

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**IA(IBC)/324/KOB/2022**

**IN**

**CP(IB)/20/KOB/2021**

*(Under Section 66 of IBC, 2016)*

***Date of Institution: 16.09.2022***

**&**

**IA(IBC)/224(KOB)2023**

**IN**

**IA(IBC)/324/KOB/2022**

*(Under Section 60(5) of IBC, 2016 r/w  
Rule 39 & 11 of NCLT Rules,2016 &  
Section 424 of Companies Act,2013 &  
Section 30 & 151 of CPC,1908)*

***Date of Institution: 11.04.2023***

***Order delivered on:08.05.2026***

***In the matter of:***

**PERIYAR AGRO FOOD INDUSTRIES**

**MEMO OF PARTIES:**

**IA(IBC)/324/KOB/2022**

**Mr. George Varkey**

IBBI Regn no. IBBI/IPA-01/IP-  
P00433/2017-18/10756

Resolution Professional of Periyar Agro  
Food Industries P. Ltd No.110, Ground  
Floor, Surabhi Nagar, Kakkanad, Kochi,  
Kerala -682030

**...Applicant**

**-Vs-**

**1. Mohammed Riyaz**

Pareli House, Thandekad, Ponjassery P.O,  
Permbavoor – 683547

**2. Abdul Marakkar**

Pareli House, Thandekad, Ponjassery P.O,  
Permbavoor - 683547 Devkrupa  
Corporation

**...Respondents**

**&**

**IA(IBC)/224(KOB)2023**

**1. Mohammed Riyaz**

Pareli House, Thandekad, Ponjassery P.O,  
Permbavoor - 683547

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**...Applicants**

**-Vs-**

**Mr. George Varkey**

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Resolution Professional of Periyar Agro  
Food Industries P. Ltd No.110, Ground Floor,  
Surabhi Nagar, Kakkanad, Kochi, Kerala -  
682030

**...Respondents**

***Coram:***

**HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL**

***Appearances:***

**IA(IBC)/324/KOB/2022**

For the Applicant : Mr Akhil Suresh, Advocate.

Mr K Parameswaran Nair, RP

For the Respondents : Mr Sherry Samuel Oommen, Advocate.

**IA(IBC)/224(KOB)2023**

For the Applicants : Mr Sherry Samuel Oommen, Advocate.

For the Respondent : Mr Akhil Suresh, Advocate.

Mr K Parameswaran Nair, RP

**ORDER**

1. The present set of Applications arises out of IA(IBC)/324/KOB/2022 filed in CP(IBC)/20/KOB/2021 by the Resolution Professional of M/s. Periyar Agro Food Industries Private Limited, under Section 66 of the Insolvency and Bankruptcy Code, 2016, against the Respondents, being the suspended Managing Director and Director of the Corporate Debtor, with the following prayers:

*(1) To declare that the respondents have carried out the business of the corporate debtor with an intend to defraud its creditors and for fraudulent purposes;*

*(2) Direct the Respondents to pay a sum of Rs. 14,30,06,084.00 to the bank account of the Corporate debtor being the value of closing stock of raw materials and finished goods of the Corporate Debtor;*

*(3) Direct the Respondents to pay a sum of Rs.23,84,57,599.52 to the bank account of the Corporate debtor being trade receivables of the Corporate Debtor;*

*(4) Any other reliefs as this Hon'ble Tribunal deems fit and proper;*

2. During the pendency of the said Application, an Application IA(IBC)/224(KOB)2023 came to be filed by the Respondents in IA(IBC)/324/KOB/2022 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 39 and 11 of the NCLT Rules, 2016 and other enabling provisions, seeking production of documents and permission to cross-examine the Resolution Professional in respect of the pleadings and documents relied upon in the main Application. Since the issues involved in the aforesaid Applications are interconnected and arise

out of the same set of facts, both Applications are taken up together and are being decided by way of this common order.

**Brief facts of the case: -**

3. M/s. Periyar Agro Food Industries Private Limited, the Corporate Debtor, incorporated on 23.12.1996 and registered with the Registrar of Companies, Ernakulam, is engaged in the manufacture of wheat-based products such as atta, maida and suji under the brand "Taj Gold." An application under Section 9 of the Insolvency and Bankruptcy Code, 2016, was filed against the Corporate Debtor by M/s. ITC Limited for a default of Rs. 1,39,11,188/-, which was admitted by this Adjudicating Authority vide order dated 21.12.2021, and the Applicant herein was appointed as the Interim Resolution Professional.
4. During the Corporate Insolvency Resolution Process, certain irregularities were observed in the financial affairs of the Corporate Debtor, pursuant to which the Committee of Creditors, in its 8<sup>th</sup> meeting held on 27.04.2022, resolved to conduct a forensic audit and appointed Mr Vibin Vincent as the Forensic Auditor. Based on the findings of the forensic audit report dated 14.09.2022 and the Applicant's analysis, it was concluded that certain transactions were carried out with the intent to defraud creditors, leading to the filing of the present application under Section 66 of the Insolvency and Bankruptcy Code, 2016.
5. The Applicant submitted that it is evident from the forensic audit report that the value of closing stock of traded and finished goods as on 31.03.2021 was Rs. 17,53,67,206.72, whereas the stock position as on the Corporate Insolvency Resolution Process commencement date was reflected as 'Nil'. It was further submitted that the 1<sup>st</sup> Respondent, during interaction with the forensic auditor, had admitted that the stock value was overstated in the financial statements to maintain drawing power under the overdraft facility. However, the Applicant submitted that the

said position was subsequently contradicted by the 1<sup>st</sup> Respondent during the 14<sup>th</sup> meeting of the Committee of Creditors, wherein it was asserted that physical stock was in fact available as on 31.03.2021, as well as at the time of the stock audit conducted by the bank in September 2021 and further submitted that no store records or supporting documents were produced to substantiate or validate the value of stock as reflected in the audited balance sheet as on 31.03.2021.

6. The Applicant submitted that the forensic auditor observed that consumer goods, including wheat, were in high demand during the lockdown period, and that proper inspection by the Financial Creditor could have prevented any loss or manipulation of stock and receivables. Though Union Bank officials claimed to have undertaken various verification measures, no supporting documents were furnished despite requests. It was further submitted that while the closing stock as on 31.03.2021 was Rs. 17,53,67,206.72, the stock as on the Corporate Insolvency Resolution Process commencement date was 'Nil'. Additionally, Tally records indicated purchases of Rs. 21,69,69,522.81/- and sales of Rs. 24,93,30,645.53/-, highlighting discrepancies in the stock position of the Corporate Debtor.
7. The Applicant stated that after accounting for purchases and sales, the Corporate Debtor ought to have maintained closing stock valued at Rs. 14,30,06,084/- as on the Corporate Insolvency Resolution Process commencement date. The absence of such stock indicates that the same has been sold and/or misappropriated by the Respondents. Accordingly, the Applicant contended that the said transactions fall within the ambit of fraudulent trading under Section 66 of the Insolvency and Bankruptcy Code, 2016, rendering the Respondents liable to contribute to the assets of the Corporate Debtor.
8. The Applicant further submitted that, as per the forensic audit report, the Corporate Debtor had trade receivables amounting to Rs. 23,84,57,599.52

as on the Insolvency Commencement Date; however, the auditor was unable to obtain confirmations from most customers and noted that the Respondents had initially admitted that such receivables were not genuine and were created through bogus sales to maintain drawing power under the overdraft facility. Though this position was not denied at the draft stage, it was subsequently contradicted before the Committee of Creditors, where the Respondents claimed the receivables to be genuine, without furnishing supporting records or customer details. The forensic auditor further observed the absence of sales bills, predominance of cash transactions, and lack of supporting documents to establish the authenticity of the transactions, which was also echoed by the statutory auditor's disclaimer regarding trade receivables.

9. In view of the above, the Applicant submitted that the said trade receivables are fictitious and indicative of fraudulent transactions carried out with the intent to siphon off funds of the Corporate Debtor, thereby attracting Section 66 of the Insolvency and Bankruptcy Code, 2016. It was further contended that the Respondents are liable to contribute to the assets of the Corporate Debtor, as their conduct has caused loss to the creditors, and hence appropriate directions are required to safeguard the interests of the stakeholders.
10. The Respondents, being the suspended Managing Director and Director of the Corporate Debtor, opposed the Application and contended that the same is not maintainable either in law or on the facts. It was submitted that the Application suffers from a fundamental defect, since it fails to specify whether it is instituted under Section 66(1) or Section 66(2) of the Insolvency and Bankruptcy Code, 2016, despite the distinct scope and ingredients of the said provisions. According to the Respondents, such a lack of clarity vitiates the proceedings at the threshold.
11. The Respondents further stated that the Resolution Professional has failed to form an independent opinion and has merely reproduced the findings

of the forensic audit report without application of mind, in violation of Regulation 35A of the CIRP Regulations. The appointment of the forensic auditor was also challenged as unwarranted and vitiated by procedural irregularities, bias and mala fides, and the report was alleged to be perfunctory, based on flawed methodology and a pre-determined conclusion. It was additionally submitted that the forensic report was not furnished to the Respondents, thereby denying them a fair opportunity to respond and violating principles of natural justice.

12. On merits, the Respondents submitted that the allegations regarding the disappearance of stock and fictitious trade receivables are based on conjectures and fail to account for the business realities during the pandemic period, including labour shortages, perishability of goods, adverse weather conditions, and disruption in the food industry. It was contended that these aspects were explained but not duly considered. The Respondents further submitted that stock and receivables had been periodically verified by the lending bank through audits and inspections, and no creditor, including the major financial creditor, had raised any allegation of fraud or illegality.
13. Denying any fraudulent intent, the Respondents submitted that the transactions were carried out in the ordinary course of business to sustain operations during financial distress and that the essential ingredients of Section 66, particularly 'intent to defraud', have neither been pleaded nor established. It was further submitted that no material particulars or evidence have been produced to demonstrate any personal benefit to the Respondents. Placing reliance on ***Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors.***, it was argued that the burden of proof had not been discharged by the Applicant. Accordingly, dismissal of the Application was sought as being devoid of merit and an abuse of the process of law.

**IA(IBC)/224(KOB)2023**

14. During the pendency of the present Application, the Respondents filed IA(IBC)/224(KOB)/2023 under Section 60(5) of the Code read with Rules 39 and 11 of the NCLT Rules, seeking permission to cross-examine the Resolution Professional and for production of documents. It was contended that the Application under Section 66 has been filed with mala fide intent and is based on “borrowed satisfaction” from the forensic audit report, without any independent opinion or determination by the Resolution Professional.
15. The Respondents/Applicants in IA(IBC)/224(KOB)/2023 further stated that there exist material contradictions between the pleadings and submissions of the Resolution Professional in the connected applications, giving rise to serious “points of conflict” which require examination through cross-examination. It was also alleged that the Respondents were denied a fair opportunity, relevant documents were not furnished, and the principles of natural justice were violated. On this basis, it was urged that cross-examination of the Resolution Professional is necessary for a just adjudication of the issues. The Respondents/Applicants in IA(IBC)/224(KOB)/2023 accordingly sought directions to the Resolution Professional to produce various documents, including correspondence with the Committee of Creditors, Union Bank, and the Applicants, as well as records evidencing the formation of his alleged “independent opinion” and opportunity of hearing. It was contended that such documents are essential to determine the veracity of the allegations and that denial of the same would cause serious prejudice.
16. The Resolution Professional opposed the Application and contended that the same is not maintainable either in law or on facts and is liable to be dismissed at the threshold. It was submitted that the reliefs sought for cross-examination and production of documents under Rule 39 of the NCLT Rules can be granted only upon establishment of specific “points of

conflict,” which, according to the Resolution Professional, have not been demonstrated in the present case.

17. It was further alleged that the proceedings under the Code are summary in nature and can be adjudicated on the basis of documents and affidavits on record. The Resolution Professional submitted that the Application under Section 66 is founded on documentary evidence, including financial statements and the forensic audit report, and therefore, no necessity arises for cross-examination. It was also submitted that the main Application has not yet reached the stage of final adjudication, and the present Application is premature.

18. On merits, the Resolution Professional denied the allegations of lack of independent application of mind and contended that the Applications filed under Section 66 of the Code themselves constitute his independent opinion and determination. Further submitted that while assistance of the forensic auditor was taken for analysis and quantification, the Resolution Professional had independently assessed the material and, in fact, did not adopt all findings of the report. It was further submitted that the Applicants have admitted the figures relating to stock and receivables and have only offered explanations, which can be adjudicated on the basis of available records without the need for oral evidence. It is further submitted that this Application has been filed with the intent to delay the proceedings and avoid adjudication on the merits.

**Written submissions**

19. In the written submission, the Respondents submitted that the present application under Section 66 of the Insolvency and Bankruptcy Code, 2016, is not maintainable in law, as the alleged default admittedly occurred during the period covered under Section 10A of the Code. In view of the statutory bar under Section 66(3), no application for fraudulent trading can be sustained for defaults arising during the COVID period. This position is settled by the Hon’ble Supreme Court in ***Ramesh Kymal v.***

***Siemens Gamesa Renewable Power Pvt. Ltd. 2021 KHC 6058***, and the same view has been taken by the Hon'ble NCLAT in ***Manish Mukim v. Ms. Rakhi and Anr., (2025) ibclaw.in 163 NCLAT***. Hence, the present application is liable to be dismissed on this ground alone. The Applicant, however, opposed the said contention by submitting that Section 10A merely suspends initiation of CIRP under Sections 7, 9, and 10, and that Section 66(3) restricts only proceedings under Section 66(2) and not Section 66(1). It was further contended that no such bar exists for fraudulent trading under Section 66(1), and that the benefit of suspension under Section 10A cannot be extended to such proceedings.

20. The Respondents have relied upon and cited numerous decisions; however, it is neither necessary nor feasible to refer to and discuss each of them in detail. Accordingly, only the relevant and significant case laws are being considered here.

21. Respondents further stated that the essential ingredient of "intent to defraud" under Section 66 is completely absent in the present case. All transactions were duly recorded in the books of accounts and were within the knowledge of financial creditors, who, in fact, continued to extend and even enhance credit facilities, thereby negating any allegation of fraudulent intent. It is settled law that fraud requires actual dishonesty, as held in ***Barium Chemicals Ltd. v. Company Law Board AIR 1967 SC 295***, and mere business losses, particularly during the COVID period, cannot be equated with fraudulent conduct. It is further submitted that every transaction resulting in a loss does not amount to fraud, especially when such transactions are transparently recorded and within the knowledge of stakeholders, thereby ruling out any element of deception or suppression. In this regard, reliance was placed on ***Lipi Boilers Limited v. CCE, 2025 SCC OnLine SC 2379***, wherein the Hon'ble Supreme Court reiterated that in the absence of intent to deceive, allegations of fraud cannot be sustained. The Hon'ble Supreme Court in ***CBI v. V.C. Shukla AIR 1998 SC***

**1406**, has further held that books of accounts alone cannot establish guilt, and in the absence of corroborative evidence, allegations based on entries or assumptions are unsustainable.

22. It is further submitted that the entire application is premised on a forensic audit report, which is itself inconclusive, contains disclaimers, and has undergone revision. Such a report cannot form the sole basis for invoking Section 66, as held by the Hon'ble NCLAT in ***State Bank of India v. Dommeti Surya Rama Krishna Saibaba and Ors., (2025) ibclaw.in 708 NCLAT***. Moreover, it is contended that the Resolution Professional has failed to demonstrate any independent application of mind as mandated under Regulation 35A and has proceeded on a "borrowed satisfaction." It is further submitted that it is settled law that Sections 66(1) and 66(2) operate in distinct fields, each requiring separate pleadings and supporting evidence, and that the Applicant must specifically establish the element of *mens rea* on the part of the Respondents, which has not been done in the present case. Reliance was placed on ***Jaypee Infratech Limited v. Axis Bank Limited & Ors., (2020) 8 SCC 401***, wherein the Hon'ble Supreme Court has clarified the necessity of distinct pleadings and proof under the respective provisions. The Hon'ble Supreme Court has further held in ***Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405***, that failure to afford an opportunity of hearing renders the proceedings violative of the principles of natural justice.
23. In view of the above, coupled with the inconsistencies in the Applicant's case, absence of cogent evidence, failure to discharge the burden of proof as specified by the Hon'ble Supreme Court in ***Union of India v. Chaturbhai M. Patel AIR 1976 SC 712***, and the fact that the allegations are based merely on conjectures and business losses during an unprecedented pandemic, the present application is wholly misconceived.

**Findings: -**

24. This Adjudicating Authority has heard the parties at length and perused the pleadings, documents on record, written submissions, and the case laws relied upon by the parties.
25. At the outset, the primary issues that arise for consideration are:
- (i) whether the Respondents have carried on the business of the Corporate Debtor with an intent to defraud its creditors or for any fraudulent purpose within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016; and
  - (ii) whether the application filed by the Respondents seeking permission to cross-examine the Resolution Professional and for production of documents merits consideration.
26. Before proceeding further, it is necessary to address a preliminary aspect arising from the record. The Respondents have filed their detailed reply and thereafter a written submission in April 2025, followed by a further written submission in March 2026. A careful perusal of the reply and the earlier written submissions discloses that no plea whatsoever was raised with regard to the applicability of Section 10A of the Insolvency and Bankruptcy Code, 2016 or the alleged bar under Section 66(3) of the Code. The said contention has been introduced for the first time only in the subsequent written submissions filed in March 2026. In the considered view of this Adjudicating Authority, a plea of such nature, which goes to the root of maintainability, ought to have been specifically pleaded at the earliest stage with necessary foundational facts. The omission to do so, followed by its introduction at a later stage, renders the plea belated and in the nature of an afterthought.
27. While it is true that pure questions of law may be raised at any stage of the proceedings, the present plea of Section 10A of the Code is not a pure question of law but is intertwined with foundational facts, including the timing and nature of the alleged transactions. Such a plea, requiring a

factual foundation, cannot be permitted to be introduced at the stage of subsequent arguments without prior pleadings.

28. Even otherwise, the contention based on Section 10A of the Insolvency and Bankruptcy Code, 2016, is misconceived in the facts of the present case. This Adjudicating Authority has already admitted the Corporate Insolvency Resolution Process, and the proceedings have progressed accordingly. At this stage, it is not open to the Respondents to invoke Section 10A of the Code so as to question or unsettle the admitted CIRP. Hence, the reliance placed on Section 10A at this juncture is not tenable. For clarity regarding the submissions on Section 66(3) of the Insolvency and Bankruptcy Code, 2016, Section 66 of the Code is reproduced below:

*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.*

*(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 10A.*

29. A plain reading of Section 66(3) makes it clear that the bar in respect of Section 10A is confined only to proceedings under Section 66(2) of the

Code. The said sub-section explicitly restricts the filing of an application under sub-section (2) in respect of defaults covered under Section 10A. However, no such embargo is placed on proceedings under Section 66(1), which deals with fraudulent trading or carrying on business with intent to defraud creditors. In the present case, a perusal of the application, pleadings, and reliefs sought clearly indicates that the Applicant has primarily alleged that the business of the Corporate Debtor was carried on with intent to defraud creditors and for fraudulent purposes. Therefore, the present application substantially falls within the ambit of Section 66(1) of the Code. In such circumstances, the bar under Section 10A, read with Section 66(3), is not attracted, and the contention of the Respondents in this regard is liable to be rejected.

30. It is also observed from a perusal of the reply filed by the Respondents that the defence put forth is largely technical in nature, focusing on the alleged limitations of the forensic audit report and raising academic contentions regarding its evidentiary value. The Respondents have elaborated on such technical aspects; however, there is a conspicuous absence of any substantive explanation on the merits of the case, particularly with regard to the discrepancy in stock and trade receivables reflected in the books of accounts of the Corporate Debtor. The reply does not meaningfully address the core issue as to how the substantial assets shown in the financial statements have ceased to exist or remain unaccounted for. Thus, the defence appears to be predominantly founded on technical grounds rather than a factual denial on merits.

31. Another defence taken by the Respondents is that the present application has been filed solely on the basis of the forensic audit report without any independent application of mind by the Resolution Professional, and in this regard, reliance has been placed on *State Bank of India v. Dommeti Surya Rama Krishna Saibaba and Ors.*, (2025) *ibclaw.in* 708 NCLAT (supra),

as well as *Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors.* (supra).

32. This contention does not merit acceptance. It is an admitted position on record that, as per the audited financial statements of the Corporate Debtor for the year ending 31.03.2021, a substantial value of closing stock and trade receivables had been reflected in the books of accounts. However, at the time of commencement of the Corporate Insolvency Resolution Process, the stock position was shown as 'Nil', and the trade receivables remained unsubstantiated. The Respondents have failed to dispute the figures reflected in the financial statements and also the genuineness and authenticity of said financial statements; rather, their defence is that the stock was damaged or diminished due to prevailing circumstances during the COVID period and that the receivables were genuine and transactions were made in the ordinary course of business.
33. At this juncture, it is necessary to advert to the financial position emerging from the records. As per the audited financial statements as on 31.03.2021, the Corporate Debtor had reflected closing stock valued at Rs. 17,53,67,206.72. Further, as per the Tally data and books of account, purchases during the relevant period amounted to Rs. 21,69,69,522.81/-, while sales were to the extent of Rs. 24,93,30,645.53/-. Upon a reconciliation of these figures, the Corporate Debtor ought to have maintained closing stock valued at approximately Rs. 14,30,06,084/- as on the Insolvency Commencement Date. However, the stock position at the time of commencement of the Corporate Insolvency Resolution Process was reflected as 'Nil'. Similarly, the books of accounts disclosed trade receivables to the tune of Rs. 23,84,57,599.52, which have remained unsubstantiated, with no supporting documents, confirmations, or recovery records placed on record. These figures, which originate from the Respondents' own financial records, form the basis of the present proceedings and require a satisfactory explanation from the Respondents.

34. The reliance placed by the Respondents on business losses during the COVID-19 period also does not advance their case. While it is a matter of record that the pandemic impacted various sectors, the same, by itself, cannot explain the complete disappearance of stock or the inability to account for substantial trade receivables in the absence of any supporting documentary evidence. It is pertinent to note that the Corporate Debtor was engaged in the manufacture and sale of essential food products, and there is nothing on record to indicate that the demand for such goods had diminished to an extent that would justify the position now sought to be projected by the Respondents. In any event, if losses were indeed incurred, the same ought to have been duly recorded in the books of accounts and supported by verifiable material. However, no such evidence has been placed on record.
35. In such circumstances, it cannot be said that the present application is based merely on the forensic audit report or that there is an absence of application of mind on the part of the Resolution Professional. The forensic audit report itself is based on the books of accounts and financial records of the Corporate Debtor, which were prepared and maintained during the period when the affairs of the Corporate Debtor were under the management and control of the Respondents. The figures relating to stock and receivables, therefore, originate from the records of the Respondents themselves. Once such substantial assets are reflected in the financial statements prior to the initiation of the Corporate Insolvency Resolution Process, and the same are found to be non-existent or unsubstantiated as on the insolvency commencement date, the burden shifts upon the Respondents to satisfactorily explain the manner in which such stock and receivables have been dealt with or have ceased to exist.
36. However, the Respondents have failed to discharge this burden. No material has been placed on record to evidence the alleged destruction or diminution of stock, such as records of disposal, insurance claims, write-

offs, or any expenditure incurred for such destruction, or even proof of sale at discounted rates. Similarly, no documents have been produced to substantiate the realisation or recovery of trade receivables, such as invoices, debtor confirmations, or recovery proceedings. In the absence of any cogent and contemporaneous evidence, mere bald assertions cannot be accepted. The reliance placed by the Respondents on *CBI v. V.C. Shukla, AIR 1998 SC 1406* is also misplaced, as the present case is not one where findings are based solely on entries in the books of accounts or on the forensic audit report in isolation; rather, the discrepancies arise from the Respondents' own financial records, and the failure lies in their inability to explain the disappearance of assets reflected therein. Accordingly, the contention that the application is based solely on the forensic audit report, without independent application of mind, is untenable and devoid of merit. The reliance placed by the Respondents on *Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors.* (supra) and *State Bank of India v. Dommeti Surya Rama Krishna Saibaba and Ors.* (supra) is misplaced and does not advance their case in the facts of the present matter.

37. The reliance placed by the Respondents on *Mohinder Singh Gill v. Chief Election Commissioner(supra)* is misplaced. The grievance regarding the absence of opportunity prior to filing of the present application is untenable, as the record indicates that the issues relating to stock and receivables were discussed in the meetings of the Committee of Creditors, and queries were raised during the forensic audit, to which the Respondents had to respond. As per the allegation of the Applicant, the Respondents have taken inconsistent stands at different stages, including during the forensic audit and in the meetings of the Committee of Creditors. The various defences taken by the Respondents are reproduced hereunder:

Occasion	Face-to-face interview with the 1 <sup>st</sup> Respondent	During the 14 <sup>th</sup> CoC meeting	Reply filed by the Respondents	Second round of Arguments
Stand taken	The closing stock value was overstated by the management in the financial statements, without actual stock, to maintain the drawing power of the Overdraft facility extended by the bank	1 <sup>st</sup> Respondent refused that he had not mentioned anything stated in the face-to-face interview. He informed that there was stock on 31-03-2021, and in September 2021, when the bank conducted a stock audit.	The RP acted without independent application of mind, relying on a flawed, undisclosed forensic audit report, while the stock position in the books reflected pandemic-related business realities, including perishability and disruptions.	Defence under Section 10A has also been taken.

38. In any event, there is no requirement under Section 66 of the Insolvency and Bankruptcy Code, 2016, to afford a pre-decisional hearing prior to filing of such application, and absence thereof cannot be construed as a violation of principles of natural justice. Even before this Adjudicating Authority, instead of dealing with the hard and core factual aspects relating to missing stock and unexplained high-value trade receivables, the Respondents have predominantly rested their defence on academic and technical grounds; however, in commercial matters of this nature, a satisfactory, true and practical explanation must first be furnished, and only thereafter can such defence be supplemented by technicalities.

39. It is also pertinent to observe that once a Corporate Debtor avails credit facilities from financial institutions and deals with funds belonging to creditors, a corresponding duty is cast upon its management to conduct its affairs with due diligence and to maintain its books of accounts in a fair,

honest, and transparent manner. The management is expected to deal with the assets and funds of the Corporate Debtor prudently and to maintain proper records accounting for every transaction. The disappearance of substantial stock and the absence of traceable business transactions, coupled with the failure to furnish any details regarding the utilisation or sale of such stock, speak volumes about the conduct of the suspended management. In the present case, the Respondents were in control of the books of accounts and affairs of the Corporate Debtor, yet have failed to disclose the whereabouts of the stock or the identity of the persons to whom the goods were allegedly sold. In such circumstances, the facts on record, by themselves, constitute sufficient evidence, and no further proof is required. Even applying the standard of a prudent person, the only reasonable inference that can be drawn is against the Respondents.

40. It is further observed that if the transactions in question had been carried out in the ordinary course of business, the same would necessarily be supported by corresponding statutory records such as GST returns, e-way bills, invoices, and other contemporaneous documents evidencing movement and sale of goods, as well as records substantiating the existence and realisation of trade receivables, including debtor confirmations, ledger extracts, and proof of payments. However, the Respondents have failed to produce any such material to substantiate their claim that the stock was sold or dealt with in the normal course of business or that the trade receivables reflected in the books were genuine and recoverable. The absence of such statutory and commercial records further weakens the defence of the Respondents and reinforces the inference that the transactions are not genuine.

41. It is further observed, as submitted by the Applicant, that the Respondents had initially taken a stand that the figures relating to stock and trade receivables were overstated or not genuine and were reflected only to maintain the drawing power of the overdraft facility. However, during the

meeting of the Committee of Creditors, the 1<sup>st</sup> Respondent subsequently stated that he had not made such a submission at all and denied the earlier position. Such inconsistent stands taken at different stages cannot be overlooked. Even if it is assumed that such figures were merely projected or inflated for financial purposes, the very act of reflecting non-genuine or exaggerated figures in the books of accounts to avail or sustain credit facilities amounts to a conscious misrepresentation to the creditors. Such conduct, by its very nature, falls within the ambit of transactions carried out with intent to defraud creditors, and the Respondents cannot escape liability by subsequently disowning the same.

42. It is also pertinent to consider the magnitude of the stock in question. The value of stock, which ought to have been available as on the Insolvency Commencement Date, has been quantified at Rs. 14,30,06,084/-. Even on a broad and conservative estimation, taking an indicative average price of approximately Rs. 30 per kilogram (i.e., around Rs. 30,000 per tonne) for wheat-based products such as atta, maida and suji, the said value would correspond to roughly 4,700 to 4,800 tonnes of physical stock. Such a substantial quantity of goods could not have vanished or evaporated like water or been exhausted without leaving any documentary or financial trail. If the said stock had been damaged, deteriorated, or otherwise disposed of, the same would ordinarily be reflected through corresponding records such as sales at reduced value, write-offs, disposal entries, or expenditure incurred towards destruction. However, no such supporting material has been placed on record by the Respondents. Even damaged wheat stock retains commercial value and can be used for cattle feed. The magnitude of the stock involved, coupled with the complete absence of any corroborative evidence, renders the explanation offered by the Respondents wholly untenable and reinforces the inference that the stock has been dealt with in a manner prejudicial to the interests of the creditors.

43. In view of the above discussion, this Adjudicating Authority finds that the Respondents have failed to provide any cogent or satisfactory explanation with regard to the disappearance of substantial stock and non-realisation of trade receivables reflected in the books of the Corporate Debtor. In the absence of any supporting material to substantiate their defence, the only reasonable inference that can be drawn is that such assets have been dealt with in a manner prejudicial to the interests of the creditors. The conduct of the Respondents, therefore, falls within the ambit of carrying on the business of the Corporate Debtor with intent to defraud its creditors or for a fraudulent purpose, thereby attracting the provisions of Section 66(1) of the Insolvency and Bankruptcy Code, 2016.

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44. The next issue for consideration is whether the application filed by the Respondents seeking permission to cross-examine the Resolution Professional and for the production of documents merits acceptance. The Respondents have alleged that the present proceedings are based on a forensic audit report and that cross-examination is necessary for proper adjudication of the present proceedings.

45. It is well settled that proceedings under the Insolvency and Bankruptcy Code, 2016, are summary in nature and are to be decided primarily on the basis of pleadings and documents placed on record. In this regard, the Hon'ble NCLAT in ***Nandamuri Meenalatha v. Quality Steels and Wire Products, (2023) ibclaw.in 433 NCLAT***, it has been observed that proceedings under the Code are 'summary in character' and do not contemplate a detailed trial akin to a civil suit.

46. The grant of permission for cross-examination is not a matter of right and can be allowed only in exceptional circumstances where specific and substantial points of conflict in evidence are demonstrated.

47. In the present case, the application under Section 66 is founded upon documentary evidence, including the financial statements and records of

the Corporate Debtor, which are not in dispute, and the discrepancies arise from the Respondents' own records. This Adjudicating Authority finds that the present case does not involve any exceptional or special circumstances warranting cross-examination of the Resolution Professional, nor is it shown to be necessary for effective adjudication of the issues involved.

48. Further, permitting cross-examination in a routine manner would defeat the very object of the Code, which envisages time-bound resolution. In the absence of any compelling necessity or demonstrated prejudice, such a request cannot be entertained.

49. In the absence of any exceptional circumstances, specific points of conflict, or demonstrated necessity for oral examination, this Adjudicating Authority is of the considered view that the request for cross-examination of the Resolution Professional and for production of additional documents is unwarranted. This Adjudicating Authority further finds that the said application is nothing but a misuse of the process of law, evidently intended to delay the adjudication of the main matter. Accordingly, the application filed by the Respondents is devoid of merit and liable to dismissal.

50. It is observed that the Respondents have structured their defence largely on technical and academic grounds, placing reliance on an extensive number of judicial precedents, running into more than sixty decisions across the applications under Section 66 and the cross-examination proceedings. While reliance on case law is not impermissible, the defence advanced is predominantly academic in nature and does not adequately address the core factual discrepancies arising in the present case. In proceedings concerning Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions, adjudication must primarily turn on the factual and commercial realities rather than abstract legal propositions. Though numerous judgments have been cited in support of their defence,

the same are distinguishable on facts and do not advance the Respondents' case in the present factual matrix.

51. In the instant case, there is no dispute with regard to the correctness of the financial statements forming the basis of the proceedings, nor is there any dispute that the stock position as on the Insolvency Commencement Date was reflected as 'Nil', or that substantial trade receivables remain unsubstantiated. Despite this, the Respondents have failed to place on record any cogent evidence or material to explain the disappearance of stock or to demonstrate that the trade receivables arose from genuine business transactions. There is no straitjacket formula for adjudication, as each case turns on its own facts, and even a slight variation in the factual matrix can lead to a significant change in the outcome and consequences. However, in the present case, the Respondents have attempted to contest the matter on a different footing without producing any material to displace the admitted factual position. Accordingly, where a conflict arises between academic arguments and the factual matrix borne out from the record, this Adjudicating Authority is of the considered view that the practical realities of the case must prevail.
52. The Respondents, being the suspended Managing Director and Director of the Corporate Debtor, were in control of and responsible for the conduct of its affairs and management, and are therefore liable to be held jointly and severally accountable for the consequences arising from their acts and omissions.
53. In the result, the Respondents are directed to pay jointly and severally a sum of Rs. 14,30,06,084/- (Rupees Fourteen Crore Thirty Lakh Six Thousand and Eighty-Four only) towards the value of closing stock, and a sum of Rs. 23,84,57,599.52/- (Rupees Twenty-Three Crore Eighty-Four Lakh Fifty-Seven Thousand Five Hundred Ninety-Nine and Paise Fifty-Two only) towards trade receivables, to the account of the Corporate Debtor within a period of one month from the date of this order, failing which the

said amounts shall carry simple interest @ 12% per annum from the date of this order till realization. In the event of failure to comply, the Resolution Professional is at liberty to take appropriate steps for execution and to recover the amount in accordance with the law.

54. In view of the aforesaid findings, **IA(IBC)/324/KOB/2022 IN CP(IB)/20/KOB/2021 is allowed and disposed of, and IA(IBC)/224(KOB)/2023 IN IA(IBC)/324/KOB/2022 is dismissed** with a nominal cost of **Rs. 5,000/-** (Five thousand only) to be deposited by the Respondents/ Applicants in IA(IBC)/224(KOB)/2023 with the **National Defence Fund** within five days of the date of this order. The Respondents/ Applicants in IA(IBC)/224(KOB)/2023 shall file a compliance memo to this effect.
55. The Registry is directed to send e-mail copies of the order to the parties and their learned counsels for information and to take necessary steps.
56. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
57. File be consigned to records.

**Sd/-**  
**VINAY GOEL**  
**(MEMBER JUDICIAL)**

Signed on this the 8<sup>th</sup> day of May, 2026.

A\*