NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 830 of 2024

IN THE MATTER OF:

Yashwant Lalchand Sangla,
(Suspended Director of Linkson
International Ltd.) & Ors. **...Appellant(s)**

Versus

Manish Baldeva,
(Liquidator of Linkson International Ltd.)
& Ors. **...Respondent(s)**

Present:

For Appellant	**:**	Mr. Gaurav H. Sethi, Mr. Kartik Nagpal, Mr. Rahul Kapoor & Mr. Rahul Pawar, Advocates
For Respondents	**:**	Ms. Aditi Tuteja & Mr. Nikhil Gupta, Advocates for R-1

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Instant appeal has been filed by the appellants, who are suspended directors of the corporate debtor (CD), under Section 61 of the Insolvency and Bankruptcy Code, 2016 (Code), against the judgment/order dated 23 February 2024 (impugned order) passed by the National Company Law Tribunal, Mumbai Bench (Adjudicating Authority) in an application filed under Section 60(5) read with Sections 35, 36, 66, 68 to 72 of the Code, being IA No. 1568 of 2020 in CP(IB) No. 1267 of 2017, whereby the application filed by the liquidator has been partly allowed and the appellants have been directed to contribute, jointly or severally, an amount of ₹437.02 lakhs to the corporate debtor.

2. Brief facts necessary for the disposal of this appeal are that Respondent No. 2, who is the corporate debtor, was subjected to CIRP vide order passed by the Ld. Adjudicating Authority on the petition filed by the Punjab National Bank under

Section 7 of the Code. Respondent No. 1, namely Mr. Manish Baldeva, was appointed as the Interim Resolution Professional (IRP) who was later on confirmed as the resolution professional (RP) and subsequently as the liquidator of the CD vide order dated 20/07/2018.

3. It is also reflected that the liquidator, in exercise of powers provided under Section 35 of the Code, took into his custody and control various assets and properties of the corporate debtor and thereafter took a decision to investigate the financial affairs of the corporate debtor under Section 35(1) of the Code and by letter dated 25th July 2019, the liquidator appointed ADB and Associates, Chartered Accountants, to conduct the forensic audit of the corporate debtor with respect to the present status of the assets and genuineness of certain transactions as per the details provided by the erstwhile management.

4. It is further reflected that the forensic auditor conducted the forensic audit and an investigation into the affairs of the CD and submitted their report on 04/10/2019 and the liquidator, after receiving the forensic audit report filed the IA No. 1568 of 2020, with regard to which the impugned order has been passed by the Ld. Adjudicating Authority with the following prayers;

> *"24. The Applicant/Liquidator therefore prays this Hon'ble Tribunal as follows:*
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> *a. To pass such Order or Orders directing the ex-Directors / promoters of the Corporate Debtor to cooperate with the Applicant - Liquidator and provide information, books of accounts, ledgers, Bank statements and other documents as required by the Liquidator as per the list annexed hereto and marked as Exhibit and any further and other documents as may be required by the Liquidator from time to time.*
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> *b. That this Hon'ble Tribunal may be pleased to declare that the promoters / ex-directors of the Corporate Debtor have indulged in transactions to defraud its creditors and are liable for misfeasance and other offences under the Code.*

c. That this Hon'ble Tribunal may be pleased to direct the ex-directors/promoters to pay a sum of Rs. 103.15 Lakhs in respect of cash vouchers to the Liquidator as set out in Exhibit A (Report)

d. That this Hon'ble Tribunal may be pleased to direct the Respondents Nos. 1-3 i.e. ex-directors/promoters, Respondent No. 4 i.e. Linkson Coal and Minerals Private Limited and Respondent Nos. 5-8 i.e. Vendors and any other person's to whom the consideration paid in respect of immovable properties i.e. Gopal Complex and Megh. Complex has been diverted to make a contribution and jointly and/or severally pay to the Liquidator a Sum of Rs. 527.06 Lakhs siphoned off from the Corporate Debtor as set out in the exhibit agreement.

e. That this Hon'ble Tribunal may be pleased to direct the Respondent Nos. 1-3 or by Respondents 5-8 to furnish and submit copies of all. License / Tenancy / Lease Agreements executed by them to the Applicant and pay all the rents in respect of the immovable properties of Gopal Complex and Megh Complex received till date by either the Respondent Nos. 1-3 or by Respondents 5-8 to the Liquidator along with interest @ 18% p.a. and the tenants be directed to pay all arrears, if any and current rent to the liquidator.

f. That this Hon'ble Tribunal may be pleased to direct the Respondent Nos. 1-3 and/or Respondent Nos. 5-8 to hand over vacant and peaceful possession of the said immovable properties i.e. Gopal complex and Megh/complex the details which are set out in Exhibit coin) to the Liquidator.

g. That this Hon'ble Tribunal may be pleased to allow auction of the said properties Gopal Complex and Megh Complex of the Corporate Debtor as per the rules and direct the ex-directors / promoters of the Corporate Debtor and the sellers of the said property and all others concerned including the tenants of not to create any obstructions in respect thereof and submit all the original documents as required by Liquidator.

h. That in the alternative the purported Sale in respect of the properties set out in Exhibit F be declared fraudulent and void accordingly be cancelled and the Respondent Nos. 5-8 i.e. the said Vendors named above be directed to forthwith return the entire consideration received by them

> *to the Liquidator of Corporate Debtor (in Liqn) with interest @ 18% p.a. or as this Hon'ble Tribunal may deem fit in addition to rents received till date".*

5. Perusal of the copy of the application IA No. 1568 of 2020 would reveal that, upon perusal of the report of the forensic auditor, the liquidator came to know about various fraudulent financial acts of the CD and of their directors and promoters, which have been highlighted by the forensic auditor. The liquidator, in his application moved before the learned Adjudicating Authority, stated that he had found the conclusions drawn by the forensic auditor with regard to siphoning of and misappropriation of funds by the corporate debtor to the tune of about Rs. 527.06 lakhs, unlawful and fictitious cash expenses to the tune of ₹103.15 lakhs and the supporting documents provided by the company were found unreliable, various bank statements of the CD were stated to be not provided, and incomplete books of account were provided.

6. The liquidator in his application has highlighted that the corporate debtor has purchased:

- 6 flats (flat numbers 201, 202, 203, 204, 205, and 206), situated at Shri Gopal Complex on the second floor

- 6 flats (flat numbers 301, 302, 303, 304, 305, and 306) of the uncompleted third floor in Shri Gopal Complex, situated at MIDC T-point, Ward No. 1, Mauza & village Wadi, on land bearing Khasra number 58/23 Nagpur, along with 38.62% undivided proportionate share and interest in plot number 25 (being a part of the entire land bearing Khasra new number 58/23), (Gopal Complex property), vide registered sale deed dated 30.03.2013 in favour of the CD, however, the record obtained from the office of the sub-registrar reflects the name of the sellers as on 26/8/2019 and no steps were taken by the CD to carry out or insert relevant mutation entries in the office of the Sub-Registrar in respect of the partial ownership of the land of Gopal Complex property.

7. It is further stated that the aforesaid sale deed mentions a down payment of ₹1.05 crores, allegedly paid in cash as part consideration in respect of the purchase of the said property by the CD, and the final payment of ₹2.45 crores being paid at the time of registration of the sale deed, which was lent by the Sahkari Bank as a housing loan to the corporate debtor. Despite the purchase of this property by the CD in 2013, the forensic auditor found possession of the vendors i.e. Mr. Sudhir Hiranwar and others.

8. It is further stated in the application that the forensic auditor's report further states that, in respect of Gopal Complex property, there are tenants in the six second-floor flats, and all of the six flats at the third floor are still not constructed. The building was found inhabitable, as more particularly set out in the site report. Out of these tenants, one of the tenants, without disclosing her name, mentioned that she was a tenant of the vendor, Mr. Sudhir Hiranwar. It is also mentioned that, since the possession of the property is still with the vendors, no rent paid or deposited has been shown to the bank or to the corporate debtor.

9. It is further stated in the application that the State Bank of Nagpur, Nagarik Sahkari Bank, Dharampeth branch, had sanctioned a loan of ₹2,45,00,000 for the said property, which was valued at ₹3,50,00,000. The sale deed was registered on 30 March 2013. The stamp duty of ₹19,25,000 was paid on the purchase price of ₹3,50,00,000, whereas the market value of the said property was only about ₹1,50,23,000 and the said property was overvalued to procure a higher amount of loan from the bank.

10. It is further stated in the application that the said bank, Nagpur Nagrik Sahkari Bank, Dharampeth branch, transferred the loan amount to the vendor, in Mr. Sudhir Hiranwar's account in the same bank on 30 March 2013 itself, the date

on which the sale deed appears to have been executed. It is noted by the bank statements of Mr. Sudhir Hiranwar that he transferred vide pay orders dated 30 March 2013 of Rs. 9 lakhs each, amount of Rs. 99 lakhs, and one demand draft of Rs. 1 lakh in Favor of Linkson Ispat and Energy Private Limited (a related party of the CD having a common director ie., Yashwant Sangla), which was deposited in the Punjab National Bank account of the Linkson Ispat.

11. It is also stated in the application that on the basis of the report of the forensic auditor, that Mr. Sudhir Hiranwar also transferred:

- Rs. 14 lakhs from his bank account of Nagpur Nagrik Sahrkari Bank Limited, by way of cheque dated 30 March 2013, to his savings account in the same branch.

- Rs. 90,000 by way of a cheque dated 2 April 2013 to his savings account in the same branch.

- Rs. 10 lakhs by way of RTGS from the savings account to Linkson Coal and Minerals Private Limited (Another related party of the CD, with common directors).

- Rs. 6 lakhs by way of cheque dated 31 March 2013 back to Linkson International Limited (CD).

12. It is also stated that a payment of ₹1,05,00,000/- was made in cash. However, no receipt or acknowledgement is made available to the liquidator, and there is no practice of the bank to sanction disbursement of the home loan on the basis that the purchaser has made a down payment in cash to the seller without any verification of the alleged cash payment.

13. It is also stated that similar other discoveries were made by the auditors, and appropriate observations are noted from the facts pertaining to the purchase of 12 godowns situated on the ground floor of the building known as Megh Complex, MIDC T-point, Ward No. 1, Mauza Wadi near Wadi, Nagpur, and 6 flats numbered

107, 108, 112, 202, 203, and 204 on the first and second floors of the said building (Megh Complex property) by the CD, vide separate sale deeds, both dated 7 June 2013.

14. With regard to this property also, in the record of the sub-registrar, the ownership was found to be of the vendors, and the said godowns were found occupied by tenants. The tenants informed that they consider Mr. Sudhir Hiranwar (vendor) as the owner and are paying rent to him. The first and second floors facing the main road were found occupied by tenants, including insurance companies, namely Tata AIG/Reliance, etc. and the respondents were collecting the rent of these properties.

15. In the case of these godowns also, the market value of the property for stamp duty is shown as 122.33 lakhs and the entire plot was found mortgaged to the Nagrik Sahkari Bank. Despite there being a charge of the bank, the same was not redeemed or cleared, and the bank sanctioned and disbursed the loan on the property. With regard to the flats situated on the first and second floors of Megh complex, the property was valued at ₹161.56 lakhs, whereas the market value of the said flats was only ₹85.77 lakhs.

16. It is also stated in the report that the amount of loan of ₹168 lakhs and ₹112 lakhs were transferred to the vendor's account on 10 June 2013. On the same day, when the sale agreements were registered, the said vendor transferred ₹150 lakhs by cheque on the same day (i.e., 11 June 2013) in favour of Linkson Ispat and Energy Private Limited in its account in Axis Bank, Gandhi Nagar, Nagpur branch. ₹7 lakhs were transferred by cheque dated 12 June 2013 in favour of Linkson International Limited (Corporate Debtor). The said amount was used to purchase the share money of the bank of ₹7 lakhs on 12 June 2013 for repayment of the loan on 10 June 2013.

17. Certain other discrepancies were also highlighted in the application, as evident from the report of the forensic auditor.

18. Learned Adjudicating Authority, as stated earlier, by passing the impugned order, partly allowed the application filed by the liquidator. Relevant part of the order is produced as under;

> *"4.1.3. The above facts clearly indicate that the transaction of the purchase of these properties is undervalued transaction entered by the Corporate Debtor to defraud its Creditors. The fraudulent modus operandi adopted by the Corporate Debtor is writ at large on the face. Since, these properties are stated to be mortgaged in favour of Nagari Sahakari Bank ltd, which have already sought attachment orders in terms of Section 14 of the SARFAESI Act, it would be against the interest of the Creditors to set aside the Transaction; however, we consider it appropriate to restore the benefit taken by the Respondents 1 to 8 by indulging into over valuation of the purchased property and helping the Corporate Debtor to siphon off the amount borrowed from Nagpur Sahakari Bank Ltd. Accordingly, we direct Respondents to contribute jointly or severally an amount of Rs. 437.02 Lakh {(Rs. 350 Lakh-91.60 Lakh) + (161.56 Lakh - 102 Lakh) +(Rs. 241,39,500-122.33 Lakh)}, within 30 days to the Corporate Debtor. It is made clear that the amount realised by the Nagpur Sahakari Bank from these properties mortgaged to them shall be appropriated towards the outstanding loan of Rs. 527.06 Lakh and these Properties shall belong to the Corporate Debtor if not auctioned by Nagpur Sahakari Bank Limited.*
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> *4.2. It is also alleged that unlawful/fictitious cash expenses of Rs. 103.15 Lakh have been shown to have been incurred while the supporting documents provided by the Company were umeliable and does not show to prove that the alleged case transaction and expenses are genuine. These Transactions have been entered in the books of accounts of the Corporate Debtor under Five expense head and these expenses have been debited by Lump sum amount which in itself indicates that these expenses are not genuine. A screen short of debit to the one of the Accounts as found on the Transaction Report is reproduced below:*
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> *4.2.1. The manner in which transactions have been entered into the books of accounts of the Corporate Debtor*

in summary manner clearly indicates that these are fictitious expenses recorded by Respondents 1 to 3 to take out cash from the books of the Corporate Debtor. Since, these transactions are in the nature of carrying of the business of the Corporate Debtor for the Fraudulent purpose and falls u/s 66, we are satisfied that an appropriate order is required to be passed by us directing Respondent Nos. 1 to 3 to contribute these amounts within 30 days to the Corporate Debtor.

4.3. The Applicant has also prayed for the vacant and peaceful possession of the properties as well as agreements with tenants. The Applicant has also sought the recovery of rent received by the Respondents 5 to 8 from these tenants. Since these properties are mortgaged to Nagpur Sahakari Bank who has already proceeded to take possession of these properties in terms of Section 14 of SARFAESI Act, we consider that no order is called for in this relation. Further, we have already directed all the Respondents which include Respondents 5 to 8 to contribute the amount equivalent to the loan obtained from Nagpur Sahakari Bank and has allowed appropriation of realisation from the auction property by such bank towards the balance remaining consideration paid by the Corporate Debtor, we do not consider it appropriate to pass any order".

19. We have heard Ld. Counsels for the parties and have perused the record.

20. Ld. Counsel for the Appellant at the outset submits that the impugned order has been passed Ex parte, and the Appellant did not get any opportunity to contest the case before the Ld. Adjudicating Authority.

21. It is further submitted that Appellants Nos. 1 and 2 were continuously fighting with life-threatening illnesses and therefore were unable to appear before the Ld. Adjudicating Authority. Appellant No. 2 was detected with stage 3 breast cancer, and glaucoma was also detected to Appellant No. 1. Thereafter, the COVID-19 pandemic had struck, and the Appellants were also infected by the black fungal infection, therefore, they could not appear before the Ld. Adjudicating Authority. Appellant No. 1 also underwent heart surgery and surgery of his eyes. Owing to the

deteriorating health conditions of the Appellants Nos. 1 and 2, they were not in a position to properly present their case before the Ld. Adjudicating Authority.

22. It is further submitted that Ld. Adjudicating Authority has committed grave mistake in relying on the forensic audit report, which was prepared on the basis of incomplete data and without providing an opportunity to the Appellants to present their case.

23. Elaborating further, it is submitted to the corporate debtor had entered into three sale deeds with respondent Nos. 3 to 6 concerning a number of apartments, go downs, and undivided share in certain plots in Nagpur in the year 2013. These transactions were largely financed and approved by respondent No. 7, a cooperative bank situated at Nagpur. These transactions were carried out partly in own funds and partly through the finance secured through Respondent No. 7. The finance secured through Respondent No. 7 was paid directly by the bank to Respondent Nos. 3 to 6. So there exist no opportunity or occasion for the Appellants to have siphoned off the money?

24. It is further submitted that the quantum of the purchase price has been erroneously alleged to be overvalued in the forensic audit report. The basis of the same has been taken from the government ready reckoner, which does not take into account the prevailing market prices at that time. The prices taken by the forensic auditor are, per se, not based on any evidence or material.

25. It is further submitted that Respondent No. 7 bank, at the time of giving housing loan, has also recorded the valuations of these properties and has verified the valuations at which the properties are being purchased. The said value has been made the basis of financing by the bank. Therefore, the allegations levelled against the appellants are not true and substantiated by any material or evidence and despite many opportunities given to the Respondent bank, no evidence of any type was produced in contradiction of the contention of the appellants.

26. It is further submitted that non-mutation in records has been taken by Ld. Adjudicating Authority and the forensic auditor as a factor in assuming foul play, while the mutation has no significance so far as the ownership is concerned. In this regard, the law laid down by the Honourable Supreme Court in **Balwant Singh and Another versus Daulat Singh and Others (1997) 7 SCC 137** has been relied upon. It is submitted that the possession of the property was taken by the bank under Section 13(4) of the SARFAESI Act. Therefore, the mutation procedure was required to be adopted by the bank.

27. It is further submitted that there is no mention of sanction letters, order sheets, and mortgage deeds entered into between the Appellants and respondent No. 7 in the forensic audit report. Moreover, it has also not been considered that respondent No. 2 company has approximately repaid a sum of Rs. 71,94,000 in instalments to respondent No. 7, and this payment has not been considered by the forensic auditor.

28. It is also submitted that it is alleged in the forensic report that the respondent No. 2 had colluded with the respondent No. 7. However, the respondent No. 7 was not made a party before the Ld. Adjudicating Authority.

29. It is further submitted that the Ld. Adjudicating Authority has treated the forensic report as a conclusive piece of evidence, which goes against the established law of evidence that the report of an expert is only an opinion of an expert and is not the conclusive proof of a fact. Reliance in this regard has been laid down on following case laws;

(i) Prashant Bothra & Anr. v. Bureau of Immigrations & Ors. WPA No. 25668 of 2022 (High Court of Calcutta)

(ii) Amit Kumar Kejriwal v. UCO Bank & Ors. 2023 SCC Online Cal 5347 (Hon'ble High Court of Calcutta)

(iii) Bank of Maharashtra v. VISA Power Ltd. 2019 SCC Online NCLT 24522 (Hon'ble NCLT Calcutta Bench)

(iv) Official Liquidator, High Court, Calcutta v. Padam Kumar Khaitan, (2011) 161 Comp Cas 402

(v) Rohan Varma Constructions Pvt. Ltd. v. Ind-Barath Power (Madras) Ltd. 2021 SCC Online NCLT 9658 (Hon'ble NCLT Hyderabad Bench)

(vi) State Bank of India & Ors. v. Rajesh Agarwal & Ors. dt. 27.03.2023 (Supreme Court of India)

30. It is further submitted that the disclaimers contained in the forensic audit report are identical in their tone and tenor, which the Ld. Adjudicating Authority has not taken into consideration before passing the said order. It is also submitted that only 70% of the sale value was disbursed by the bank, therefore, there may not be any question of siphoning of any money or of overvaluation.

31. It is further submitted that the cash vouchers submitted by the appellants were not taken into consideration by the Ld. Adjudicating Authority without assigning any reason, while it was evident on record that the Appellant was working in remote areas of Jharkhand and Bihar. These areas were also affected by Naxalites, and therefore the payment through bank was not possible in these remote areas. Thus, the applicant was bound to make the cash payments, and this aspect of the matter should have been considered by the Ld. Adjudicating Authority.

32. Lastly, it is submitted that the Punjab National Bank has filed an application under Section 95 of the Code before the Learned Adjudicating Authority to declare that Appellant No. 1, Appellant No. 2, and other members of the family are insolvents on 8th August 2023. Thereafter, a letter dated 22nd September 2023 was issued by the Punjab National Bank stating that interim moratorium is in effect from the date of filing of the application and when no amicable settlement

could be reached, the first Appellant filed an application under Section 94(1) of the Code. As per Section 96 of the Code, an interim moratorium has come into effect automatically by filing of such application. Therefore, the proceeding before the Ld. Adjudicating Authority should have been stayed, and the proceedings are also bad on this score. Thus, the impugned order is liable to be set aside.

33. Learned counsel for the respondent No. 1 – liquidator, on the other hand, submits that after being appointed as the liquidator of the CD, he by exercising powers under Section 35(1)(i) of the Code, appointed forensic auditors for conducting forensic audit of the CD. On 4 October 2019, the audit report was submitted. Upon perusing the audit report, it became evident that the ex-directors of the CD, were having hand in gloves with their related parties and third parties and conducted various fraudulent financial acts on the CD including:

- siphoning of and misappropriation of funds to the tune of Rs. 527.06 lakhs granted by the respondent No. 8 bank to the CD

- unlawful cash expenses to the tune of ₹103.15 lakhs shown in the books of the CD without any supporting document

- various documents and books of accounts of the CD were also not provided by the ex-directors to the liquidator.

34. After satisfying himself of the financial irregularities and misappropriation, the liquidator filed IA No. 1568 of 2020 before the Ld. Adjudicating Authority, and notices were issued to the Respondents (appellants). They failed to appear before the Ld. Adjudicating Authority in spite of being given numerous chances, and in compulsion, the ex parte order was passed.

35. It is also submitted that the CD purchased six flats on the second floor of Shri Gopal complex and six more flats on the third floor of the same complex, along with 38.62% undivided proportionate share and interest in plot number 25 being a

part of the entire land bearing Khasra new number 58/23 and all these flats were sold by the respondent Nos. 3 to 6 as vendors to the CD for a total consideration of Rs. 3,50,00,000/- and this amount was paid as under:

- Rs. 25 lakhs were paid to the respondents 3 to 6 by cash, and there is no proof of payment or receipt with the CD or any other source of income.

- Rs. 80 lakhs were paid to the respondents 3 to 6, by cash from the CD, and no proof of the payment of the same is available.

- Rs. 245 lakhs were paid to the Respondents 3 to 6 by way of a cheque bearing number 663411, drawn on Nagpur Nagrik Sahkari Bank. This amount was received by the CD and was paid by availing a loan facility from the aforesaid bank.

36. However, the record obtained from the office of the Sub-Registrar reflects the names of the original vendors (i.e., Respondents Nos. 3 to 6) as on 26th August 2019, and it shows that no efforts were taken by the CD to mutate its name.

37. It is also submitted that in flat numbers 201 to 206, tenants were in possession, and they recognized Respondent No. 3 as their landlord. The market value of all 12 flats was of Rs. 1,50,23,000, while the loan of Rs. 2,45,00,000 was taken from the Sahkari Bank and thereafter, respondent No. 3, Mr. Sudhir Hirinvar, transferred an amount of Rs. 99 lakhs by way of pay orders, each dated 30 March 2013 of Rs. 9 lakhs, and also a Demand Draft of Rs. 1 lakh in Favour of Linkson Ispat and Energy Private Limited, which is a related party to the CD and also having Appellant, Yash Vanth Sangla, as common director. Respondent No. 3 further transferred an amount of ₹14 lakhs from his bank account to his savings account by way of a cheque dated 30 March 2013. He also transferred an amount of ₹90 thousand from his bank account to his savings account by way of cheque dated 02.04.2013. Thereafter, Respondent No. 3, transferred an amount of ₹10 lakhs in the bank account of Linkson Coal and Minerals Private Limited, which is

also a related party of the CD having common director, Mr. Yashwant Sangla and thereafter, an amount of Rs. 6 lakhs was transferred by respondent No. 3 to the CD.

38. It is further submitted that the CD purchased total 12 go-downs bearing go-down numbers 6 to 17, situated on the ground floor of the building known as Megh Complex, by sale deed in June 2013 from respondent Nos. 3 to 6, for a total consideration of Rs. 2,41,39,500/-and the total consideration amount for these 12 go downs was paid in following ways:

- Rs. 12,50,000/- was paid by the CD by cheque bearing number 724734.

- Rs. 59.9188 lakh was paid by the CD to respondent numbers 3 to 6 by cheque bearing number 015638.

- Rs. 1,68,97,650/- was paid by the CD to Respondent Nos. 3 to 6 by availing the loan facility from the Nagpur Nagrik Sahkari Bank.

39. However, in the Sub Registrar office, the mutation was not done with regard to this property also, and the market value of all these go downs was much less than shown in the sale deed.

40. It is also submitted that the CD also purchased six flats on the first and second floors of the Megh complex by sale deed dated 7 June 2013 from respondents 3 to 6 for a total consideration amount of Rs. 1,61,56,000, and the consideration was paid as under:

41. Rs 12,50,000/- were paid by cheque. Rs 35,50,000/- were also paid by cheque to Respondent Nos. 3 to 6, while Rs 1,13,09,200/- was paid to Respondent No’s. 3 to 6 by availing loan facility from the Nagpur Sahkari bank. With regard to these properties, also no mutation was done. The market value of these six flats was about 85,77,000/- while the sale deed was executed for an amount of Rupees 1,61,56,000/-. Thereafter, Respondent No. 3 transferred an amount of Rs.

1,50,00,000 by cheque dated 11 June 2013 in favour of CD, wherein Appellant No. 1 Yashwant Sangla was director and Rs. 7 lakhs were transferred by the respondent No. 3 in the bank account of the CD.

42. It is also submitted that the Appellants have also committed various other financial irregularities. Despite continuous letters sent by the liquidator, they did not furnish any document, including leave and license agreements, with regard to the appellants and Respondent Nos. 2 to 8 and also that the third party is in possession of the properties.

43. It is vehemently submitted that, in utter disregard to the financial norms, the cash expenses to the tune of ₹103.15 lakhs were incurred while there was no supporting document provided by the corporate debtor and also that there was nothing on record which may suggest that these expenses are genuine. All these transactions have been entered in the books of account of the CD under the five head, and these expenses have been debited by a lump sum amount, which itself indicates that these expenses are not genuine and reliable and the way these expenses have been shown in the record in the ledger account of the CD would itself make it conspicuous that these cash transactions are not valid. Thus, having regard to all the facts and circumstances of this case, it is reflected that it is a case of round-tripping of money, and the fraud committed with the bank may be with the hands in gloves with the bank.

44. Having heard learned counsel for the parties and having perused the report, we are of the considered view that, though the forensic audit report is not a conclusive evidence with regard to any fraudulent transactions committed by the CD, but in absence of the relevant documents which were not provided by the erstwhile management of the CD, the forensic audit report assumes significance. The non-providing of relevant documents and account books by the erstwhile management of the CD is also indicative of the fact that perhaps this documentary

evidence, which has not been supplied by the erstwhile management of the CD, may go against them. Therefore, in view of the facts and circumstances of this case, the forensic audit report may not be brushed aside if the same is supported by documentary evidence which is reliable and supported by material and evidence.

45. Now we proceed to appreciate the Forensic Audit Report submitted by Forensic auditors. Perusal of the forensic audit report would reflect that the period for the forensic audit has been taken from March 2013 to July 2013 in relation to the various properties, and April 2015 to March 2019 is determined for cash transactions/ expenses. The forensic auditors were also able to get:

- bank accounts of the directors of the CD: Mr. Yashwant Sangla, Mr. Gaurav Sangla, and Mrs. Manju Sangla and Barkha Sangla

- bank statement of Linkson International Limited, Linkson Ispat and Energy Limited, of various banks

46. **Properties at Shri Gopal Complex, situated at MIDC T Point, ward number 1, Mauza Wadi, near Wadi, Nagpur, Maharashtra**

The auditors stated that six flats situated at Shri Gopal Complex (i.e., flat numbers 201 to 206), as per the sale agreement, are owned by the corporate debtor (i.e. Linkson International Limited). However, the record of the sub-registrar office as on 26 August 2019 shows that the ownership still lies with the seller, Mr. Sudhir Hiranwar, and the possession of these flats is also with Mr. Sudhir Hiranwar (vendor). Also, the flats numbered 301 to 306 on the third floor are still not constructed. It is also stated that the Nagpur Nagrik Sehkari Bank Dharmpeth branch had sanctioned a loan of ₹2,45,00,000/- for the said property. The property was valued at ₹3,50,00,000/-, and the sale deed was made as on 30 March 2013, Which was registered on the same day, and the stamp duty value of the property was only about ₹1,50,00,000/-.

47. It is also observed that the six flats on the third floor, from flat number 301 to 306, are yet to be constructed, whereas in the sale agreement, no such observation has been mentioned. It is stated that the flat numbers 301 to 306 are being sold while they were not even constructed at that point of time. The amount of the loan was transferred to Shri Sudhir Hiranwar in their account at Nagpur Nagrik Sahkari Bank branch on 30 March 2013 and as per the bank statement of Sudhir Hiranwar he transferred by 11 pay orders of ₹9 lakhs each, total amount of ₹99 lakhs, and one draft of Rs. 1 lakh = Rs. 1 Crore, in favour of Linkson Ispat and Energy Private Limited by depositing in Punjab National Bank.

48. Further, Mr. Sudhir Hiranwar transferred ₹14 lakhs on 30 March 2013 through a cheque and ₹90,000 on 2 April 2013 to his savings account in the same branch. Thereafter, he issued two checks from this account:

- ₹10 lakhs was transferred to Linkson Coal and Mining Limited through RTGS (cheque dated 2 April 2013)

- ₹6 lakhs on 31 March 2013 to Lincoln International Limited

49. The report further stated that the Nagpur Sakari Bank also did valuation of the property through a registered valuer on 7 February 2015. The valuer also mentioned that the third floor is yet to be constructed and gave a valuation of ₹76 lakhs.

50. The report further suggests that the down payment of Rs. 105 lakhs was made by the CD in cash, for which no receipt or acknowledgement was available.

51. The report suggests that there is a nexus between the company and the bank authorities internally and externally, and also a nexus between the company and the seller. As the bank never made a site visit nor did a valuation of the property at the time of the purchase of the property, they never had proof of ownership by mutation

52. **Properties at Megh Complex, MIDC T Point, Ward No. 1, Mauza Wadi , near Wadi, Nagpur**

As per forensic audit report, 12 go-downs, No. 6 to 17, situated at the ground floor of the aforesaid building, and 6 flats, No. 107, 108, 112, 122, 202, 203, and 204, situated on the first and second floors of the aforesaid Megh complex, were sold by executing two sale deeds on 10th June 2013 for consideration of Rs.161.56 lakhs. Ownership of these properties is with the corporate debtor. However, as per the record of the sub-registrar, the ownership still lies with the seller, Mr. Sudhir Hiranwar, and the possession is also of the seller – Mr. Sudhir Hiranwar.

53. There are tenants at the 12 godowns and at the time of the visit of the forensic auditor, these properties were found occupied by the tenants. Almost all of these tenants told the forensic auditor team that they are paying rent to Sudhir Hiranwar. However, the copy of the tenancy agreement was not provided by any of them.

54. With regard to the flats situated on the 1st and 2nd floors of this building, there were no indications of the flat numbers. On the front side of the building, facing the main road, the 1st and 2nd floors were occupied by tenants with shops. However, there were no numbers or any identification mark. The first-floor right corner was occupied by the seller, Mr. Sudhir Hiranwar, in the name of Shri Gurudev Trader, and other shops were occupied by some insurance companies in the name of Tata AIG, Reliance, etc.

55. The godowns are stated to be occupied by tenants who are paying rent to the vendor, Mr. Sudhir Hiranwar. The liquidator then asked the appellants, by writing various letters, to pay the rents received by them and also to submit copies of the leave and license agreements. However, no document was supplied, nor was the money paid.

56. With regard to the go-downs, the market value of the property, as set out for the purpose of stamp duty, was Rs. 122.33 lakhs. The entire plot number 3, on which the building was constructed, was mortgaged to Nagrik Sahkari Bank, and the said mortgage was never redeemed or cleared. Even then, the loan was sanctioned by the bank.

57. So far as the three flats constructed on each of the first and second floors of the Megh complex building, this property was valued at ₹161.56 lakhs, whereas the value for stamp duty of the same was only ₹85.77 lakhs.

58. It is also stated in the report that amount of loan of Rs. 168 lakhs and 112 lakhs were also transferred to the vendor's account in Nagpur Nagrik sahkari Bank Wadi branch on 10 June 2013, on which the sale deeds were executed and registered. The said vendor transferred:

- Rs. 150 lakhs by cheque dated 11 June 2013 in favour of Linkson Ispat and Energy Private Limited in its account in Axis Bank, Gandhi Nagar, Nagpur branch.

- Rs. 7 lakhs by cheque dated 12 June 2013 in favour of Linkson International Limited (CD). The said amount was used to purchase the share money of the bank of Rs. 7 lakhs on 12 June 2013 and repayment of the loan on 10 June 2013. It is also highlighted that there is no receipt available in respect of the down payment of Rs. 12.50 lakhs each for go-downs and the flats, and for payment of Rs. 35.50 lakhs with Nagpur Nagrik Sakari Bank.

59. **<u>Cash expenses by the company without any genuine supporting document</u>**

The forensic auditors also stated that they had verified the accounts which were provided from April 2015 to March 2019, maintained in Tally data, and cash book from April 2015 to March 2019. The cash expenses were broadly incurred in the following five heads:

- ₹4,292,800/- for business expenses

- ₹1,833,660/- for labour charges

- ₹2,858,401/- for salary

- ₹8,852,00/- for transportation

- ₹4,452,63/- for store expenses

Totalling Rs. 1,03,15,324/-

60. Total cash expenses are shown as: ₹1,123,922.18/- therefore, the expenses in the above five heads constitute 92.73% of the total cash expenses. A difference of ₹1,04,390 was noted as the amount shown in the ledger and in supporting documents provided by the erstwhile management and entries made in the books of accounts. The auditor also considered the cash expenses incurred in other heads and found that these are not supported by genuine documents.

61. Thus, it is evident that the corporate debtor had paid a total amount of ₹7,52,95,500/- to the vendors/sellers towards purchase of the above immovable property in Shri Gopal Complex and Megh Complex. For the purpose of procuring the consideration for the sale, ₹527.06 lakhs were taken as the loan from Nagpur Sahkari Bank. In view of the conclusions drawn by the forensic auditor, a major part of this consideration money travelled back to the corporate debtor or its related parties, wherein one of the directors of the CD was a director. We also notice that the properties which are stated to have been sold to the corporate debtor are still in the possession of the sellers/vendors.

62. Having considered the Forensic Audit Report in depth, we notice that the above conclusions drawn by the forensic auditors are based on documentary evidence and material collected by them in the form of sale deeds, bank records, the sub-registrar office records, and the title verification reports obtained through

an Advocate, therefore, it could not be said that the forensic report prepared by the forensic auditor was prepared without any supporting documentary material or evidence.

63. According to the Appellants, they did not contest the proceedings before Ld. Adjudicating authority, however we notice that fullest possible opportunity was provided by the Ld. Adjudicating Authority to the Appellants to contest the proceedings, however it is due to their own fault they did not contest the proceedings before the Adjudicating Authority and the explanation given by them for not contesting the proceedings before the Ld. Adjudicating Authority does not appear to be genuine and acceptable to us.

64. Even when the Appellants did not contest the proceedings before the Adjudicating Authority they can produce all the material/evidence in support of their defence before us. Once the copy of the Appeal along with the copy of the application moved by the Resolution Professional before the Ld. Adjudicating Authority giving details of the Forensic Audit Report, was provided to the Appellants, it was their duty to have shown before us by tendering any reliable material or documentary evidence that the Forensic Audit Report is not trust worthy. Whatever material has been produced by the Appellants before us, in our considered opinion is not sufficient to discard the Forensic audit report, which in our considered opinion is trustworthy and may be relied on. Though the strict principles of evidence act are not applicable to the proceedings before us or before Ld. Adjudicating authority, even then we cannot ignore the basic principles of appreciation of evidence. The burden to prove those facts which are in the specific knowledge of the party is on it and the other party could not be compelled to prove those facts which are impossible for it to prove. Thus it was the duty of the Appellants to discharge their onus, once the RP has discharged its onus by submitting reliable forensic audit report.

65. At the cost of repetition, we would recall that the Forensic Audit Report in this case is prepared on facts, material and documentary evidence collected by the Forensic Auditors and this evidence, material and facts have also not been disputed by the Appellants nor any material has been placed before us, which may be sufficient to discard this Forensic Audit Report.

66. We, thus agree with the conclusions drawn by the Ld. Adjudicating Authority that these transactions of sale were nothing but an accommodation transaction to enable the Corporate Debtor to raise further loans and receive it back by making the sellers a conduit. We also notice that the value of these properties, as shown in the ready reckoner for the purpose of payment of stamp duty, was substantially low. We are also in agreement with the conclusions drawn by the forensic auditor so far as the same are concerned with the valuation of the property, and value of properties has been shown much more than their actual value in the sale deeds. No title verification of the property was conducted before the purchase of the property, and some of these properties were already mortgaged to Sahkari Bank, but neither the mortgage could discharged nor redeemed.

67. We also notice and also highlighted by the Forensic Auditors that with regard to Shri Gopal Complex, the registration of the property was done at 4.58.38 pm at the Registrar’s office and the time of the bank was only from 10 am to 5 pm, and the money appears to have been transferred by the bank before the property was actually sold.

68. We also notice that if the facts of the execution of the sale deeds, their timings, and the transfer of money from the bank to the vendor and by the vendor to the bank and also to the related entities and CD is considered in its normal parlance, it will emerge that the purpose of the loan advanced by the Nagpur Sahkari Bank was not for the purchase of the property and it has been rightly held by the Ld. Adjudicating Authority that it was an accommodation provided to the

Corporate Debtor in the shape of a home loan. A large portion of the money advanced to CD, in fact, came back to the Corporate Debtor and its related companies, wherein one of the directors of the CD was also a director. It appears to be a crystal-clear case of round-tripping of money, and the sole purpose of it was to defraud the creditors.

69. Thus, keeping in view all the facts and circumstances of this case, we do not find any error in the impugned judgment passed by the Ld. Adjudicating Authority. Therefore, the appeal, in our considered opinion, lack merits and is hereby **dismissed**.

70. However, there is no order as to costs.

71. The pending IAs are also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi
10.09.2026
sr