

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302

IA 918 of 2020 in CP(IB) 82 of 2018

Orders under Section 66 & 67 IBC

IN THE MATTER OF:

Manish Kumar Bhagat, Liquidator of Pioneer Globex Pvt Ltd
(In Liquidation)
V/s
Narendrakumar Jayantilal Shah & Ors

.....Applicant

.....Respondent

Order delivered on: 06/03/2025

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court, vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)
IA 918 of 2020**

**In
CP(IB) No. 82 of 2018**

*(An application filed under Section 66 & 67 of the Insolvency and
Bankruptcy Code, 2016)*

IN THE MATTER OF:

Mr. Manish Kumar Bhagat
Liquidator of M/s. Pioneer Globex Private Limited
(In Liquidation)
103,104, Panchdeep Complex,
Mithakhali Six Roads, Navrangpura,
Ahmedabad, Gujarat-380009

...Applicant

Versus

1. Narendrakumar Jayantilal Shah
Residing at 173/B, Jainam,
Vijayrajnagar, Bhavnagar-364002,
Gujarat. ...Respondent No.1
2. Hardik Narendrakumar Shah
Residing at 173/B, Jainam,
Vijayrajnagar, Bhavnagar-364002,
Gujarat. ...Respondent No.2
3. Varun Golechha & Associates
501, Pushp Vinod Tower 4,
Near Korakendra, SV Road,
Borivali West, Mumbai-400092. ...Respondent No.3
4. Staunch Natural Resources Pvt. Ltd.
701/702, Nestor Court,
Adj to Vinayak Chs, CTS-985 Baji Prabhu
Deshpande Marg, Vile Parle (W)
Mumbai-400056. ...Respondent No.4
5. Jinvik Expofits Pvt Ltd.
Plot no.333, C/o.Mahalaxmi

Flour Mill Atta Mill Compound,
Nirmal Nagar Main Road,
Bhavnagar, Gujara rat-36400 1

...Respondent No. 5

Order pronounced on 06.03.2025

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Pratik Thakkar, Adv.
For the Respondents : Mr. Kunal Kanungo, Adv. a.w Ms.
Tanushree Sogani, Adv. & Mr. Atishay
Jain, Adv. for R-1,2 & 5

JUDGEMENT

1. The present application is filed under Section - 66 & 67 of Insolvency and Bankruptcy Code, 2016 by the Resolution Professional subsequently pursued by the Liquidator of the Corporate Debtor ("CD") - M/s. Pioneer Globex Pvt. Ltd, *inter alia*, seeking following reliefs;

- a. *That this Tribunal to pass appropriate orders or directions under Section 66 & 67 of the Code against Respondent no.1 & 2 to contribute Rs.5,70,000/- which was Cash-In-Hand of the Corporate Debtor as per the last submitted transaction audit reports;*
- b. *to pass appropriate orders or directions against the respondents to return Rs.2,82,53,863/- & Rs.34,60,000/- which were*

siphoned by way of loan/advancements without any interest from the Corporate Debtor to a related party;

- c. *to pass appropriate orders or directions against the respondent No.1 & 2 to compensate towards unexplained loss of Rs.16,51,67,304/- towards accounting entry of purchase of inventory from related party in the FY 2015-16 and loss reported on such inventory thereafter.*

2. The Corporate Debtor was admitted into CIRP under section 9 of the I&B Code, 2016 *vide* order dated 20.01.2020 of this Tribunal. Liquidation was allowed by this Tribunal *vide* order dated 05.02.2021.

3. It is the case of the applicant that in the transaction audit report dated 09.10.2020 the transaction auditor has pointed out numerous fraudulent transactions conducted by the suspended management. The applicant submitted as hereunder;

- i. As per the last audited balance sheets of the Corporate Debtor, an amount of Rs.5,70,000/- is reflected as cash-in-hand. However, the suspended management neither handed over any cash nor provided any records to support the utilization of this cash. In their letter dated 16.03.2020, the suspended management claimed that only Rs.3,641/- was available.

- ii. As per the transaction audit report, substantial amounts have been advanced to companies with a common director without any loan agreements or transaction details. These funds appear to have been siphoned off with no records of repayment. The transactions were carried out with intent to defraud the creditors of the Corporate Debtor. A brief summary of the transactions are reproduced hereunder;

Balance as on	Name of related party	Nature of transaction	Amount of Transaction	Relationship
31.03.2018	Jinvik Exports Pvt Ltd	Advance Given	34,60,000	Mr. Hardik Shah is common director holding 50% shareholding
	Staunch Natural Resources Pvt Ltd	Advance Given	2,82,53,863	Mr. Hardik Shah is common director
31.03.2017	Staunch Natural Resources Pvt Ltd	Advance Given	2,82,53,863	Mr. Hardik Shah is common director
	Staunch Natural Resources Pvt Ltd		77,78,183	Mr. Hardik Shah is common director

- iii. During FY 2015-16, stocks worth Rs.27,56,47,498/- were purchased from Staunch Natural Resources Pvt. Ltd. and subsequently disposed of, while the balance sheet for FY 2016-17 reflects a gross loss of Rs.16.57 crores. Despite repeated requests, the respondents have

failed to provide any explanation. The entire opening stock for FY 2016-17 was disposed of, leaving no closing stock. The statutory auditor of the Corporate Debtor *vide* email dated 02.11.2020 has confirmed that stocks were written off from the books, resulting in a substantial loss in FY 2016-17. The suspended management valued the closing stock for FY 2015-16 at Rs.20,27,86,584/-, which became the opening stock for FY 2015-16. By writing off realisable inventory and showing losses, the accounts were manipulated to siphon off funds.

- iv. The bank accounts of the Corporate Debtor were closed during the pendency of CP (IB) No. 82 of 2018. Transactions worth approximately Rs.100 crores took place between 01.04.2018 and 22.10.2019, yet no supporting data has been provided.
- v. The Corporate Debtor's Form AS 26 reflects that it had given loans and earned interest. However, the respondents failed to exercise due diligence in minimizing losses to the creditors. A significant portion

of these loans and earned interest was squared off just before the insolvency commencement date.

vi. Despite being given an opportunity to clarify the findings of the transaction audit report dated 09.10.2020, the suspended management has failed to provide any response.

4. Respondent No. 1, 2, 4 & 5 filed its reply affidavit and submitted that the Transaction Audit Report is conclusive based on the limitations mentioned therein. The Report explicitly states that it is not practically possible to examine all aspects of identified issues within the limited time available. Therefore, the outcome may neither be exhaustive nor representative of all possibilities. Further, the Corporate Debtor had Rs.5,70,000/- cash in hand as on 31.03.2018. However, this amount was utilized for business operations up to October 2019. The allegation that the entire amount was siphoned off by Respondent Nos. 1 to 3 is erroneous and should be rejected. The ledger account from 01.04.2018 to 31.03.2020, clearly shows that the amount was used solely for the Corporate Debtor's operations, leaving only Rs.3,641/- . In respect of Respondent No. 4 i.e. SNRPL, it is stated that

the Respondent No. 2 became a director of SNRPL only on 23.11.2016, until then, it was a non-related party. The business between the Corporate Debtor and SNRPL was conducted in the regular course. The coil purchased in FY 2015-16 for Rs.27,56,47,498/- does not qualify as a related-party transaction. The Corporate Debtor purchased Mill Scale from various non-related parties in FY 2013-14, which was later written off due to degradation and lack of marketability. Mill Scale, being similar to iron ore, loses quality over time. The stock was naturally eroded due to weather conditions, and maintaining it was commercially unviable. Further, in respect of Respondent No. 5 i.e. Jinvik Exports Pvt. Ltd. ("JINVIK"), the funds transferred to JINVIK was for urgent business needs and was subsequently returned.

5. Respondent No. 3 was engaged as the statutory auditors of the Corporate Debtor for the FY 2016-17 and 2017-18. It stated that the statutory audit report for the FY 2016-17 and 2017-18 were provided to the applicant. Furthermore, stated that the stock was written off and the Corporate Debtor had recorded huge loss in its books because the said stock was purchased by the Corporate Debtor in the year 2013 and

since the same was in custody of the Corporate Debtor for so long, due to depreciation and wear and tear, the value of the stock had come down drastically, the same was recorded and explained in the Management's Report as on 31.03.2017.

6. The applicant filed a pursis dated 22.07.2024 in view of the decision passed by the Hon'ble Supreme court in the matter of Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors. Reported in [2023]179scl44(SC). The applicant seeks deletion of Respondent No. 3 to Respondent No. 5 from the proceedings as the same will not be maintainable.
7. Both the parties have filed their written submissions.
8. Heard the learned counsel for the applicant and learned counsel for the Respondents. Perused the submissions made and documents available on record.
9. In view of the above, it is observed that the report of Forensic Audit has been prepared with specific limitations having a bearing on the transactions. Further, the Respondents have given a detailed reply along with the ledger statements in rebuttal. The RP would be well within his powers to file a recovery suit before a commercial court after seeking the permission of this Tribunal against the respondent no. 4 & 5

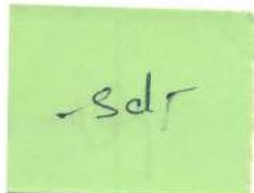
namely Jinvik Exports Private Limited and Staunch Natural resources Private Limited who have taken loan/advancements as we do not find any merit to decide these to be fraudulent transactions as the Audit Report is a qualified report. As regards the stocks written off, we observe that the Statutory Auditor has given a detailed reply by affidavit dated 29.03.2022 that he has given a detailed recording as explained in the Management's Report as on 31.03.2017 (Para 10 of reply read with Clause 24 of the Management Report). Hence, in respect of the missing cash in hand amounting to ₹5,70,000, the respondents have provided a satisfactory explanation along with the ledger. Regarding the siphoning of loans amounting to ₹2,82,53,683 and ₹34,60,000, the RP is directed to explore other modes of recovery. Concerning the loss of stocks written off amounting to ₹16,51,67,304, it has been noted from the response of Respondent No. 1 & 2 and the Management's Report as on 31.03.2017 that the said stocks were purchased by the Corporate Debtor in the year 2013 and due to depreciation and had no intrinsic value the same was disposed of in the year with loss in the year 2016-

17; however, the applicant has not provided complete details regarding the stock-in-trade.

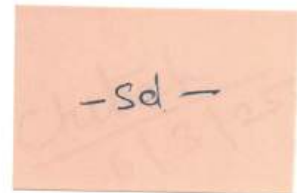
10. The Audit Report has been prepared with constraints and limitations. In absence of crucial records no conclusion can be drawn that the alleged transactions done are under section 66 & 67 of I&B Code 2016. The applicant has not filed sufficient evidence to hold that the alleged transactions are fraudulent transaction under section 66 of the Code. It is also pertinent to note that the RP has not form opinion and determination as per Regulation 35A of IBBI (Resolution Process for Corporate Persons) Regulations, 2016. Hence, we pass the following orders:

ORDER

- I. Respondent No. 3 to 5 are deleted from the present I.A. .
- II. I.A. 918 of 2020 in CP (IB) 82 of 2018 is rejected.



DR. V. G. VENKATA CHALAPATHY
MEMBER(TECHNICAL)



CHITRA HANKARE
MEMBER(JUDICIAL)

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