66(1) and Section 66(2) of the IBC are both self-contained provisions with clear mechanisms for their invocation during a CIRP. Further, a perfunctory glance at Section 67 of the IBC will make it abundantly clear that the draftsmen and legislators clearly intended for Section 66(1) and Section 66(2) to operate independently, as the opening line of Sec 67(1) and 67(2) of the IBC would reflect,

> "67. **Proceedings under Section 66**
>
> (1) Where the Adjudicating Authority has passed an order under sub-section (1) **or** sub-section (2) of Section 66, as the case may be....

XXX

(2) Where the Adjudicating Authority has passed an order under sub-section (1) **or** sub-section (2) of Section 66, as the case may be…."

16. The intentional use of the disjunctive "or" makes the intent abundantly clear that the provisions must be read as independent sub-sections applicable to the facts in hand. Most recently, in the decision dated 23.04.2025 rendered by the Hon'ble Supreme Court in **Hussain Ahmed Choudhury and Ors. v. Habibur Rahman(Dead) Through LRs and Ors.** *[Civil Appeal No. 5470 of 2025]*, the Apex Court reiterated the existing position of legal interpretation in paragraph 26 of the decision by stating:

> "26. Section 34 entitles a person to approach the appropriate court for a declaration, if that person is entitled to (i) any legal character or (ii) any right as to any property. "Legal character" and "right to property" are used disjunctively so that either of them, exclusively, may be the basis of a suit. **The disjunctive 'or' cannot be read as a conjunctive 'and'**."

17. The Respondent further submits that Section 66(1) of the IBC correlates to Section 339(1) of Companies Act, 2013, and must be read in light of this similarity.

18. Finally, the Respondent submits that it is settled law that fraud does not have a lookback period. Assuming the incorrect interpretation that Section 66(1) and Section 66(2) of IBC were required to be read together, then an assumption of limitation automatically applies to fraudulent transactions, as the ingredient of Section 66(2) is knowledge of impending CIRP. Given that the limitation period for invoking CIRP is 3 years, the lookback period applicable to fraud is completely

negated. This could not have been the intent covered in a slew of judgements dealing with fraud.

19. Reliance is placed on the decision rendered by this Appellate Tribunal on 03.07.2025 in **Gopal Kalra v. Akhilesh Kumar Gupta [2025 SCC Online NCLAT 1129]** which has been taken up by us in our appraisal herein later on.

20. The Respondent also places reliance of the decision of this Appellate Tribunal in **Sangeeta Jatinder Mehta and Anr. v. Kailash Shah RP of New Empire Textile Processor Private Limited [CA(AT)(INS) 104 of 2024]** and also on **Renuka Devi Rangaswamy, Interim Resolution Professional of M/s. Regen Infrastructure Services Pvt. Ltd. v. Madhusudan Khemka, Suspended Director of M/s. Regen Infrastructure Services Pvt. Ltd. [2023 SCC Online NCLAT 1722]**

21. During the course of arguments, the Appellant relied on a very recent decision of this Hon'ble Appellate Tribunal rendered in **Nalinesh Kumar Paurush, Member of Suspended Board of Directors of CD and Ors. v. Arvind Mittal, Resolution Professional of Temple Leasing and Finance Limited and Ors. [CA(AT)(INS) 346 of 2024 and IA 6783 of 2024]**.

22. The Respondent – Liquidator opposes the arguments of the Appellant that principles of natural justice were violated as the Appellant was not heard prior to reserving the Impugned Order. Respondent contends that this is a completely disingenuous argument as the Appellant's own submissions in para (aa) – (gg) of

the Appeal categorically records the numerous opportunities granted to the Appellant to appear and submit before the Adjudicating Authority. The Appellant has very intentionally chosen not to appear in each of those dates, whilst appearing in other applications in the same matter. The Appellants were well aware of each date of hearing of the matter as well as the next date granted upon adjournment due to the non-appearance of the counsel. Respondent also places its reliance on the decision rendered by this Appellate Tribunal in **Ashok Tiwari v. DBS Bank and Anr. [2024 SCC Online NCLAT 637]**, wherein the Hon'ble Bench has held that the provisions of Rule 49 of the NCLT Rules, 2016 cannot be misused and 'sufficient cause' must be considered.

23. Respondent – Liquidator also contends that there is clear evidence of fraudulent transactions having been undertaken. The Appellant has not been able to substantiate that the transactions do not attract the provisions of Section 66 of the IBC and has also not been able to justify any 'sufficient cause' for not appearing on the given dates before the Adjudicating Authority only for submission of written notes, if any.

24. On the issue of the bias of the erstwhile resolution professional Respondent Liquidator brings to our notice that initially Mr Pinaki Sircar was appointed as the IRP of the. Subsequently Mr Kanakabha Ray was appointed as the RP in replacement of Mr Pinaki Sircar as per order dated 3rd July 2020 passed by the NCLT Kolkata Bench. Later on, as per the orders of AA on 18th September 2020 in IA(IB) 823/KB/2020 the Adjudicating Authority appointed

Mr Shashi Agarwal as the resolution professional and later on 15th June 2022 was appointed as Respondent Liquidator. RP Liquidator brings to our notice that IA (IB) No. 466 of 2020 has been filed by the erstwhile RP in the capacity as RP and as such all other allegations or contentions are vehemently denied.

25. The Respondent Liquidator contends that arguments of the appellant are aimed at diverting attention from the crux of the matter. Instead of addressing the pivotal fact that the fraud came to light only after a detailed examination of the books of accounts, the appellant is making irrelevant and tangential statements and contentions. These submissions fail to directly engage with or refute the specific evidence and timeline establishing the discovery of fraud during the scrutiny of financial records.

26. Respondent liquidator also brings to our notice that under the IBC 2016 the transaction's falling under the ambit of preferential undervalued fraudulent and extortionate (PUFE) transactions, if influenced by fraud are not constrained by look back, which we will discuss in detail in our appraisal.

27. It is important to note that the account of the CD has long been declared as fraud and a case has been lodged with the CBI which in turn has filed charge sheet. It is also to be noted that since there were some issues between the erstwhile RP Mr Kanakabha Ray and the COC members, the RP filed the application based on material available with him considering such information to be sufficient for forming an independent view without inquiring from the

lenders as to the status of any complaint with some law enforcement agency. It is to be noted that the timelines prescribed under the IBC, 2016 and the regulations framed there under are directory in nature and not mandatory. In the present case the RP has meticulously investigated the affairs of the CD and identified several fraudulent transactions However IA No. 466/2020 pertains to only one such fraudulent transaction

Appraisal

28. We have heard counsels of both sides and also perused materials placed on record. We find the issues for consideration before us are as follows:

a. Is their violation of the principles of natural justice against the Appellant in this case before the orders were reserved by the Adjudicating Authority?

b. Can Section 66(1) of the Code be interpreted or invoked or made operational without recourse to Section 66(2) of the Code? Do they operate independent of each other or jointly?

29. With respect to the arguments that the principles of natural justice were violated in this case, the Appellant claims that the application I.A. (I.B.)/466(KB)/2020 was filed on 03.03.2020, however, there had been no substantial hearing of the application until February, 2024. Appellant has narrated the events in his APB to substantiate his claim. The Appellant claims that the I.A. (I.B.)/466(KB)/2020 was heard on 06.02.2024, 08.03.2024 and

15.07.2024. The Appellant has given details from paras 5 to 17 at page 26 to 30 of the Appeal Paper Book, as to how it could not present his case and for that reason, he had filed a recall application on 06.12.2024 and was also listed in the cause list on 10.12.2024.

30. To determine the sufficiency of the cause for recall per Rule 49 of the NCLT Rules, 2016, it will be useful to reproduce the grounds presented by the appellant (at page 26 APB) as given below:

> "5. It is pertinent to mention that I. A. (IB) No. 466 of 2020 [hereinafter referred to as the "said application"] was heard by the Hon'ble Adjudicating Authority on February 6, 2024, March 8, 2024 and July 15, 2024. The aforesaid position would be evident from the orders passed on the aforesaid dates, copies whereof are chronologically annexed hereto and collectively marked as "Annexure A-13".
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> 6. All along, the appellant was contesting the said application. On July 15, 2024, arguments were advanced by the Learned Advocates representing the Appellant before the Hon'ble Adjudicating Authority. The arguments on the said date were incomplete and the matter was posted for hearing on August 7, 2024. On the said date, the application was not taken up for hearing on account of paucity of time of the Hon'ble Adjudicating Authority. The aforesaid position would be evident from the order dated August 7, 2024, a copy whereof is annexed hereto and marked as "Annexure A-14".
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> 7. On September 19, 2024, the said application was appearing in the cause list of the Hon'ble NCLT. Mr. Souvik Sana, was the Advocate on Record of the members of the Suspended Board of Directors of the Corporate Debtor, including the Appellant. Mr. Souvik Sana, Advocate instructed Mr. Aritra Basu, Advocate to appear and represent the Members of the Suspended Board of Directors. On September 19, 2024, Mr. Souvik Sana, Advocate was engaged in Court No. 29 and Mr. Aritra Basu, Advocate was engaged in Court No. 38 in the Hon'ble High Court at Calcutta, when the matter was taken up for hearing. In those circumstances, the

Members of the Suspended Board of Directors went unrepresented and the hearing of the application was adjourned to October 22, 2024.

8. On and from October 9, 2024, the Puja Vacation of the Hon'ble High Court at Calcutta and the Hon'ble NCLT intervened. In those circumstances, the Learned Advocates engaged by the Members of the Suspended Board of Directors were unavailable. As a result, Mr. Kuldeep Mullick, Advocate was instructed to pray for an adjournment on the ground of non-availability of the Learned Senior Counsel. Accordingly, the hearing of the applications was adjourned to November 27, 2024 on the prayer made by the Learned Advocate representing the Members of the Suspended Board of Directors.

9. The Hon'ble High Court at Calcutta reopened after the Puja Vacation on November 4, 2024. Unfortunately, the Learned Advocate on Record engaged in the matter, Mr. Souvik Sana, was diagnosed with viral fever and was not attending his office from November 10, 2024 to November 28, 2024. Mr. Souvik Sana, Advocate was advised by his family doctor not to attend court and had advised complete bed rest. In the said circumstances, Mr. Sana Advocate could not instruct the Learned Senior Counsel to appear in the aforesaid matter.

10. On November 27, 2024 the said application was called on for hearing and on account of non-appearance of Mr. Souvik Sana, Advocate an order was passed in terms whereof the said application filed by the erstwhile Resolution Professional was reserved for final judgement and order. The right to file the Written Notes of Arguments was also closed by the Hon'ble NCLT. This is despite the fact that the Members of the Suspended Board of Directors did not conclude their final arguments in the said application pending adjudication.

11. Mr. Aritra Basu, Advocate was instructed to appear before the Hon'ble NCLT on November 27, 2024 on behalf of the members of the suspended Board of Directors as Mr. Souvik Sana, the Advocate on Record was indisposed.

12. Mr. Basu, Advocate was engaged before the Hon'ble High Calcutta in Court Room No. 16 and could not attend when the said application was called on for hearing. In the said circumstances,

the members of the suspended Board of Directors went unrepresented before this Hon'ble Tribunal on the said date.

13. The Members of the Suspended Board of Directors and Mr. Souvik Sana, Advocate was under the impression that the said application was not taken up for hearing on November 27, 2024. The Learned Advocate of the Members of the Suspended Board of Directors were waiting for the next date of hearing to be allotted by the Court Officers of the Hon'ble NCLT.

14. On November 29, 2024 the members of the suspended Board of Directors in order to peruse the records and in order to find out the next date of hearing of the said application made online searches on the website of the Hon'ble NCLT and thereafter discovered that in terms of the order dated November 27, 2024, the hearing of the application was concluded. Furthermore, by the order dated November 27, 2024 the opportunity given to file the written notes of argument was also closed.

15. Upon discovering the above, necessary intimation was given to Mr. Souvik Sana, Advocate. Mr. Sana, Advocate thereafter instructed his office clerk to obtain necessary information in respect of the above. The office clerk of Mr. Souvik Sana, Advocate, after obtaining necessary information regarding the hearing of the application thereafter informed Mr. Sana, Advocate and the Members of the Suspended Board of Directors that an order has been passed in terms whereof no further opportunity of hearing of the PUFE application and filing of written notes will be given. It is only on the aforesaid date that the members of the suspended Board of Directors and their Learned Advocate discovered that hearing of the said application and filing of written notes was closed.

16. The Appellant filed an application for recalling the order dated November 27, 2024 passed by the Hon'ble Adjudicating Authority. In the recalling application, it was also prayed that appropriate orders be passed granting further opportunity to the appellant to file the Written Notes of Argument. The recalling application was filed on December 6, 2024 and was listed in the Cause List on December 10, 2024.

17. Upon discovering that the application has been listed for 'pronouncement for orders', the Learned Advocates of the appellant mentioned and requested the Hon'ble Adjudicating Authority not to

pronounce the final judgment in the said application. However, the request made by the Learned Advocate of the Appellant was rejected and the impugned order dated December 10, 2024 was passed by the Hon'ble Adjudicating Authority."

31. Against the case set up in the IA, as noted from paragraphs 3 to 9 at page 112 to 114 of the Appeal Paper Book, we note that the Appellant has not been able to controvert the fact of fraud in any way. We note that the Appellant is raising unnecessary technical and procedural issues which are not relevant and this is evident as noted in the IA reproduced as below:

"....

3. The RP approached the directors of the Corporate Debtor (hereinafter referred to as "CD") to acquire the information, documents etc. and thereafter, from time to time, but they either did not respond at all, or responded late and/or responded by furnishing erroneous information aimed at misguiding the RP and to disrupt the CIRP.

4. There were several communications, both verbal and written, between the CD and the RP requesting and reminding the CD to provide certain documents/records, information and explanations. However, CD's attitude had always been very evasive and was not inclined to furnish the information sought in terms of the Code.

5. The Applicant gathered information available at the website of the Ministry of Corporate Affairs about the financial affairs and other matters of the Corporate Debtor

6. From the financial statements of the Corporate Debtors and the related parties as disclosed in the financial statements of the Corporate Debtor, it was found that the Corporate Debtor invested Rs. 1890 lakhs during the financial year 2011-12, in the equity share capital of the related parties, namely, Crescent

Manufacturing Private Limited (Rs. 607 lakhs), Appollo Commercial Private Limited (Rs. 403 lakhs and Orient Exports Private Limited Rs. 880 lakhs. (Annexure 1 Page 1 to 3)

7. The investment of Rs.880 lakhs in the equity of the related party, namely, Orient Exports Private Limited, was also reflected in the audited accounts of this related party for the FY 2011-12 as available at the website of the Ministry of Corporate Affairs. (Annexure 2, Page 4 to 7). From the audited accounts of this related party, it will be evident that the book value of this related party as on 31.03.2011 was only Rs.8.50 per share while the share subscribed was at the rate Rs. 1000 per share. It is also pertinent to note that during the immediately preceding FY 10-11, there was subscription of shares in that company at the rate of Rs.10 only the KMP Sri Swapan Kumar Saha.

8. The aforesaid investment of 88000 equity shares of related party, namely, Orient Exports Private Limited, purchased at Rs. 880 lakhs was sold to the KMP, Mr Swapan Kumar Saha for Rs. 8.80 lakhs, thereby a loss on sale of investment by Rs. 871.20 lakhs was recorded in the books of the Corporate Debtor as per financial statements of the Corporate Debtor for the FY 2013-14 available on the website of the Ministry of Corporate Affairs (Annexure 3. Page 8 to 16).

9. The transfer of 88000 shares from the name of the Corporate Debtor to the name of the KMP, Mr Swapan Kumar Saha on 28.03.2014 as per Annual Return as on 30.09.2014, available on the website of the Ministry of Corporate Affairs (Annexure 4, Page 17 to 27)."

32. Respondent places its reliance on the decision rendered by this Appellate Tribunal in **Ashok Tiwari v. DBS Bank and Anr. [2024 SCC Online NCLAT**

637], wherein it was held that the provisions of Rule 49 of the NCLT Rules, 2016 cannot be misused and 'sufficient cause' must be considered.

> "15. When we look into Rule 49(2), it is clear that where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing. As far as service of notice is concerned, it is an admitted fact that the notice was served on the appellant on 07.03.2022 which has not been denied nor the application was filed on the ground that notice was not served. The second ground on which order can be recalled is where he or they were prevented by any sufficient cause from appearing. Present is not a case where it can be said that the corporate debtor was prevented by any sufficient cause from appearing. Notice has been issued which was duly served. No cause is being showed by the appellant that they were prevented from appearing."

33. From the facts and circumstances of the case we find that, the argument of 'sufficient cause' cannot be continuously applied for four hearings in a row and it becomes clear that the intent of the Appellant in this case was to delay the final adjudication of this issue. The appellant in this case has appeared substantial number of times before NCLT and had failed to make its submissions. Respondent liquidator also brought to our notice that it has been nowhere stated in the order sheet dated 15th July 2024 that the adjudicating authority had directed the Counsel's appearing to file their convenience note. But even then after so many days the Appellant neither mentioned the matter

nor turned up for providing any justified reason to file the convenience note. Thereafter on 22nd October 2024, last chance was given to make submissions on the next date of hearing, failing which an appropriate order would be passed. Respondent liquidator also brings to our notice that the adjudicating authority had given repeated opportunity to the appellant for their appearance. However, not complying with the same, the right to file written notes were closed, reserving it for orders. Furthermore, the appellant had time and again taken the same ground of non-appearance which itself should not stand a reason to keep the matter in abeyance. Further, we note that the Appellant was in fact heard in detail and the Impugned Order records the submissions of the Appellant. Paragraph 6 of the Impugned Order with the heading *"6. Ld. Counsel for the Respondent"* contains the detailed arguments raised and argued by the counsel for the Appellant herein. Additionally, paragraph 7 of the Impugned Order with the heading *"7. Analysis and Findings"* begins with sub- para 7.1 which states *"Before getting into the merits of the case, we would first like to deal with the respondent contentions."*. Therefore, we note that all arguments raised by the Appellant had been considered by the Adjudicating Authority, and as such, no grounds disputing the fact that fraudulent transactions had taken place were raised.

34. The narration of the appellant, noted by us herein earlier, indicates a pattern that, even after sufficient opportunities and hearings, instead of arguing on merit, Appellant is trying to prolong the proceedings and points to lack of due

diligence and dilatory tactics. We, therefore find that the reasons as noted above are not sufficient for recall of the orders.

35. Apart from above narration, it was also brought to our notice that the CD had done business transactions with two other entities namely, Crescent Manufacturing Private Limited and Appollo Commercial Private Limited for the same application on same grounds, filed by RP, but these applications were rejected by the Adjudicating Authority. Also, in an Appeal of RP before this Appellate Tribunal, it was not allowed. Further, the Appeal by the RP is pending before the Hon'ble Supreme Court. Respondent clarified that the notice has been issued and the matter is pending before the Hon'ble Supreme Court. Be that as it may, we are concerned of the matter in hand and we proceed to decide on the facts and circumstances of the present case.

36. Respondent liquidator also brings to our notice that under the IBC, 2016 the transaction's falling under the ambit of preferential undervalued fraudulent and extortionate (PUFE) transactions, if influenced by fraud, are not constrained by look back. The Respondent Liquidator also contends that frauds act irrespective of the passage of time. We note that the appellant is solely focusing on the fact that the transaction in question occurred more than 10 years ago and this argument is not only misplaced but also without any merits. We note that the discovery of fraud by the RP was made only after a meticulous examination of the books of accounts. Fraudulent transactions cannot be shielded by the lapse of time. Respondent Liquidator also contends that fraud

nullifies the protections of any statutory limitation as the intention behind fraudulent transactions is to deceive creditors and subvert the insolvency resolution process. The appellant instead of disputing the Commission of fraud is attempting to divert the focus to the timeline of transactions, which has no bearing in the matter, given that fraud was discovered only recently and falls within the scope of investigation under Section 66 of the IBC. Therefore, we find that the contentions of the appellant regarding the time of the transactions are irrelevant.

37. We also note that fraud by its very nature cannot be overlooked or condoned merely because of procedural technicalities or partial identification. Whether there is one fraudulent transaction or multiple, the principle remains the same that fraud vitiates all transactions. Even a single instance of fraud once proven is sufficient to establish the intent to deceive creditors and manipulate the insolvency process. The appellant's contention that procedural timelines should bar or restrict the investigation or adjudication of fraudulent transactions is untenable. Fraud whether limited to one transaction or widespread across several, undermines the integrity of the insolvency framework and warrants judicial intervention to restore equity and protect the creditors' interest. We thus cannot agree with such specious arguments of the Appellants. It was brought to our notice that the account of the CD has been declared as fraud and a case has been lodged with the CBI, which in turn has filed charge sheet. We may not look into this fact of filing of charge sheet by CBI, as the fact that the business of the CD was being carried on to defraud the creditors of fraud has been independently

established, basis the facts and circumstances of the case and which satisfies the requirement of Section 66 of the Code.

38. We, therefore, do not find that there is a violation of the principle of natural justice against the Appellant. Appellant had sufficient opportunities to argue the case on merit and he did so also and which was noted by the adjudicating authority in the impugned order. Even then, he has been making tangential arguments to divert focus from the fraud, which needs to be addressed by him, but which he did not. Appellant's arguments relating to the fraud are discussed separately herein after.

39. Now we delve into the issue whether Section 66(1) of the Code can be interpreted or invoked or made operational without recourse to Section 66(2) of the Code or not.

40. It will be instructive to reproduce the Section 66 for our appraisal:

> **"Section 66. Fraudulent trading or wrongful trading.** (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor **has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose**, the adjudicating authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.
>
> (2) On an application made by a resolution professional during the corporate insolvency resolution process, the adjudicating authority

may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

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

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

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

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

41. Appellant canvassed the argument that the RP had filed an Application under Section 66(2) of the Code but the necessary conditions under this Section were not fulfilled. The prayer itself is under Section 66(2), even though the heading of the application by RP is under Section 66(1) of the Code and Adjudicating Authority has passed the order under Section 66(1), but there was

no prayer under this section. Appellant claims that both these sections are inter-related and they have to be read together. We observe that whatever the heading of the application be, the matter has been dealt in Section 66(1) of the Code by the Adjudicating Authority and decided accordingly and this argument by the Appellant is not sustainable.

42. The Respondent brings to our notice that the relevant Section applicable in this case is Section 66(1) of the Code for setting up a case of Fraudulent trading or wrongful trading, which provides that *"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."* We note an application under this section may be filed if any of the two conditions stipulated in this subsection are satisfied which are:

1. any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or
2. for any fraudulent purpose

Furthermore, we not that this section can be invoked in case *"... during the corporate insolvency resolution process or a liquidation process".*

43. Perusal of the facts and circumstances and submissions, we find that the business of the corporate debtor was carried on with intent to defraud creditors of the corporate debtor and it has been clearly established. Briefly we note that conduct hereinafter, which cannot go unnoticed by any reasonable person. We note that the Appellant, in the year 2013-14, had acquired 88,000 equity shares of a related party namely Orient Exports Pvt. Ltd. (Orient Exports), from the CD (*which was acquired by the CD in the year 2011-12 for a sum of* ₹ *8.80 crores*) at an undervalued rate of ₹ 8.80 lakhs, thereby causing loss of ₹ 871.20 lakhs to the CD. Accordingly, it is a fit case for a direction to be issued to the Appellant to make contribution of ₹ 871.20 lakhs and for that reason we cannot find any infirmity in the order of the Adjudicating Authority that Appellant should be making such a contribution.

44. We further note that the next subsection 66(2) relates to specific provisions for a Director or partner of the CD for which CIRP is going on. This subsection provides that if before the insolvency commencement date, a director or partner knew or ought to have known that CIRP could not have been avoided and failed to exercise due diligence in minimising potential loss to the creditors, AA may direct the erring director or partner to be liable and make such contributions to the assets of the CD as it may deem fit. We observe that the first provision (section 66(1)) is very broad but not the second one (Section 66(2)) and, moreover, they operate independently. This gets clarified by Section 67 which is clear from the first line of the Section.

"Section 67. Proceedings under section 66.

(1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation. — For the purposes of this section, "assignee" includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made."

45. From a bare reading of Section 66(1) and Section 66(2) of the IBC we find that both have self-contained provisions, with clear mechanisms for their invocation during a CIRP. Further, a perfunctory glance at Section 67 of the IBC will make it abundantly clear that the draftsmen and legislators clearly intended for Sec 66(1) and Section 66(2) to operate independently, as the opening line of Section 67(1) and 67(2) of the IBC would reflect,

> "67. **Proceedings under Section 66**
>
> (3) Where the Adjudicating Authority has passed an order under sub-section (1) **or** sub-section (2) of Section 66, as the case may be….
>
> XXX
>
> (4) Where the Adjudicating Authority has passed an order under sub-section (1) **or** sub-section (2) of Section 66, as the case may be…."

We also note the intentional use of the disjunctive "or" makes the intent abundantly clear that the provisions must be read as independent sub-sections applicable to the facts in hand. We find that Respondent-Liquidator also gets support from the decision dated 23.04.2025 rendered by the Hon'ble Supreme Court in **Hussain Ahmed Choudhury and Ors. v. Habibur Rahman(Dead) Through LRs and Ors. [Civil Appeal No. 5470 of 2025],** wherein the Apex Court reiterated the existing position of legal interpretation in paragraph 26 of the decision by stating:

> "26. Section 34 entitles a person to approach the appropriate court for a declaration, if that person is entitled to (i) any legal character or (ii) any right as to any property. "Legal character" and "right to property" are used disjunctively so that either of them, exclusively, may be the basis of a suit. **The disjunctive 'or' cannot be read as a conjunctive 'and'**."

46. Appellant places its reliance on decision of this Appellate Tribunal in the judgement of 03.07.2025 in **Gopal Kalra v. Akhilesh Kumar Gupta [2025 SCC Online NCLAT 1129],** wherein the Bench framed the issue to be adjudicated upon as – *"I. Whether the transactions undertaken by the Appellant in the LED*

Bulb business during FY 2016-17 constituted fraudulent trading under Section 66(1) of the Code?". We find that the bench proceeded to adjudicate upon the issue by first categorically stating the ingredients to be met in order to attract Section 66(1) of the IBC. The relevant paragraph has been reproduced below:

> "32. To determine whether these transactions amount to fraudulent trading, **we must apply the ingredients of Section 66(1) of the IBC**, which authorizes the Adjudicating Authority to direct any person who was knowingly a party to carrying on business with intent to defraud creditors or for any fraudulent purpose, to contribute to the assets of the Corporate Debtor. This requires us to examine:
>
> i. Whether there was an intent to defraud; and
> ii. Whether the Appellant was a knowing party to such conduct."

Therefore, instead of supporting this case of the Appellant, the judgement supports the case of the Respondent-Liquidator.

47. The Respondent also places reliance of the decision of this Appellate Tribunal in **Sangeeta Jatinder Mehta and Anr. v. Kailash Shah RP of New Empire Textile Processor Private Limited [CA(AT)(INS) 104 of 2024]** wherein the Bench has held,

> "7. Section 66, sub-section (1) provides that if 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 RP 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."

Herein this AT has held that Section 66(1) of the IBC is a standalone provision capable of being invoked without reading in the requirements stipulated under Section 66(2) of the IBC, which very much supports the case of the Respondent.

48. Finally, reliance is also placed by the Appellant on the decision of this Appellate Tribunal in **Renuka Devi Rangaswamy, Interim Resolution Professional of M/s. Regen Infrastructure Services Pvt. Ltd. v. Madhusudan Khemka, Suspended Director of M/s. Regen Infrastructure Services Pvt. Ltd. [2023 SCC Online NCLAT 1722]** wherein the Hon'ble Bench held that

> "38. The Appellant has a 'duty', to establish to the satisfaction of this 'Tribunal', that a 'person', is knowingly carrying on the business with the 'Corporate Debtor', with an 'dishonest intention', to 'defraud', the 'Creditors'. For a 'Fraudulent Trading'/ 'Wrongful Trading', necessary materials are to be pleaded by a 'Litigant'/ 'Stakeholder', by furnishing 'Requisite Facts', so as to come within the purview of the ingredients of Section 66 of the I & B Code, 2016. Suffice it, for this 'Tribunal', to pertinently point out that **the ingredients of Section 66(1) and 66(2) of the I & B Code, 2016, operate in a different arena.**"

This judgement also supports the case of the Respondent and rebuts the case of the Appellant in very clear terms as the Respondent had been successfully able to set up a case that the business of the corporate debtor was carried on with intent to defraud creditors of the Corporate Debtor.

49. During the course of arguments, the Appellant relied on a very recent decision of this Hon'ble Appellate Tribunal rendered in **Nalinesh Kumar Paurush, Member of Suspended Board of Directors of CD and Ors. v. Arvind**

Mittal, Resolution Professional of Temple Leasing and Finance Limited and Ors. [CA(AT)(INS) 346 of 2024 and IA 6783 of 2024] and claims that *" one of the main ingredient of Section 66 of the Code is that a transaction may only be termed as a fraudulent transaction if it has been carried on with a intention to defraud creditors and before the insolvency commencement date the directors knew that there was no reasonable prospect of avoiding the CIRP process along with the fact that the due diligence has not been exercised by directors for minimizing the losses to the creditors"* The relevant paragraphs of the decision, relied upon by the Appellant is reproduced as below:

> "35. Thus the necessary ingredients of invoking this section appears to be that (i) the business of the CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose. (ii) 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 CIRP and (iii)or such director or partner did not exercise due diligence in minimizing the potential loss to the creditors."

> "41. As noticed earlier, one of the main ingredient of Section 66 of the Code is that a transaction may only be termed as a fraudulent transaction if it has been carried on with an intention to defraud creditors and before the insolvency commencement date the directors knew that there was no reasonable prospect of avoiding the CIRP process along with the fact that the due diligence has not been exercised by directors for minimizing the losses to the creditors."

50. The Appellant has also placed reliance upon the Hon'ble Supreme Court judgement in **Atlanti Spinning and Weaving Mills Limited Vs. Dolly**

Investment Company Private Limited, Civil Appeal No. 7420 of 2023. The relevant extracts of the judgments are reproduced below: -

> "…
> 51. We have considered the rival submissions and have perused the materials on record. Before we proceed to address the rival submissions it would be useful to notice Sections 66 and 67 of IBC under which the appellant filed the application to declare the sale void. Sub-section (1) of Section 66 makes it clear that before consequential directions as contemplated under sub-section (1) of Section 66, or under Section 67, are issued a finding would have to be recorded that the business of the corporate debtor has been carried on with the intent to defraud creditors of the corporate debtor or for any fraudulent purpose…."

The above judgment requires that a finding would have to be recorded that the business of the CD has been carried on with the intent to defraud the creditors of the CD or for any fraudulent purpose. In this case there is a clear finding that the business of the CD was being carried on with the intent to defraud the creditors as we note that share purchase and sale were being carried on, which had already been apparently loss-making transactions, even though the accounts of the CD were declared as NPA by the Creditors. Therefore, the above judgment of the Supreme Court is of no assistance to the Appellant.

51. The Appellant has also relied upon **Ashok Kumar Agarwal vs. Narayan Chandra Saha & Ors., Company Appeal (AT) (Ins.) No. 139 of 2025**. The relevant extracts of the judgments are reproduced below: -

"...

6. The fact that Corporate Debtor who was to receive the sum of Rs.37.50 Lakhs has settled with the Orient Export Pvt. Ltd. by transferring shares of another group Company cannot lead to conclusion that the transaction was fraudulent. Adjudicating Authority has clearly held that mere possibility of fraud without any specific finding of fraud is not legally sustainable. Liquidator's presumption of under valuation and fraud without any circumstantial evidence even, if not direct evidence, cannot be a basis for allowing the Application under Section 66 of the Code."

The above order of this AT is of no assistance to the appellant as the facts of the present case are distinguishable and a clear case has been set up and adjudicated by the by NCLT. We observe that the Appellant is distorting the interpretation provided in this decision as this AT was clearly commenting on the invocation of Section 66(2) of the IBC and there are two paragraphs in the referred decision that completely demolish the incorrect assertion of the Appellant and these are cited as below:

"5. It also reflected that the Respondent liquidator filed an application under Section 66 of the Insolvency and Bankruptcy Code 2016, bearing IA No. 2536/ND/2022 alleging two transactions with regard to buying of shares of Uno Industries Limited and Jayant Mercantile Company Limited by the Suspended Board of Directors labelling them as fraudulent. The Ld. Tribunal by passing the impugned order directed the appellants to contribute a sum of Rs. 28,50,000/- to the assets of the CD with regard to these two transactions which in the opinion of Ld. Tribunal were made with the purpose of avoidance of commencement of insolvency resolution process in respect of the CD and due diligence has not been exercised by the Promoters/Directors/Appellants."

[emphasis supplied]

> "44. That is why under Section 66(2) it is provided that the directors of the CD or partner must know or ought to have known that there is no reasonable prospect of avoiding the commencement of corporate insolvency resolution process and simultaneously another condition is added by putting the word "and" that such director or partner did not exercise due diligence in minimizing the potential loss to the creditors. Thus the clause "a" and "b" of Sub-Section 2 of Section 66 are required to be read together and if a comprehensive reading of these provisions is done it would emerge that the director or partner of the CD at the time of making the impugned transactions must know that there is no reasonable prospect of avoiding the CIRP process and they did not exercise due diligence in minimizing the potential loss to the creditors of the CD. Thus non-exercise of due diligence alone may perhaps be not sufficient to label a transaction as fraudulent in order to attract sub-section 2 of section 66 of the Code."
>
> [emphasis supplied]

52. A simple reading of, both, paragraphs 5 and 44 of the decision, makes it abundantly clear that the Hon'ble Appellate Tribunal was dealing with a matter wherein Sec 66(2) of the IBC was being argued and adjudicated upon. Therefore, the entire discussion on ingredients of the section refers to the ingredients for invocation of Sec 66(2) of the IBC only and can in no manner be inferred to deal with Sec 66(1) of the IBC. In fact, there is no mention of Sec 66(1) of the IBC in the findings of the Appellate Tribunal and therefore, the intent to limit the analysis to Sec 66(2) of the IBC is not only implied, but is the only appropriate conclusion that may be drawn and this judgment doesn't support the case of the Appellant.

53. We find that the arguments presented by the Appellant are not sufficient

to deny the factual matrix which has been placed before us by the RP. This is supported by the balance sheet of the CD, which bears the signature of the Appellant. RP obtained them from the records with Ministry of Corporate Affairs, as the CD had not provided them and not cooperated in the proceedings. We also observe that the Appellant is a KMP in both the companies and has caused a loss to the CD by these transactions by first buying the shares from a related party at a high price and subsequently selling it back to the same related party at a very low price, thereby incurring huge loss. Even though the transactions relate to earlier period but the fraudulent intent is very clearly established.

Conclusions

54. The principal grievance of the Appellant that his right to hearing was closed and his recall application has not been considered and there has been a violation of natural justice against him cannot be established, in the facts and circumstances and the submissions. Even the grounds of biased conduct of the earlier resolution professional cannot help the appellant as the facts and circumstances clearly establish that any business of the corporate debtor was carried on with intent to defraud creditors of the corporate debtor, thus invoking section 66(1) of the Code. The other main ground that Section 66 with its two provisions are interconnected and cannot be invoked independently also doesn't stand the legal scrutiny as well as the judicial precedents. Moreover, the appellant has not been able to controvert the facts but has been delaying the proceedings bases artificially created technicalities and procedural

requirements. Under these circumstances, we don't find any infirmity in the orders of the Adjudicating authority.

Orders

55. In the above background we find no merit in the Appeal and is dismissed. Orders of Adjudicating Authority directing the Appellant to contribute to the CD a sum of ₹ 871.20 lakhs along with interest @ 12%, from the date of the investment of the CD in the said related party namely, Orient Exports Pvt. Ltd is upheld. No orders as to costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi.
November 06, 2025.

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