

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**  
*(Exercising powers of Adjudicating Authority under  
The Insolvency & Bankruptcy Code, 2016)*

**I.A NO. 269/2022**

Under Section 66 of the I& B Code, 2016 r/w  
Rule 11 of the NCLT Rules, 2016  
in

**C.P (IB) No. 26/BB/2021**  
u/s 9 of the IBC Code r/w Rule 6 of  
Insolvency and Bankruptcy 2016

In the matter of

**Mr. Hari BabuThota,**

Resolution Professional

M/s. Rich Fruits Private Limited,  
#41/1, 2<sup>nd</sup> Floor, 11<sup>th</sup> Cross,  
8<sup>th</sup> Main, 2<sup>nd</sup> Block, Jayanagar,  
Bengaluru -560011

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Applicant/ Liquidator

**Versus**

**1. Mr. Abdul Asif,**

No. 15, Rogers Road,

Richards Town, Bangalore – 560005 ---

Respondent No.1

**2. Mr. Abdul Sattar,**

#55, Robertson Road,

Frazer Town, Bangalore – 560005 ---

Respondent No.2

**3. Mr. Amirjan Nasimunisa,**

No. 15, Rogers Road,

Richards Town, Bangalore – 560005 ---

Respondent No 3

**Order delivered on: 23<sup>rd</sup> June 2023**

**Coram:**

1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Applicant : Shri Chandramouli Prabhakar  
For the Respondent : Shri. S.Harish

**ORDER**

**Per:Manoj Kumar Dubey, Member (Technical)**

1. This application is filed on 28.06.2022 by Shri Hari Babu Thota, the Resolution Professional of M/s. Rich Fruits Private Limited/Corporate Debtor, under Section 66 of the I & B Code 2016 read with Rule 11 of the NCLT Rules, 2016 *inter alia* seeking to declare the identified transactions as fraudulent as per section 66 of the Insolvency and Bankruptcy Code, 2016 and to direct Respondents 1 to 3 to contribute to the assets of the Corporate Debtor a sum of Rs. 6,03,30,643.37/- jointly or severally as per section 66(1) of the code.
2. Brief facts of the case, as mentioned in the application and written submission filed vide diary no 1396 dated 10.03.2023 which are relevant to the issue in question, are as follows:
  - a) It is stated that this Adjudicating Authority initiated CIRP process of the Corporate Debtor on 02.02.2022 in CP (IB)No.26/BB/2021.In the 3<sup>rd</sup> CoC meeting held on 20.05.2022, the liquidation of the Corporate Debtor was approved along with the appointment of the RP as the liquidator; who filed an I.A for liquidation before this Tribunal.
  - b) The Corporate Debtor had supplied goods to Safa Fruits (Rs.5,46,15,818.00) and SMGK Agro Products (Rs.57,14,825.37), from Financial Year 2013-2014 onwards and is yet to recover a sum of Rs. 6,03,30,643.37/-, as per the provisional financial statements as on 2<sup>nd</sup> February 2022.The Applicant sought the invoices and the ledger statements of Safa Fruits and SMGK Agro Products and observed that there exists a significant difference between the amount accounted for as per the ledger statements and the invoices made available by the promoter directors. The accounts of the Corporate Debtor do not depict the true status of affairs and ultimately are meant

to manipulate the suppliers and lenders by inflating its net worth.

- c)** It is stated that the manner in which business of the Corporate Debtor has been carried out, raises a question on the validity of the amount of receivables. Though the amounts were pending over a long time, the same weren't written off as bad debts neither were recovered. Though the Corporate Debtor has an outstanding liability of Rs. 7,77,85,486.18/-, the promoter directors have not made any considerable efforts to recover the dues.
  - d)** During CIRP, the applicant sent notices to the debtors for recovery of dues. The speed post to Safa Fruits was returned and applicant has not received any reply from SMGK Agro Products. The promoter also did not make available the latest address of Safa Fruits. It is pertinent to note that the debtors are the only assets as per the provisional Financial Statements, the proceeds of which can be utilized for payment of CIRP costs and settle the claims of the creditors. Even though the Corporate Debtor was bearing losses since the Financial Year 2018-2019, no serious legal or commercial actions were taken by the promoter directors of the Corporate Debtor. The applicant has opined and further determined that the business of the Corporate Debtor has been carried on with intent to defraud to creditors of the Corporate Debtor.
- 3.** The Respondents No.1 & 3 have filed the statement of objections vide Diary No.1036 dated 22.02.2023 and written submission vide diary no 1632 dated 21.03.2023 *inter alia* contending as follows:
- i.** The respondent no 3 was not involved in the day to day affairs of the Corporate Debtor. It is submitted that the Liquidator has erroneously scrutinised the ledger statements of the Corporate Debtor and opined that the accounts do not present the true state of affairs of the Corporate Debtor, without clarifying the entries with the Corporate Debtor.

- ii.** The mismatch in the ledger statement of ‘Safa Fruits’ is due to the fact that the Liquidator has failed to consider a vital aspect in the accounting entries i.e., the Liquidator has failed to account for excess payments made towards invoices which has not been accounted in the ledger statements furnished by the Liquidator. Further, supplies made by the Corporate Debtor to ‘Safa Fruits’ perished, and the advance payment made by ‘Safa Fruits’ was refunded. The advance amount paid by ‘Safa Fruits’ was reflected in the ledger statement which the Liquidator has considered as excessive payment.
- iii.** Further, the Liquidator has erred in not considering the arrangement between the Corporate Debtor and SMGK Agro Products, in which they were engaged in a mutually consented arrangement for supply and purchase of goods. It is also submitted that SMGK Agro Products were supplying fruit pulp to the Corporate Debtor. The applicant failed to consider the aspect that money owed by the Corporate Debtor was adjusted with the payables to SMGK Agro Products based on their arrangement at the convenience of both the parties.
- iv.** Hindustan Tin Works limited is the only creditor of the Corporate Debtor. It is an admitted fact that the books of accounts brought on record that the Corporate Debtor had business with ‘Safa Fruits’ and ‘SMGK Agro Products ‘ even before the financial year 2013-14. Post financial year 2017-2018 no new supplies were undertaken to the entities as they failed to clear the outstanding dues. Finally, in 2019-2020 the entities came forward to pay a part amount of the outstanding balance but the entities showcased their willingness in settling outstanding dues after several requests were made to pay the outstanding amount. From the year 2020-2021 recovery of debt became difficult due to Covid 19.
- v.** The respondents had made several attempts to recover moneys due from SMGK Agro Products but in spite of repeated reminders

there was no response from SMGK Agro Products. Finally in the financial year 2019-2020 SMGK Agro Products agreed to clear dues partly pursuant to repeated reminders.

4. Heard the Learned Counsel for the Applicant and Learned Counsel for the Respondents and carefully perused the records.
5. In the written submission filed by the Applicant vide Diary No.1396 dated 10.03.2023, it was stated that based on the ledger Accounts and transactions with the two entities mentioned above, the Applicant is of the opinion that these transactions were liable to be treated as fraudulent transactions U/s.66 of the IBC, 2016. It was further stated as under:-

*“6. In the Statement of Objections filed before this Hon’ble Tribunal, the Respondents have for the first time since the commencement of the CIR Process given some information and documents which are summarised as follows:*

- i. *That the Corporate Debtor was in the business of manufacturing and supplying ‘Fruit Pulp’. In the event the Sales as made by the CD to the Buyer got spoilt, there was no possibility of recovery of such monies. Further, Advance Payments and Excess Payments were refunded and reconciled from time to time {Paragraph 4 of the Counter}*
- ii. *In the case of M/s. SMGK Agro Products, the arrangement was that the said Entity would manufacture and supply some fruit pulp to the CD while the CD would also supply other Fruit Pulp to it, as a result of which there would be no actual payments between the two entities {Paragraphs 5 of the Counter}*
- iii. *Due to continued business relationship and perishable nature of products and the small field in which very few firms such as M/s. Rich Fruits, M/s. Safa Fruits and M/s. SMGK Agro Products operate, continued business relationship was more important and was stopped from 2017-18 due to mounting receivables and losses {Paragraphs 10 & 12 of the Counter}*
- iv. *At Paragraph 11 of the Counter, it has been stated that Partial Recoveries had indeed been made from M/s. Safa Fruits even during 2019 – 2020 to the tune of Rs. 17,46,383 & during 2020 – 2021 to the tune of Rs. 19,00,000 which would show that continued efforts were made to recover the monies to the extent possible from vendors and therefore there was no fraudulent trading on the part of the Respondents.*
- v. *It was due to Business Losses that the Corporate Debtor fell into Insolvency and bad business decisions cannot be termed as a Fraudulent Act on the part of the*

erstwhile promoters. Mere inability to recover outstanding dues from Creditors would not be a fraudulent act on the part of the Respondents and the affairs of the CD were not carried on with an intent to defraud the Creditors with any dishonest intention {Paragraph 15 and 16}

7. For the convenience of this Hon'ble Tribunal, a detailed chart showing a comparison of the Applicant's allegations and the Respondents' relevant extracts from the reply to the same in their Objections is produced for the sake of ready reference:

<b>SL NO.</b>	<b>ALLEGATION</b>	<b>CLARIFICATION BY THE RESPONDENTS</b>
1.	The accounts of the Corporate Debtor do not depict the true state of affairs, i.e; there exists a difference in the amounts accounted and invoices available with respect to the trade receivables	<p>Excess payments were made towards invoices which has not been accounted in the ledger statements. Further, in this regard, supplies made by the Corporate Debtor to 'Safa Fruits' perished, and the advance payment made by 'Safa Fruits' was refunded. The advance amount paid by 'Safa Fruits' was reflected in the ledger statement which was considered as excessive payment.</p> <p>With regard to SMGK Agro Products, there existed an arrangement between the Corporate Debtor and SMGK Agro products, in which they were engaged in a mutually consented arrangement for supply and purchase of goods. Moneys owed by the Corporate Debtor was adjusted with the payables to SMGK Agro products based on their arrangement at the convenience of both the parties. SMGK Agro Products was supplying goods to the Corporate Debtor and dues owed by the Corporate Debtor were set off with receivables with respect to the accounts of SMGK Agro Products</p>
2.	The accounts of the Corporate Debtor is meant to manipulate suppliers and lenders by inflating net worth and	The decision to enter into the aforesaid transactions was a commercial decision which was taken by the Corporate Debtor unsuccessfully. Commercial decisions taken by the Corporate Debtor cannot be deemed to be fraudulent transactions. Businesses have the autonomy to decide on business policies

	<i>presenting a false notion about accrued income;</i>	<i>based on their footing in the market and prevailing market conditions and this autonomy cannot be doused by taking stringent measures by classifying such decisions as 'fraudulent'.</i>
3.	<i>Respondents carried on supplies even when payment remained stagnant, thus amounting to an enormous debt;</i>	<i>Post the financial year 2017-2018 no new supplies were undertaken to the entities as they failed to clear outstanding dues. Despite several attempts made by the respondents to recover the dues, there was no response from the entities. Finally, in 2019-20 the entities came forward to pay a part amount of the outstanding balance but the entities showcased their willingness in settling outstanding dues after several requests were made to pay the outstanding amount. From the year 2020-2021, recovery of debt became arduous owing to curbing of economic activity due to the COVID. As the respondents struggled to cope with the recession, it became increasingly difficult to continue business and as a result of a total economic halt, the business of the Corporate Debtor suffered.</i>
4.	<i>The respondents did not make any considerable efforts to recover dues.</i>	<i>Considering the entries of 'Safa Fruits' for the year 2019-20 and 2020-2021, the respondents took steps to recover the debt due from the entities as can be evidenced from entries made in the ledger books of the Corporate Debtor for the financial years 2019-20 and 2020-21 concerning 'Safa Fruits', where a sum of Rs 17,46,383/- was recovered in the year 2019-20 and a sum of Rs. 19,00,000/- was recovered in the year 2020-21.</i>  <i>The ability to recover dues from entities depends on several factors which was not in the hands of the respondents. There is no reason for the respondents to not recover the dues as the Corporate Debtor was incurring huge losses which in turn burdened the respondents.</i>

8. The Applicant/Liquidator most respectfully submits that none of the above facts, explanations or documents presented along with the Reply before this Hon'ble Tribunal were ever presented to the undersigned when the Applicant had sought explanations from the Respondents."

6. The Respondent in their written submission have reiterated that the Liquidator himself admitted that he did not have sufficient documents to ascertain the true nature of transactions and there were no sufficient evidences for the same. On the other hand, the Corporate Debtor has furnished the documents to negate the allegations of the Liquidator. It was the duty of the Liquidator to seek clarifications for the entries which could have been explained by the respondents. The Respondent reiterated the submissions given earlier in the statement of objections and has contested the claim that no efforts were made to recover the dues. It was stated that an amount of Rs.17,46,383/- was recovered in the year 2019-20 and a sum of Rs.19,00,000/- was recovered in the year 2020-21 from M/s. Safa Fruits, and from M/s. SMGK Agro Products also repeated attempts were made to recover the dues. It has been contended that merely because the Corporate Debtor is not able to recover the entire amount, it could not be said it was a fraudulent transaction. Finally, the Respondent has stated that in order to attract Section 66 of the Code, the essential ingredients of dishonest intention to defraud the creditors must be existing, for which Respondents placed reliance on an Order dated 11.02.2022 given by the co ordinate Bench of NCLT, Chennai in the case of *Mr. Ashish Rathi Vs. Rajiv Rai & Ors. in MA/631/2018 in C.P/665/IB/CB/2017*.
7. We have considered the submissions by both the parties carefully and have gone through the provisions of the Code, along with decisions mentioned above.
8. It is noted that in the written submissions filed by the Applicant itself it is clear that the Applicant has repeatedly stated that the explanation and reply to the various observations of the Applicant has been made for the first time after commencement of the CIRP before this Adjudicating Authority. In fact in para 8 of the written submissions filed on 10.03.2023 by the Applicant it has been stated as under:

*“...8. The Applicant/Liquidator most respectfully submits that none of the above facts, explanations or documents presented along with the reply before this Hon’ble Tribunal were ever presented to the undersigned when the Applicant had sought explanations from the Respondents.”*

9. It is seen from the provision of the Section 66 of the Code, that the essential condition in accordance with U/s. 66(1) of the IBC, 2016 that the business of the Corporate Debtor should have been carried on with intent to defraud Creditors of the Corporate Debtor; and the Respondents responsible for such transactions should have been the parties ‘knowingly’ to the carrying on of the business in such a manner. In this case, the Applicant has not been able to make out such a case. In fact, in the written submissions, it was stated by the Applicant that he was of the ‘opinion’ that these transactions, were fraudulent in nature. If there was some inconsistency with regard to nature of the transactions, an audit should have been ordered by the RP/Liquidator but this was not done. For concluding that it was ‘knowingly’ done there has to be some independent evidence even if there was no such transaction audit carried out RP. The RP has got enough powers to collect such information and furnish a detailed analysis before this Adjudicating Authority showing that the provisions of section 66(1) were attracted.
10. In Section 66(2), the requirement is that the Director or Partner of the Corporate Debtor was liable, in case before the CIRP commencement date, he was aware of the fact that there was no reasonable prospect of avoiding commencement of CIRP, if such Director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor. In this case no such finding and evidence has been furnished so as to arrive at the conclusions that the conditions mentioned in the Section 66(2) were satisfied. Accordingly, it is held that neither the conditions of Section 66(1) nor the conditions of Section 66(2) of IBC, 2016 has been satisfied in this case. The Respondent relied upon the decision of the Hon’ble NCLT, Chennai vide Order dated 11.02.2022, in the case of Mr.

Ashish Rathi Vs. Rajiv Rai (cited supra) in which reliance was also placed by the Tribunal on the decision of the Hon'ble Supreme Court in the matter of *Anuj Jain IRP for Jaypee Infratech Limited Vs. Axis Bank Limited etc., in Civil Appeal No.8512 – 8527 of 2019.*

11. Accordingly, the Applicant has failed to prove that the Respondent entered into transactions with dishonest intentions to defraud the Corporate Debtor and the Applicant in his Application/pleadings nowhere contended that the conditions of Section 66 (2) were applicable.
12. Therefore, in view of the above facts and circumstances, we are of considered opinion that the applicant has failed to furnish the requisite details or provide any material proof with regard to the contention raised in the application. Hence, the present application is liable to be dismissed. **Accordingly IA No.269 of 2022 is dismissed.**

-Sd-

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

-Sd-

**( T.KRISHNAVALLI)  
MEMBER (JUDICIAL)**