

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. IA/1642/2024 C.P. (IB)/1166(MB)2020

IN THE MATTER OF

Edelweiss Asset Reconstruction Company Limited

... Petitioner

Vs

Perfect Engine Component PvtLtd

... Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 06.10.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the FC: Aparna Wagle (VC)

For the Respondent: Adv Joshi i/b crawford bayley & co. (R-1) (VC)

ORDER

IA/1642/2024- The above IA/1642/2024 is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Avdhesh//

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V**

IA (IBC) No. 1642 of 2024

IN

CP (IB) No. 1166 of 2020

IN THE MATTER OF

**Edelweiss Asset Reconstruction
Company Ltd**

*Having its registered office at Edelweiss
House, Off. CST Road, Kalina, Mumbai
- 400098*

... Applicant

Versus

Ms. Chetana Ambarish Shah

*Member of Board of Director of Perfect
Engine Component Pvt Ltd (Suspended
Director)*

*A-29, Nikash Skies Co-Operative
Housing Society, Off Baner Road,
Someshwar Wadi Pune - 411008*

... Respondent No. 1

Mr. Ramakumar Purayath Nair

*Member of Board of Director of Perfect
Engine Component Pvt Ltd (Suspended
Director)*

A-35, Varsha, Anushakti Nagar, Mumbai
400094

... Respondents No. 2

IN THE ORIGINAL MATTER OF

**Edelweiss Asset Reconstruction
Company Ltd**

...Financial Creditor

Versus

**Perfect Engine Component Private
Limited**

... Corporate Debtor

Order Delivered on: 06.10.2026

Coram:

Sh. Vinay Goel

Member (Judicial)

Sh. Charanjeet Singh Gulati

Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant:

For the Respondent:

ORDER

IA (IBC) No. 1642 of 2024

1. The present Interlocutory Application dated 09.03.2024 (refiled on 23.03.2024) has been originally filed by M/s ARCK Resolution Professionals LLP, Through its Designated Partner, Mr. Anil Kohli, Resolution Professional for M/s Perfect Engine Components Private Limited (**‘Corporate Debtor/PECPL’**), under Section 66 of the

Insolvency and Bankruptcy Code, 2016 (**IBC/the Code**) with the following prayers:

- a) Allow the present application;*
- b) Pass an order qua the transactions as set out in the application more particularly in paragraph 29 to 31 entered into by the Respondents under Section 66 of the Code as fraudulent transactions with the intention to defraud the creditors of the Corporate Debtor;*
- c) Pass consequential directions against Respondent Nos. 1 & 2 being member of board of director of the Corporate Debtor (power suspended) to contribute an amount being Rs.0.20 Crore for deliberately defrauding the creditors of the Corporate Debtor and diverting funds of the Corporate Debtor along with interest at the rate this Hon'ble Adjudicating Authority deems fit;*
- d) Pass Consequential directions against the Respondents for deliberately defrauding the creditors of the Corporate Debtor and diverging funds from the Corporate Debtor to make such contributions to the assets of the Corporate Debtor as this Hon'ble Adjudicating Authority may deem fit including order/directions under Section 67 of the Code;*
- e) Pass such other or further Order/Order(s) as may deemed fit and proper in the facts and circumstances of the instant case.*

2. In terms of the approval of the Resolution Plan vide order dated 05.09.2024, the present applicant is to be pursued by Edelweiss Asset Reconstruction Company Ltd (**Edelweiss ARC Limited**). Accordingly, the present Application was amended, and Edelweiss ARC Limited was substituted as the Applicant.

Brief facts as per the Application:

3. The Corporate Insolvency Resolution Process (**‘CIRP’**) of M/s Perfect Engine Components Private Limited (**‘Corporate Debtor’**) was commenced on 25.01.2023 and the M/s ARCK Resolution Professionals LLP through its Designated Partner Mr. Anil Kohli was appointed as the Interim Resolution Professional (**‘IRP’**). Pursuant thereto, a public announcement was made on 27.04.2023 inviting claims with last date for submission as 09.05.2023.
4. The IRP constituted the Committee of Creditors (**‘CoC’**) on 15.05.2023 and subsequently, filed a report certifying the constitution of the CoC before the Tribunal vide application I.A. No. 2135 of 2023 which was taken on record by this Tribunal vide order dated 02.06.2023.
5. It is submitted that, in the 4th CoC meeting held on 11.08.2023, M/s. BDO India LLP was appointed as the Transaction Review Auditor. Thereafter, in the 10th CoC meeting held on 30.01.2024, the draft Transaction Audit Report (**‘TAR/ the said Report’**) was discussed, and Respondent No. 1 was requested to furnish her comments/clarifications. The Applicant apprised the CoC that additional bank statements had been provided to the Auditor and that a revised draft was awaited. The Auditor confirmed that there were no material changes to the draft, as most bank accounts were dormant during the review period. Subsequently, vide email dated 17.01.2024, Respondent No. 2 stated that he had acted as a director pursuant to the management’s directions and had nothing further to state regarding the report.
6. The Applicant submits that it received an email dated 07.02.2024 from the Respondent No. 1 in reply to the clarification sought in view of TAR. Respondent No. 1 stated that, during her tenure as a director of Corporate

Debtor, she was involved in production, human resource management, correspondence with the workmen union, and customer relations. With respect to sales to the Cummins group of Companies, she stated that the Company was an authorised vendor of Cummins and that, pursuant to a Trade Discount Agreement dated 01.04.2019 with Perfect Engineering Products Ltd. (**‘PEPL’**), supplied “Valve Seats and Valve Guide” to Cummins on behalf of the Company.

7. It is submitted that, in the 11th CoC meeting held on 08.02.2024, the Applicant placed the final revised TAR before the members and read out the clarifications contained therein. The transactions identified in the TAR were discussed, and the Applicant stated that appropriate avoidance applications would be filed upon examination of the report. The Transaction Auditor submitted the final report on 29.02.2024 for the review period from 01.04.2021 to 25.04.2023, identifying various transactions falling within the purview of Section 66 of the Code and stated to have been undertaken with an intent to defraud the creditors of the Corporate Debtor.
8. The Applicant states that the Transaction Auditor observed that there were long outstanding receivables of Rs. 5.51 Crores from Karla Engine Components Limited (**‘KECL’**) on 25.04.2023. It was also observed by the Auditor that debit adjustment amounting to Rs. 20 Lakhs was made against the ledger of the Corporate Debtor. Further, payment of Rs. 20 Lakhs were made to KECL during the review period (01.04.2021 to 25.04.2023) out of which an amount of Rs. 16 Lakhs was paid within the relevant period i.e. 2 years prior to insolvency commencement date, thereby making the total outstanding receivables made to KECL as on 25.04.2023 amounting to Rs. 5.91 Crore. The details of the outstanding

balances were on account of loan/advances given by Corporate Debtor as per TAR are hereinbelow:

(Amount in Rs. Crores)

Particulars	Related/Connected to PECPL	Opening Balance as on 01.04.2019	Debit Adjustment	Credit Adjustment	Payments	Receipts	Closing Balance as on 25.04.2023
Karla Engine Components Ltd.	Yes	5.51	0.20	-	0.20	----	5.91
Loan to Siddharth Shah	Yes	0.50	-	-	-	----	0.50
Total	-	6.01	0.20	-	0.20	----	6.41

9. It is submitted that, as per the audited financial statements, the Corporate Debtor had no revenue from operations and had incurred losses since Financial Year 2015–16. However, Respondent Nos. 1 and 2 failed to provide the Transaction Auditor with any reasons, supporting documents, or Board resolutions justifying the loans and payments advanced to Karla Engine Components Ltd., despite its weak financial position. Further, no steps were taken by the Respondents to recover the outstanding receivables from KECL.
10. The said Report also disclosed that Respondent No.1 and Respondent No. 2 were holding the position of a director in KECL and were also the directors of the Corporate Debtor thereby as per the audit report for F.Y. 2022-23, it was observed that KECL is a related party to the Corporate Debtor under Section 5(24) of the Code.
11. The Applicant states that under no circumstances the said transactions can be considered as “normal” in the ordinary course of business by any company. Further, it can be construed that the above said transactions were carried out by the directors which are not only fraudulent in nature but the

said transactions were carried out with an intent to defraud the creditors which is an ingredient of Section 66 of the Code.

12. It is submitted that the said fraudulent transactions have saddled the Corporate Debtor with the liabilities and stripped it off all the funds raised from the financial creditors, which were diverted to create assets in related entities of the promoters of the Corporate Debtor.

13. In support of its submission, the Applicant relied upon the following judgments of the Hon'ble Supreme Court:

a. Jaypee Infratech Limited v. Axis Bank Limited passed in Civil Appeal No. 8512-8527

b. Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited versus Axis Bank Limited etc., Civil Appeal Nos. 8512-8527 of 2019

Affidavit in Reply, in brief:

14. Respondent Nos. 1 and 2 have filed separate replies, which are substantially similar in content. The reply filed by Respondent No. 1 is shown as defective on the DMS; however, a hard copy thereof is available on record and is accordingly taken into consideration. In the interest of brevity and to avoid unnecessary repetition, the individual replies are not reproduced herein. Instead, the collective submissions of the Respondents, in brief, are set out below:

15. Respondent No. 1 submits that, prior to 2017, Late Mr. Ambrish Shah and Respondent No. 2 were directors of the Corporate Debtor. Following Mr. Shah's disqualification as a director, Respondent No. 1 was appointed as a Non-Executive Director by Respondent No. 2 in a nominal capacity. It is submitted that, following Mr. Shah's demise on 11.10.2018, Respondent

No. 1 was not involved in the day-to-day affairs or financial and past transactions of the Corporate Debtor, and her role and responsibilities were limited.

16. The Respondent No. 2 submits that he was a professional/ non-promoter director of the Corporate Debtor since 11.07.2015. The Respondent No. 2 sent an email dated 17.01.2024 to Resolution Professional of the Corporate Debtor that he was an employee of the Corporate Debtor and was a non-promoter director.
17. The Respondent Nos. 1 and 2 submits that on 01.03.2011, Corporate Debtor and Karla Engine Components Pvt. Ltd. (“**KECL**”) executed a Business Transfer Agreement (“**BTA**”), whereby KECL transferred its engine component business as a going concern comprising its assets, contracts and liabilities to the Corporate Debtor for consideration. By virtue of the BTA, the Corporate Debtor agreed to indemnify and keep KECL indemnified against all claims, costs, expenses, damages and liabilities arising or becoming payable. The Respondent No. 2 submits that the assumed liabilities of the KECL included Bank CC liability of Rs. 21,35,00,000/-, Sales Tax liability of Rs. 1,60,29,538/-, and SICOM liability of Rs. 1,33,07,959/-.
18. It is submitted that KECL is wholly owned subsidiary of the associate concern of Corporate Debtor and Corporate Debtor and Perfect Engineering Products Limited (“**PEPL**”) are related parties by virtue of being subsidiaries of the same holding company namely Perfect Nivesh Infra Pvt. Ltd.
19. Respondent No. 2 states that Edelweiss ARC Limited filed the Company Petition No. 1166/2020 against the Corporate Debtor for initiating CIRP. This Tribunal vide order dated 25.04.2023 admitted the said Company

Petition. Similarly, Edelweiss ARC Limited had also filed Company Petition No. 1164/2020 against the associate concern i.e. PEPL for initiating CIRP, which too was admitted by this Tribunal vide its order dated 06.06.2023. Thus, both of the Companies have been placed in CIRP on the application of the same financial creditor, arising out of the same restructuring package.

20. Respondent No. 1 submits that no relief for diversion, recovery or restoration can be maintained against her in respect of transactions predating her appointment, nor has any specific relief been sought for transactions undertaken thereafter. It is further submitted that the Applicant relies merely on observations in the Forensic Audit Report dated 29.02.2024, without establishing any fraudulent intent or satisfying the ingredients of Section 66 of the Code.
21. The Respondent No. 2 submits that, as stated in paragraph 30 of the Application, the Corporate Debtor paid Rs. 15.54 lakhs (Rs. 16 Lakhs out of Rs. 20 Lakhs mentioned in the Application) to KECL towards its statutory provident fund liabilities through ten demand drafts under the Agreement dated 01.03.2011. The balance Rs. 4 lakhs fall outside the relevant look-back period and therefore does not require consideration.
22. The Respondent Nos.1 and 2 submits that the transactions undertaken was in the ordinary course of its business. The Respondent No. 1 states that it is not to justify the transactions undertaken in the ordinary course of its business being questioned as if those transactions fall within the purview of Sections 43, 45, 49 and 66 of the Code. It is submitted that the Application fails to identify what aspect of the transaction is fraudulent. Mere existence of amounts due or receivable does not, per se, render a transaction illegal or fraudulent.

23. The Respondent No. 1 submits that the CIRP of the Corporate Debtor commenced on 25.04.2023, whereas the present Application was filed on 09.03.2024 based on the Transaction Audit Report dated 29.02.2024. Regulation 35A of the CIRP Regulations prescribes the timeline for filing an application in respect of avoidance transactions, which expired on or around 02.09.2023. Therefore, the present Application, having been filed only on 09.03.2024, is belated and beyond the prescribed timeline.

Analysis and Findings

24. We have heard the Ld. Counsels for the parties and perused the documents placed on record.

25. Through the present Interlocutory Application, the Applicant seeks a declaration that the transaction of Rs. 5.91 Cores advanced to Karla Engine Components Limited ('**KECL**') is a fraudulent transaction under Section 66 of the Code and consequential directions against Respondent Nos. 1 and 2, who were common directors of the Corporate Debtor and KECL, to contribute Rs. 5.91 Lakhs, along with interest, to the assets of the Corporate Debtor.

26. *Per Contra*, the Respondent Nos. 1 and 2 contend that the transactions undertaken was in the ordinary course of its business and according to the Agreement dated 01.03.2011. The Respondent No. 1 also contend that the present application is barred by limitation.

27. Before advertng to the merits of the contentions relating to fraudulent transaction, we deem it appropriate to deal with the contention raised by the Respondent No. 1 regarding delay in filing the present application under Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('**Regulations 2016**'). In this regard, it is necessary to refer to the

provisions of Regulation 35A of Regulations 2016, which is reproduced hereinbelow:

“35A. Preferential and other transactions.

- (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.*
 - (2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.*
 - (3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.*
- ... ”*

28. Upon plain reading of the Regulation 35A, it is clear that the said Regulation prescribes timelines for the Resolution Professional to form an opinion, make a determination, and file an application before the Adjudicating Authority in respect of avoidance transactions. Under Regulation 35A(3), the time for filing the application before the Adjudicating Authority, which was earlier 135 days, was reduced to 130 days by the Fourth Amendment to the Regulations, notified on 16.09.2022.

29. At this juncture, we refer to the judgement of Hon’ble National Company Law Appellate Tribunal in ***Prasant Chandra Rath & Ors. v. Surya Kanta Satapathy (RP)*** (2022) ibclaw.in 789 NCLAT dated 30.09.2022, in paragraph 25, has held as under:

“25. We now summarise our findings on the two issues which we had delineated for our consideration. On the first issue, we are of the considered opinion that CIRP Regulations 35-A is not mandatory and the requirement for approaching the Adjudicating Authority for appropriate relief on or before 135th day of the ICD is only directory. Keeping in view the facts of this case, we hold that there were sufficient and genuine reasons, for the application under Section 66 to be considered by the Adjudicating Authority, even though it was filed beyond 135th day of ICD....”

[Bold for Emphasis]

30. Upon consideration of the aforesaid judgment of Hon’ble NCLAT, it is clear that the timelines prescribed under Regulation 35A are directory and not mandatory, and non-adherence thereto does not render the avoidance application non-maintainable. Although the Hon’ble NCLAT considered the 135 days period, the amendment of 16.09.2022 merely substituted the number of days without altering the nature of the timeline. The ratio therefore applies equally to the amended 130 days. Accordingly, the contention raised by the Respondent No. 1 on the ground of limitation is rejected.

31. Now proceeding further on the matter that ‘*whether the impugned transaction of Rs. 5.91 Crores is ‘fraudulent and/or wrongful’ under Section 66 of the Code*’. In this regard, it is necessary to refer to the provisions of Section 66 of the Code, which are reproduced hereinbelow:

“Section 66 - Fraudulent trading or wrongful trading”

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who

were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

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

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

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

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

32. From the bare reading of Section 66 of Code, it is clear that a transaction is ‘fraudulent or wrongful’ if any business of the corporate debtor has been carried on with ‘intent to defraud creditors’ of the corporate debtor or for any fraudulent purpose. Similarly, a transaction is also covered under section 66 if, before the insolvency commencement date, a director knew

or ought to have to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of the corporate debtor and if such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

33. It is admitted and undisputed fact that certain transactions took place between the Corporate Debtor and KECL. Upon perusal of the documents placed on record, the details of the transactions, as set out in the Transaction Audit Report dated 29.02.2024, are as follows:

➤ On review of books of accounts, we noted that there were long outstanding receivable, amounting to INR 6.41 crore, from 2 parties i.e., Karla Engine Components Limited (Karla) and Siddharth Shah as on 24th April 2023. These outstanding balances were on account of loan / advances given by PECPL prior to our audit period. Kindly refer below table for details :

INR in crores

Particulars	Related/ Connected to PECPL	Opening Balance As on 1st April 2019	Debit Adjustments	Credit Adjustments	Payments	Receipts	Closing Balance as on 24th April 2023
Karla Engine Components Ltd	Yes	5.51	0.20	-	0.20	-	5.91
Loan to Siddharth Shah	Yes	0.50	-	-	-	-	0.50
Total	-	6.01	0.20	-	0.20	-	6.41

34. Further, it is undisputed and admitted position that the Corporate Debtor and KECL is sister concern and having common directorship. As per the master data available on the Ministry of Corporate Affairs (“MCA”) portal, the following is the list of directors of KECL:

Director/Signatory Details

Sr. No	DIN/PAN	Name	Designation	Category	Date of Appointment	Cessation Date	Signatory
1	00021575	MANJALA VIJAY SHAH	Director	Promoter	31/03/2011	-	Yes
2	01338996	CHETANA AMBARISH SHAH	Director	Promoter	15/02/2007	-	Yes
3	07179781	RAMAKUMAR PURAYATH NAIR	Director	Professional	10/10/2016	02/03/2024	Yes

35. The Respondent No. 2 contends that the transaction of Rs. 15.54 Lakhs, forming part of the total amount of Rs. 20 Lakhs transferred between the sister concerns, was undertaken pursuant to the Business Term Agreement dated 01.03.2021 executed between KECL and the Corporate Debtor and towards payment of KECL's pending Provident Fund dues, which were the liability of the Corporate Debtor. It is further contended that the remaining amount of Rs. 4 Lakhs was not paid within two years preceding the Insolvency Commencement Date and, therefore, falls outside the relevant look-back period and is not required to be dealt with.
36. It is pertinent to note that Section 66 of the Code does not prescribe any specific look-back or relevant period within which the impugned transaction must have been undertaken. The applicability of Section 66 is to be determined on the basis of the nature of the transaction, the circumstances in which it was undertaken, and the intent underlying the conduct of the business of the Corporate Debtor. Accordingly, the contention of Respondent No. 2 that the sum of Rs. 4 Lakhs, forming part of the total amount of Rs. 20 Lakhs, falls outside the relevant look-back period and, therefore, is not liable to be examined under Section 66 of the Code, is untenable.
37. Upon perusal of the ledger account of the Corporate Debtor, it is observed that the account is headed "**Amt Payable to KECL**" and reflects an opening balance of Rs. 5,50,88,483.62. The ledger further records a debit entry of Rs. 20,40,400/- in favour of KECL on 31.03.2020, along with entries of Rs. 3,07,635/- on 31.03.2021 and Rs. 3,06,000/- on 31.03.2022. Correspondingly, the ledger account of KECL reflects credit entries for identical amounts, i.e., Rs. 20,40,400/- on 31.03.2020, Rs. 3,07,635/- on 31.03.2021, and Rs. 3,06,000/- on 31.03.2022, as set out below:

Perfect Engine Components Pvt Ltd

AMT PAYABLE TO KECL

Ledger Account

1-Apr-2019 to 20-Feb-2024

Page 1

Date	Particulars	Vch Type	Vch No./Excise Inv.No.	Debit	Credit
1-4-2019	Cr Opening Balance			5,50,88,483.62	
22-7-2019	Cr Bank of Maharashtra, Pimpri - SEPL/2019/1503241	BPAYMENT-MANUAL	BOM/19-20/00389	602.00	
30-7-2019	Cr Bank of Maharashtra, Pimpri - SEPL/2019/1503241	BPAYMENT-MANUAL	BOM/19-20/00402	2,50,829.00	
31-3-2020	Cr Karla Engine Components Ltd	JOURNAL-MANUAL	E-JV/19-20/0594	20,40,400.00	
				5,73,80,314.62	
	Dr Closing Balance				5,73,80,314.62
				5,73,80,314.62	5,73,80,314.62
1-4-2020	Cr Opening Balance			5,73,80,314.62	
31-3-2021	Cr Karla Engine Components Ltd	JOURNAL-MANUAL	E-JV/20-21/0474	3,07,635.00	
				5,76,87,949.62	
	Dr Closing Balance				5,76,87,949.62
				5,76,87,949.62	5,76,87,949.62
1-4-2021	Cr Opening Balance			5,76,87,949.62	
31-3-2022	Cr Karla Engine Components Ltd	JOURNAL-MANUAL	E-JV/21-22/0576	3,06,000.00	
				5,79,93,949.62	
	Dr Closing Balance				5,79,93,949.62
				5,79,93,949.62	5,79,93,949.62

Perfect Engine Components Pvt Ltd

Karla Engine Components Ltd

Ledger Account

Gut No.215,Chikhalse,
Post-Kamshet,Tal-Maval.,Dist.Pune

1-Apr-2019 to 20-Feb-2024

Page 1

Date	Particulars	Vch Type	Vch No./Excise Inv.No.	Debit	Credit
12-6-2019	Cr Perfect Engineering Products Ltd,Debtors A/c	JOURNAL-MANUAL	E-JV/19-20/0115 (A)	18,77,000.00	
7-11-2019	Cr Perfect Engineering Products Ltd,Debtors A/c	JOURNAL-MANUAL	E-JV/19-20/0316 (A)	25,000.00	
7-12-2019	Cr Perfect Engineering Products Ltd,Debtors A/c	JOURNAL-MANUAL	E-JV/19-20/0378 (A)	25,000.00	
8-1-2020	Cr Perfect Engineering Products Ltd,Debtors A/c	JOURNAL-MANUAL	E-JV/19-20/0420 (A)	25,000.00	
6-2-2020	Cr Perfect Engineering Products Ltd,Debtors A/c	JOURNAL-MANUAL	E-JV/19-20/0470 (A)	25,000.00	
31-3-2020	Cr Perfect Engineering Products Ltd,Debtors A/c	JOURNAL-MANUAL	E-JV/19-20/0584	63,400.00	
	Dr AMT PAYABLE TO KECL	JOURNAL-MANUAL	E-JV/19-20/0594		20,40,400.00
				20,40,400.00	20,40,400.00
5-9-2020	Cr Bank of Maharashtra, Pimpri - SEPL/2019/1503241	BPAYMENT-MANUAL	BOM/20-21/00288	10,000.00	
15-3-2021	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/20-21/0150	2,82,635.00	
23-3-2021	Cr PErfect Engineering Product LTD	JOURNAL-MANUAL	E-JV/20-21/0420	15,000.00	
31-3-2021	Dr AMT PAYABLE TO KECL	JOURNAL-MANUAL	E-JV/20-21/0474		3,07,635.00
				3,07,635.00	3,07,635.00
15-6-2021	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/21-22/0031	75,000.00	
24-6-2021	Cr Cash	CPAYMENT-MANUAL	CP/21-22/0097	1,000.00	
3-1-2022	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/21-22/0154	1,00,000.00	
7-1-2022	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/21-22/0159	30,000.00	
28-2-2022	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/21-22/0206	1,00,000.00	
31-3-2022	Dr AMT PAYABLE TO KECL	JOURNAL-MANUAL	E-JV/21-22/0576		3,06,000.00
				3,06,000.00	3,06,000.00
14-11-2022	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/22-23/0317	3,00,000.00	
9-12-2022	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/22-23/0360	3,48,079.00	
13-1-2023	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/22-23/0409	1,50,000.00	
13-2-2023	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/22-23/0450	1,50,000.00	
15-3-2023	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/22-23/0499	1,50,000.00	
				10,98,079.00	
	Dr Closing Balance				10,98,079.00
				10,98,079.00	10,98,079.00
1-4-2023	Cr Opening Balance			10,98,079.00	
10-4-2023	Cr HDFC Bank A/C	BPAYMENT-MANUAL	HDFC/23-24/0005	1,50,000.00	
				12,48,079.00	
	Dr Closing Balance				12,48,079.00
				12,48,079.00	12,48,079.00

38. We note that the heading “***Amt Payable to KECL***” in the Ledger Account of the Corporate Debtor indicates that the amount reflected therein was recorded as a liability payable to KECL. However, no corresponding liability is reflected on the liabilities side of the Balance Sheets of the Corporate Debtor for the Financial Years 2015–16 to 2022–23. The said liability, if it continued to subsist, ought to have found reflection in the financial statements of the Corporate Debtor as an outstanding loan/liability year on year.
39. Moreover, the Transaction Audit Report records the said amount of Rs. 5.91 Crores as the closing balance outstanding in the name of KECL as on 24.04.2023 is noted as being “***on account of loan/advances given by PECPL***”, and it is further recorded therein that “***adjustments amounting to INR 0.20 crore against ledger of PEPL***” were noted, for which “***reasons, basis and supporting documents were not provided for our review.***” In the said Report it is also noted that “***Further on review of ledger of these parties we noted that no interest had been recorded in the books against such related parties indicating that such loans / advances are interest free. Reason, basis and justification for providing interest free loans to related parties is not available.***”
40. As regards the contention of the Respondents that the impugned transaction relates to the BTA executed between KECL and the Corporate Debtor on 01.03.2011, upon perusal of the said Agreement, we note that it pertains to the transfer of the business of KECL (the Seller) to the Corporate Debtor (the Purchaser). Clause 3.3.7 of the said Agreement states: “***The amount of Net Purchase Consideration, of Rs. 3,22,32,398/- (Rupees Three Crore Twenty-Two Lacs Thirty-Two Thousand Three Hundred and Ninety-Eight Only) payable as on March 31, 2011 to Seller shall be transferred to the Loan Account of the Seller in the books of***

Purchaser and such loan shall be repaid within 12 months from Closing Date. The amount outstanding, if any, on the expiry of 12 months from the Closing Date shall bear interest @ 15% per annum, till actual date of repayment. The "Closing Date" means 31.03.2011 or such other date as the parties agree in writing

41. As the entire business of KECL was transferred to the Corporate Debtor as a going concern, the Corporate Debtor took over the assets and liabilities of that business, and the only amount that remained payable by the Corporate Debtor was the consideration under Clause 3.3.7. Further, this transaction in terms of BTA has a closing date of 31.03.2011 and payment was to be made within 12 months, whereas the impugned transaction has taken place much later, and opening balance is shown at Rs. 5.51 Crores as of 01.04.2019. Also, as the purchaser, the Corporate Debtor owed this consideration to KECL, and it would be shown in its books as a liability, not as a loan or advance given to KECL. However, the impugned transaction of Rs. 5.91 crore is recorded as a loan/advance given by the Corporate Debtor to KECL. The entry of Rs. 5.91 Crore, therefore, does not support the Respondents' claim that the transaction arises from the BTA.
42. We also note that the Respondent has not placed on record any documentary evidence to establish or explain the nature of the impugned transaction. There is nothing to show whether the sum of Rs. 5.91 Crores represents a fresh loan or advance extended by the Corporate Debtor to KECL, or an amount payable by the Corporate Debtor to KECL, as indicated by the ledger heading “*Amt Payable to KECL*”. Further, neither the opening balance of Rs. 5.51 Crores as on 01.04.2019 nor the subsequent entries reflected in aforementioned ledger account for Rs. 20,40,400/-, Rs. 3,07,635/- and Rs. 3,06,000/- find any corresponding reflection in the

Balance Sheets or financial statements of the Corporate Debtor for the Financial Years 2019–20 to 2022–23, whether as a liability or as a loan/advance.

43. Further, the Respondents have also failed to place on record any material to establish that the said transaction of Rs. 5.91 Crores was undertaken in the ordinary course of business. It is undisputed that Respondent No. 1 has been a director of the Corporate Debtor since 2015 and Respondent No. 2 since 2017. The opening balance of Rs. 5.51 Crores as on 01.04.2019 and the transaction of Rs. 20 Lakhs on 31.03.2020, relates to a period during which both Respondents were admittedly in control of the affairs of the Corporate Debtor.
44. As regards the contention of Respondent No. 1 that the present application is based merely on observations in the Transaction Audit Report, it is noted that the Applicant, after taking into consideration the said Report, formed an opinion that the Corporate Debtor had been subjected to an avoidance transaction, as required under Regulation 35A (1) of the Regulations, 2016. Therefore, the contention of Respondent No. 1 is untenable.
45. In the circumstances noted hereinabove, it is necessary to examine the impugned transaction in the context of Section 66 of the Code. The Corporate Debtor was admitted into CIRP on 25.04.2023, and as recorded in the Transaction Audit Report, the amount of Rs. 5.91 Crores as on 24.04.2023, represented as a loan/advances, was accordingly recoverable from KECL along with interest. The nature of the transaction, coupled with the surrounding circumstances set out above, indicates that the funds were advanced interest free by the Corporate Debtor to KECL, a related entity, without any apparent business justification, resulting in diversion of the Corporate Debtor's funds. Despite being in control of the affairs of the

Corporate Debtor at the time the transaction took place, the Respondent Nos. 1 and 2 failed to take any steps to recover the outstanding amount, despite the same having remained due and payable for a substantial period.

46. In the facts and circumstances, it is clear that the total amount of Rs. 5.91 Crores was transferred from the account of the Corporate Debtor to KECL not for any business purpose, but with the intent to siphon off the funds of the Corporate Debtor and defraud its creditors. Such conduct on the part of the Respondent Nos. 1 and 2, coupled with their continued failure to recover the outstanding amount, establishes the requisite fraudulent intent and constitutes one of the contributory causes of the Corporate Debtor's admission into CIRP.

47. In view of the facts and circumstances of the case and the discussions hereinabove, we hold that the total amount of Rs. 5.91 Crores constitutes a 'fraudulent and wrongful transaction' within the meaning of Section 66 of the Code. Accordingly, we direct as under:

- a. The Respondent Nos. 1 and 2, being the suspended directors of the Corporate Debtor who were responsible for the impugned transaction, are directed to pay jointly, severally or individually sum of Rs. 5.91 Crores to the Corporate debtor within 30 days of this order along with interest at SBI PLR rate plus 2% interest from 24.04.2023 till the date of payment.

48. Accordingly, with the above directions, the IA No. 1642 of 2024 is **allowed and disposed of.**

Sd/-

Vinay Goel
Member (Judicial)
Saumya, LRA

Sd/-

Charanjeet Singh Gulati
Member (Technical)