THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 2839 of 2024 In CP IB 1555 of 2017

under Section 66(1) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016

Mr. Dinkar T. Venkatasubramanian
Resolution Professional for Metalyst Forgings Ltd.
...**Applicant**

Arun Kumar Maiti and Ors.
...**Respondents**

In the matter of
COMPANY PETITION NO. 1555 OF 2017

STATE BANK OF INDIA
…Petitioner/Financial Creditor

V/s

METALYST FORGINGS LIMITED
…Respondent/Corporate Debtor

Order delivered on: 12.01.2026

Coram*:*

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Rishabh Jaisani a/w Adv. Siddhant Marathe

For the Respondents : Adv. Alok Dhir, a/w Adv. Kanishk Khetan, Adv. Princi Jaiswal, Adv. Janhavi Hirlekar.

ORDER

1. This Application IA 2839/2024 was filed on 23.04.2024 by Mr. Dinkar T. Venkatasubramanian (Applicant), the **Resolution Professional** of Metalyst Forgings Ltd. **("Corporate Debtor")** in Corporate Insolvency Resolution Process ("CIRP") under section 66 (1) read with section 60 (5) of the Insolvency and Bankruptcy Code 2016, seeking following reliefs:-

   a) *Order and declare that the Impugned Transactions I to VI as entered into between the Corporate Debtor at the behest of the Respondents and acts undertaken in furtherance thereof to constitute a fraudulent transaction under Section 66(1) of the Code; and*
   b) *Order and declare that the Impugned Transactions and acts undertaken in furtherance thereof, as being null and void and set aside the same;*
   c) *pass any other relief, including under Section 66 and 67 of the Code, that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*

2. This Tribunal vide order dated 15.12.2017, admitted Company Petition (IB) No. 1555/1&BP/2017 filed by State Bank of India under Section 7 of the Code against the Corporate Debtor herein and the Applicant was appointed as the interim resolution

professional. Subsequently, the Committee of Creditors of the Corporate Debtor resolved to appoint the Applicant herein as the resolution professional of the Corporate Debtor.

3. The Corporate Debtor was resolved on the approval of a Resolution Plan submitted by a consortium of Deccan Value Investors L. P. and DVI PE (Mauritius) Limited ("DVI") by the Committee of Creditors ("CoC") on 28.08.2018. However, subsequently, DVI withdrew its Resolution Plan and this Tribunal, through Order dated 27.09.2019, dismissed the Application seeking approval of the Resolution Plan. The Order was challenged before the Hon'ble Appellate Authority, which also upheld the Order of this Hon'ble Tribunal through Order dated 07.02.2020. However, the Hon'ble Supreme Court, though its Order dated 06.03.2024, set aside the decision of the Hon'ble Appellate Authority and approved the Resolution Plan of DVI. In line with the said Judgment, this Tribunal approved the Resolution Plan in the CIRP of the Corporate Debtor on 14.05.2024.

4. The Applicant appointed auditors SP Chopra & Co., Chartered Accountants as Transaction Review Auditor (“TRA”)/ “Auditor”) to conduct a transaction audit of the Corporate Debtor as per the provisions of the Code in order to check preferential transactions, undervalued transactions, extortionate transactions and fraudulent trading and wrongful trading. The Transaction Auditor submitted a Transaction Audit Report dated August 2018 ("Transaction Audit Report" / "Report") in relation to transactions for the period 16.12.2015, to 15.12.2017 ("Review Period"). On examination of the available financial records and review of various transactions undertaken by MFL,

the TRA inter alia observed certain suspect transactions including transactions with related parties/potentially related parties and others undertaken by MFL.

5. The Respondent No. 1 i.e. Arun Kumar Maiti, was the Chief Financial Officer of the Corporate Debtor during the review period. The Respondent No. 2 i.e. Arvind Dham was the Chairman and Managing Director. Respondent No. 3 i.e. Sanjiv Bhasin, Respondent No.4 i.e. Gautam Malhotra, Respondent No. 5 i.e. Deshpal Singh Malik, Respondent No. 6 i.e. Vivek Kumar Agarwal, and Respondent No. 7 i.e. B. Lugani, Respondent No. 9 i.e. Yogesh Kapur were the directors of Corporate Debtor during the review period. Respondent No. 8 i.e. Ankita Wadhawan, Respondent No. 11 i.e. Brajindar Mohan Singh and Respondent No. 12 i.e. Anuradha Kapur, were independent directors of Corporate Debtor during the review period. Respondent No. 10 i.e. Shekhar Gupta was whole time director of Corporate Debtor during the review period. The Applicant reserved its right to implead other individuals entities as party to this application and seek appropriate relief and directions, however, none was impleaded as party later on.
6. It is stated that the Applicant had sent an email to the Transaction Auditor seeking information and clarifications pertaining to the Transaction Report, however the Transaction Auditor had not responded to the Applicant, accordingly, the Applicant reserved its right to implead the Transaction Auditor as party to this application at a later stage if required, however, the Transaction Auditor was not impleaded later on.
7. It is stated by the applicant that, in the absence of any supporting documents and proper explanation from the

suspended management of the Corporate Debtor, being Respondent No. 1 to 12 ("Suspended Management"), the propriety or genuineness of the transactions explained in the Application hereinbelow cannot be ascertained and an adverse inference may be drawn against the Suspended Management in respect of such impugned transactions.

8. The following transactions have been impugned in the Application:-

a) **Loans and Advances**

There were loans and advances made by the Corporate Debtor and without any corresponding sale or purchase or without any interest to come on these loans and advances, an adverse inference has been drawn in respect of the impugned transaction that it is not in ordinary course of business of the Corporate Debtor and were with an intent to defraud the creditors of Corporate Debtor.

b) **Cash Realisation and Adjustments**

The Transaction Auditor has come across transactions with several related parties potentially related parties, whereby the Corporate Debtor made purchases/sales with these parties, and there were adjustments of balances in the form of inter party debit and inter party credit adjustments in the books of the Corporate Debtor without any supporting or reasoning for these adjustments, and without involvement of banking transactions, which has resulted into a different closing balances with these entities.

c) **Capital Work in Progress**

The Corporate Debtor during the Review Period had capitalised Capital Work in Progress ("CWIP") into Fixed Asset Register, without any underlying document substantiating the CWIP, and the Corporate Debtor has failed to maintain CWIP register. Further the Corporate Debtor during the Review Period has adjusted the receivables from few related/potentially related parties by crediting these party accounts and debiting the CWIP account, without providing any underlying document to identify the rationale and nature of such additions.

d) **Debtor's Ageing**

That whilst reviewing the debtors balances of the trail balance of MFL, it has been observed that there were debtors of huge amount of INR 224.23 Crores as on 15.12.2017 and the same have been outstanding for a period more than six months. It is relevant to mention herein that out of INR 224.23 Crores, an amount of INR 99.7 Crores were outstanding from related parties/potentially related parties. It is submitted that the overdue balances from related parties/potentially related parties for more than 180 days is nothing but diversion of money as records do not indicate an efforts having been made for recovery of such overdue balances.

e) Write Off

On a review of transactional trial balance during the Review Period, the Corporate Debtor had written off receivables of related/potentially related parties and had further written off inventory and charged additional

depreciation, without any underlying documents or without providing any proper reason for the same.

f) <u>Financial Creditors</u>

On a review of banking transactions and bank statements made available to Transaction Auditors, the loans received from banks have been utilized towards related party payment just one year prior to the insolvency commencement date.

9. It is also stated by the applicant that the Suspended Management of Corporate Debtor were unable to furnish any business records or proper justification for the basis of the impugned transactions due to which the Transaction Auditor was unable to determine whether such transactions were fraudulent. The business of the Corporate Debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose.

10. It is further stated by the applicant that, basis the available information including the Transaction Audit Report, the Applicant has also analysed, formed an opinion, and has reasons to believe that the impugned transactions in the Application tantamount to a fraudulent transaction under Section 66(1), 67 read with Section 60(5) of the Code, in addition to the view taken by and conclusion arrived at by the Transaction Auditors.

11. The Respondents have also challenged present application stating that (i) there is no independent determination; (ii) the Applicant has arrived at conclusion on conjectures by his own admission; (iii) the applicant has solely relied upon findings of Transaction Auditor; (iv) the Applicant has not even determined the amounts which he seeks to allege form part of transactions

covered under Section 66 of the IBC and leave has been sought in the said Application to ascertain them at a later stage; (v) the Applicant has failed to prove any intent, specific knowledge and absence of due diligence on part of the Respondent; (vi) the IBC is a prospective legislation and Sections 66 and 25(2)G) came into force on or after 01.12.2016 and cannot be made applicable retrospectively; and (vii) the transactions have been done with "potential related parties" (hereinafter, "PRPs") without having specifically pleaded as to how the parties are related, if at all.

12. Heard the learned counsel and perused the material on record.

13. The present application was filed on 23.04.2024 and the resolution plan in case of Corporate Debtor was approved by this Tribunal on 14.05.2024 pursuant to an Order dated 6.3.2024 passed by Hon'ble Supreme Court holding that the judgment dated 07.02.2020 passed by the NCLAT, upholding the order dated 2 7. 09.2019 passed by this Tribunal is set aside, and further holding that "*In other words, we accept the present appeals and it is held that the resolution plan, as submitted by the successful resolution applicants -Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd., is approved.*"

14. It is pertinent to note that the applicant had filed an application MA 1045/2018 to place on record the Transaction Audit Report dated 07.08.2018 and call upon the Respondents to provide such further documents as may be required to substantiate the transactions for audit and review by the Transactional Auditor, and such order / directions as may be deemed in accordance with Chapter Ill of the IBC. This application was allowed to be withdrawn by the Applicant vide

order dated 23.11.2023 with a liberty to file the application if otherwise permissible under the code.

15. In case of ***Tata Steel BSL Ltd. Vs. Venus Recruiter Pvt. Ltd. [LPA 7/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021],*** the Division Bench of Hon'ble High Court observed that, in the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta (2021) ibclaw.in 44 SC, the Hon'ble Supreme Court has, in a comprehensive manner, interpreted and laid down the scope and import of the phrase "arising out of " and "in relation to " in the specific context of Section 60(5)(c) of the IBC, and held that :

89. Conclusion

a) The phrase "arising out of" or "in relation to" as situated under Section 60(5)(c) of the IBC is of a wide import and it is only appropriate that such applications are heard and adjudicated by the Adjudicating Authority, i.e., the NCLT or the NCLAT, as the case maybe, notwithstanding that the CIRP has concluded and the resolution applicant has stepped into the shoes of the promoter of the erstwhile corporate debtor.

b) CIRP and avoidance applications, are, by their very nature, a separate set of proceedings wherein, the former, being objective in nature, is time bound whereas the latter requires a proper discovery of suspect transactions that are to be avoided by the Adjudicating Authority. The scheme of the IBC reinforces this difference. Accordingly, adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP.

c. The endeavour of the IBC and its rules and regulations is to ensure that all processes within the insolvency framework are time efficient. While the law mandates a resolution plan to necessarily provide for the treatment of avoidance applications if the same are pending at the time of submission of resolution plans, it cannot be accepted that avoidance applications will be rendered infructuous in situations wherein the resolution plan could not have accounted for avoidance applications due to exigencies that delayed initiation of action in respect of avoidable transactions beyond the submission of a resolution plan before the adjudicating authority. This is because such an interpretation will render the provisions pertaining to suspect transactions otiose and let the beneficiaries of such transactions walk away, scot-free. Money borrowed from creditors is essentially public money and the same cannot be appropriated by private parties by way of suspect arrangements. Therefore, in cases such as the present one, wherein such transactions could not be accounted, the Adjudicating Authority will continue to hear the application. Such benefit cannot be given in cases where the RP had already applied for prosecution of avoidance applications and the applicant ought to have been cognizant of pending avoidance applications but did not account for the same in its resolution plan.

d) It follows that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and

avoidance application within the scheme of the IBC, the RP can continue to pursue such applications. The method and manner of the RP''s remuneration ought to be decided by the Adjudicating Authority itself.

e.....

f.....”

16. It is also pertinent to note the observation of Division Bench in Tata BSL Limited (Supra) that “*The RP, before passing of the approval order, filed an application for avoidance of certain transactions, discharging the statutory burden laid out under Section 25(2) (j) of the IBC”*, and held that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and avoidance application within the scheme of the IBC, the RP can continue to pursue such applications. Since the present application has been filed prior to approval of resolution plan by this Tribunal, the contention of the respondents in relation to filing of present application after approval of plan by CoC does not survive.

17. It is noted that the Minutes of the meeting of the erstwhile Committee of Creditors of Metalyst Forgings Limited (MFL) held on Friday, 26 July 2024 records the submission of legal counsel that “*Amount has not been amount ascertained under Avoidance Application due to information asymmetry and leave has been sought in Avoidance Application to ascertain them at a later stage, as and when the information is made available to the erstwhile RP by suspended management.*” As noted earlier, the applicant

had also sought liberty to implead other persons as well as Transaction Auditor, if the need arises. However, we note that neither the amounts were quantified by the applicant during the hearing nor any further party was sought to be impleaded. Respondent No. 1 has placed on record a reply dated 3.9.2018 submitted to the Applicant and has explained in relation to the transactions, however, neither any further explanation was sought from the management or either of respondents thereafter, nor any inquiry was conducted with any of the parties, who were parties to the transactions impugned in the present application.

18. It is case of the applicant that "*In the absence of such co-operation or any proper explanation with respect to the Impugned Transactions, it is the Applicant's case in the Avoidance IA that he has not been able to ascertain the genuineness of the Impugned Transactions, and an adverse inference is required to be drawn that the Impugned Transactions are fraudulent in nature*". It is further asserted by the applicant that "*These categories, individually and cumulatively, evince a pattern of diversion, window dressing and the deliberate creation of opaque, circularised book entries, bereft of commercial rationale, in a period when the Corporate Debtor's financial distress was imminent. The transactions cannot be rationalised as ordinary course dealings or bona fide error; rather, they reveal a fraudulent design to prejudice creditors for which the captioned Application was filed by the Applicant.*"

19. The Applicant has summarized his case in written submissions as follows :

a. Loans and Advances made by the Corporate Debtor without any corresponding sale or purchase that took place in the Corporate Debtor's books or without any interest income being levied thereon and an adverse inference has been drawn in respect of these that they were not in ordinary course of business of the Corporate Debtor and were made with an intent to defraud the creditors of Corporate Debtor. Nearly double amounts were repaid without any revenue generating linkage, and without interest, the reason as to why such transactions were undertaken when the Corporate Debtor was under financial stress and under default to its creditors remains questionable. The lack of bank trails for set offs and the book entry netting across parties further support that the underlying transactions were not in the ordinary course of business and were made with an intent to defraud the creditors of the Corporate Debtor.
b. Cash Realisation and Adjustments with several related / potentially related parties were made by the Corporate Debtor, where receivables are netted against vendor payables and vice versa without involving banking transactions in the form of inter party debit and inter party credit adjustments, and absent proof of actual movement of supporting goods and documentation, create a web of transactions and misrepresent the actual numbers. Such adjustments cannot be said to form part of the ordinary course of business of the Corporate Debtor.

c. Capitalization of Capital Work in Progress ("CWIP") into Fixed Asset Register undertaken without CWIP registers or fixed asset registers and through credit to receivable ledgers and debit to CWIP supports that the underlying transactions were fraudulent in nature. There were unexplained adjustments of the receivables from few related/potentially related parties by crediting their accounts and debiting the CWIP account.

d. Debtor's Ageing - Aged debtors, especially from related/potentially related parties, with no recovery efforts, appear to be diverted sums away from the Corporate Debtor. Overdue balances from related parties/potentially related parties exceeding 180 days without any indication of efforts for their recovery.

e. Write Off - Write offs of receivables and inventory and additional depreciation charges of related/potentially related parties was done by the Corporate Debtor, without any business or evidentiary justification.

f. Financial Creditors - Utilization of bank loans towards related party payment just one year before the Corporate Debtor underwent corporate insolvency resolution process.

20. It is also relevant to note the Limitations stated at part D.9 of the transaction audit report, which reads as follows :

1. Sample documents: On the basis of scrutiny of parties ledgers, we had requested the company to provide the supporting documents of 196 parties, however, out of 196 parties' samples, we have been not been provided with supporting documents of several parties namely Alaska

Engineering P Ltd, Alliance Integrated Metaliks Ltd, ARGL Limited, Competent Equipment P Ltd, Wintech Equipment P Ltd,, Flex Autoparts P Ltd, Gracious Engineering (India) P Ltd, Grant Machines P Ltd, etc.

2. Bank Statements: We had requested the company to provide the Bank statements of current and loan accounts along with their reconciliations, however, due to limitation of records, statements as referred in tables and reconciliation statements for some banks has been provided to us. Refer Table D.9.1, D.9.2 and D.9.3 for detail of bank statements whose ,statements has been either partially provided or not provided for the period under review.

3. Debtors Balance Confirmation: We have requested for confirmation of balances from major debtors of MFL, however, confirmation regarding such balances is still awaited from such parties.

4. During the process of verification of supporting documents of the transactions which were selected as sample in order to verify the authenticity of transactions, we have been provided invoices only for verification of transactions.

21. It is further noted that the transaction auditor has merely stated the facts in its report and the observations made by it are factual attributing to lack of information. However, we note that the ledger accounts of parties, which were stated to be not available, have been placed on record by Respondent No. 1 in his reply. The Bank statements could have been accessed from the bankers of the Corporate Debtor. Neither the applicant nor the transaction auditor has alleged that the contact details of the debtors were not available with them to obtain balance

confirmations. The genuineness of the transactions could have been ascertained by obtaining confirmation of such transactions from the parties at other end.

22. It is noted that the transaction auditor observed some set off of receivables and payables amongst the parties. However, instead of bringing the relevant and specific facts on records for impugning those transactions in terms of Section 43 of the Code, the applicant has proceeded to hold that the business of corporate debtor was carried with an intent to defraud the creditors without identifying the characteristic of each transaction and then applying such characteristic to ascertain under which section each of such transaction can be impugned.

23. It is pertinent to note the decision in case of ***Renuka Devi Rangaswamy vs Mr. Madhusudan Khemka (NCLAT Chennai), (2023) ibclaw.in 384 NCLAT*** laying out necessary ingredients for impugning a transaction in terms of Section 66 of the Code. The relevant part of said decision reads as follows :

> *"**33.** To be noted that, the expression `Party to the carrying on business', indicates `taking positive steps', in carrying on `company's business', in a `fraudulent manner'. The intent to `defraud', is to be judged, by its `effect' on a `Person', who is the `object of conduct', in question.*
>
> ***34.** A `preponderance of probability suffices', but the degree of probability must be such that the `Tribunal', is satisfied and further that under Section 66 of the I & B Code, 2016, it is not essential to attract that there ought to be a `Debtor' and a `Creditor' relationship.*
>
> *xxx xxx xxx*
>
> ***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."

24. Further, in case of ***Regen Powertech Pvt Ltd vs M/s. Wind Construction Private Limited, Company Appeal (AT)(CH)(Ins) No. 349 of 2022***, it is held as follows :

33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'.

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the 'Company' would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling 'Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'.

25. The applicant has inferred carrying of business with an intent to defraud creditors on basis of observations viz. non-charging of interest on short term loans/advances, provision of additional depreciation, writing off of inventory on account of

impairment in its value (which require understanding the business model of the company), sale-purchases with related parties per-se, and capitalization of expenditure under capital WIP (without examination of genuineness of underlying transaction), and payment to related parties within look back period out of proceeds of borrowings, however, such observations can not lead to an automatic inference that the business of corporate debtor was carried out with an intent to defraud its creditors.

26. The applicant has sought order against them merely because they were member of board of directors or in management during the relevant period. Section 66(1) of the Code is clear that those persons who were knowingly parties to the carrying on of the business in carrying on the business with intent to defraud creditors of the corporate debtor or for any fraudulent purpose can only be made liable to contribute to the assets of the Corporate Debtor. The liability does not arise from merely holding a designation or office in a company, but such person has to be in charge of and responsible for the conduct of business of the company at the relevant time. Though, the directors of a company are responsible for conduct of the business of a company, however, it is necessary to demonstrate that such director failed to exercise due diligence in the flagging the fraudulent conduct, if such fraudulent conduct was so palpable for a man of ordinary intelligence to discern such conduct from the financial statements or transactions placed before the consideration of the board, or were in knowledge or party to carrying out the business in fraudulent manner.

27. Though, Respondent No. 1, 2 and 10 were Chief Financial Officer, Chairman and managing director, and Whole time director during the relevant time, even the fraudulent conduct of the business with intent to defraud creditors can not be inferred on basis of 'Preponderance of Probability' in this case on the basis of facts/evidences placed before us. Further, the order directing contributions requires assessment of loss caused to the assets of the Corporate Debtor, which the applicant, despite having taken specific liberty, has failed to do so even though this application is being adjudicated after 18 months of its filing.

28. In our considered view non-charging of interest on short term loans/advances is contravention of specific provision of Companies Act, however, this can not held to be fraudulent trading dehors the purpose and object of these advances/loans. The provision of additional depreciation and writing off of inventory on account of impairment in its value can not lead to automatic inference in relation to fraudulent conduct of business dehors understanding the business model of the company. The capitalization of expenditure under capital WIP can not be inferred as fraudulent transaction without examination of genuineness of underlying transaction, which has not been carried out in the present case. Further, Sale-purchases with related parties per-se can not held to be fraudulent transaction, at best, such transaction can fall within domain of undervalued transaction on basis of evidence of contemporaneous transaction with non-related party. The payment to related parties within look back period out of proceeds of borrowings and inter-se set of receivables against payables amongst the parties can also not be said to be

fraudulent, however, the same could be impugned as preferential transactions. Accordingly, we are of considered view that the payment to related parties within review period out of proceeds of borrowings certainly falls within four corners of Section 66(2) of the Code as fraudulent preference, as such payment results into loss to the creditors at the gain of related parties knowing the financial distress the corporate debtor was in. Since, the details thereof are not available in the application, we direct the RP to collate the same and fix the responsibility of persons who were occupying the office of director during the relevant period. For this purpose, the RP or representative of financial creditor, as the case may be, shall be, at liberty, to file an application before this Tribunal for appropriate orders in this relation.

29. The above analysis clearly shows that the present application impugning the transactions on the premise of conduct of business in fraudulent manner to defraud creditors can not be maintained on the basis of material and pleadings before us. The Applicant ought to have carried out further scrutiny of these transactions and connected transactions to establish the case of fraudulent conduct of business. A business can not be said to be carried in fraudulent manner on prima-facie facts as has been attempted in the present application.

30. It is further noted that the Corporate Debtor is being investigated by SFIO, where in a final investigation report in the affairs of the corporate debtor is still awaited. We clarify that the observations made by us in the present application are based on specific facts/evidences placed before us and pleadings made in the application, and no order requiring contribution in terms of section 66 of the Code is being passed in view of insufficiency of

information/material placed before us, hence the observations herein shall not constitute our final findings in relation to transactions impugned in the present application.

31. In terms of the above, IA 2839 of 2024 is dismissed and disposed of accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)