

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU**
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Web-Based Video Conferencing)

IA No. 89 of 2022 in
C.P. (IB)No.02/BB/2020
U/s. 43,45,60(5) & 66(1) of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of:

Ms. Shirley Mathew

Resolution Professional of
Maylari Agro Products Limited...

Applicant/Resolution Professional

Versus

1. Shri. Mahesh

Former Director of Maylari Agro Products Limited
S/o Mr Dyavappa, Age: 44 years,
No.92, 4th floor Sai Nandini Apartments,
Dollars Colony Layout,
Bengaluru - 560096

Respondent No.1

2. Shri Vaddarahally Puttuswamy Gowda Prakash

Former Director of Maylari Agro Products Limited
S/o Dyavappa, Age: 48 years
No.92, 4th floor Sai Nandini Apartments,
Dollars Colony Layout,
Bengaluru - 560096

Respondent No.2

3. Smt. Rekha Rani

Respondent No. 3

4. Shri Sheshadri Gowda

Respondent No.4

Order Delivered on: 06/03/2024

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 : Ms. Aishwarya Prasad
For the Respondent : None

ORDER

Per: BENCH

1. The present Application is filed on 11/03/2022 by the Resolution Professional of Maylari Agro Products Limited (hereinafter referred to as "Corporate Debtor") under section 43, 45 read with section 66(1) and 60 (5) of the IBC, 2016, interalia praying that this Tribunal my direct:
 - i. An order in terms of Section 44(1)(d) of the Code, directing the Respondent Nos 1 & 2 to pay a sum of Rs 1,61,93,400/- in respect of the benefits received by them.
 - ii. An order in terms of Section 44(1)(d) of the Code, directing the Respondent Nos 3 to pay a sum of Rs 25,000/- in respect of the benefits received by them.
 - iii. An order in terms of Section 44(1)(d) of the Code, directing the Respondent Nos 4 to pay a sum of Rs 52,000/- in respect of the benefits received by them.
 - iv. An order in terms of Section 45(1) of the Code, directing the Respondent Nos 1 & 2 to pay a sum Rs 1,72,36,070/- to the resolution professional to reverse the effect of the undervalued transactions.

OR IN THE ALTERNATIVE

v. An order in terms of Section 66(1) and (2) of the Insolvency and Bankruptcy Code, 2016 directing the Respondent Nos.1 and 2 to pay a sum of Rs 1,72,36,070/- to the Resolution Professional as contribution to the assets of the Corporate Debtor;

vi. Pass an order in terms of Section 66(1) and (2) of the Insolvency and Bankruptcy Code, 2016 directing the Respondent Nos.1 and 2 to pay a sum of Rs 25,07,37,972/- to the Resolution Professional as contribution to the assets of the Corporate Debtor.

2. The facts of the case are mentioned below:

a) The Corporate Insolvency Resolution Process of the Corporate Debtor commenced on 08/03/2021 vide the order of this Hon'ble Tribunal dated 08/03/2021 in C.P (IB) No. 02/BB/2020, filed under Section 9 of the Code and Shri S. Vishwanath was appointed as the IRP. Further, by way of Order dated 30/11/2021, this Hon'ble Tribunal allowed I.A No. 276/2021 filed by the Canara Bank and accordingly directed IRP (Shri S. Vishwanathan) be replaced, with Ms Shirley Mathew as the Resolution Professional.

b) The Committee of Creditors of the Corporate Debtor held on 21/02/2021 resolved to appoint M/s Pipara & Co. LLP for conducting the Transaction Audit of the Corporate Debtor for the period from 09/03/2019 to 08/03/2021. The transaction auditors duly carried out the transaction audit of the Corporate Debtor and submitted their final report on 08/03/2022. The main findings arrived at in the Transaction Audit Report are as follows:

PREFERENTIAL TRANSACTIONS

The Corporate Debtor has given a preference to related parties in transactions amounting to Rs. 1,64,25,400/-, during the relevant period as follows:

- i. Maylari Agro Products is a related party of the Corporate Debtor, controlled by the Respondent Nos.1 & 2, that had advanced a loan of Rs 1,20,59,100/- to the Corporate Debtor. Transactions that were in the nature of payments by way of cash and bank transfers, adjustment of amounts owed by other debtors of the Corporate Debtor and sales transactions, totally amounting to Rs 85,84,998/- were made by the Corporate Debtor in favour of Maylari Agro Products during the period of 2 years preceding the insolvency commencement date.
- ii. The Respondent No.1 is a related party of the Corporate Debtor and the following transactions carried out by the Corporate Debtor with the Respondent No.1 during the period of 2 years preceding the insolvency commencement date:
 - a. The Corporate Debtor paid an amount of Rs 30,80,930/- to the Respondent No.1 towards repayment of an unsecured loan advanced by the Respondent No.1 to the Corporate Debtor.
 - b. The respondent No. 1 maintained a Current Account with the Corporate Debtor and a payment of Rs.2,00,000/- was made to the Respondent No.1 by the Corporate Debtor through this Account and further an amount of Rs 7,91,472/- was debited from the amount owed by the Respondent No.1 to the Corporate Debtor under the Current Account through journal entries.
 - c. The Respondent No.1 has made some payments to third parties on behalf of the Corporate Debtor through an

'Advance Account' maintained with the Corporate Debtor. The Corporate Debtor repaid a sum of Rs 25,36,000/- directly to the Respondent No.1 by debtors of the Corporate Debtor and adjusted in the books of account of the Corporate Debtor.

- iii. Mr Bharata being the KMP(Director) of Maylari Agro Products Limited falls under the definition of related party Mr. Bharata maintained an advance account with the Corporate Debtor and a payment of Rs. 1,55,000/- was made by the Corporate Debtor to Mr Bharata in respect of the advance given by him, during the period of 2 years preceding the insolvency commencement date. Mr Bharata has since passed away and the Resolution Professional is in process of identifying the legal heirs and will file a separate Application against such legal heirs.
- iv. A payment of Rs 25,000/- was made by the Corporate Debtor to one made to Respondent No.3 during the period of 1 year preceding the insolvency commencement date, towards repayment of a loan advanced by her to the Corporate Debtor.
- v. A payment of Rs 52,000/- was made to Shri Sheshadri Gowda by the Corporate Debtor towards repayment of a loan during the period of 1 year preceding the insolvency commencement date.

UNDERVALUED TRANSACTIONS

- vi. Certain sale transactions entered into by the Corporate Debtor during the relevant period (Financial Year – 2019-20) were carried out at a sale price that was below the material consumption cost (excluding overheads such as labour cost, factory cost and direct overheads) resulting in a loss of Rs 1,72,36,070/- and thus, these transactions were undervalued.

- vii. The Resolution Professional has formed an opinion that the above transactions are undervalued transactions, since the transfer of the assets by the Corporate Debtor was for a consideration the value of which is significantly less than the value of the consideration provided by the Corporate Debtor. Without prejudice to the above, the above transactions resulting in a loss of Rs 1,72,23,070/- constitute fraudulent and wrongful trading under Section 66 of the Code, since it is evident that funds have been siphoned off from the company as the selling price of the finished products of the Corporate Debtor was lower than even the material consumption cost. Therefore, this was made an alternative prayer.

FRAUDULENT TRANSACTIONS

- viii. In the Transaction Audit Report, it appears that the Respondent No. 1 and 2 have carried on the business of the Corporate Debtor with intent to defraud creditors of the Corporate Debtor of for any fraudulent purpose in terms of Section 66 of The Code.
- a. No details available for sundry debtors whose outstanding balance amounted to Rs 24,2,26,509/- in the books of account of the Corporate Debtor, and no provision was found to be created on long ageing receivables. Further in absence of recovery measures, it appears that the entries were fictitious. ‘
 - b. As per the books of accounts of the Corporate Debtor, a sum of Rs 82,11,463/- was shown as receivable from related party Maylari Constructions which does not appear to be in normal course of business.

- c. The value of inventory for year ended March 2020 was under reported in the audited financial statements to the tune of Rs 20,81,193/-
- ix. The Respondent No. 1 & 2 have breached the fiduciary duty owed by them to the Corporate Debtor as directors, by diverting the funds of the Corporate Debtor for their own personal use, creating fictitious entries, misrepresenting the financial statements of the Corporate Debtor, removing funds from the Corporate Debtor as questionable advances to unknown parties without PAN, TDS, deduction, address etc. without any proof of actual receipt of goods/services tantamount to carrying business of the Corporate Debtor for fraudulent purpose and meet the threshold for fraudulent trading prescribed in Section 66 of the Code. Further, in terms of Section 66, since the Corporate Debtor's liabilities far exceed the Assets, the Respondent knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP of the Corporate Debtor and have failed to exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor.
3. In spite of issuing the court notice and paper publication, neither the Respondents nor the Counsel for the Respondents has appeared before this Tribunal. Therefore, the Respondents are set as *ex parte* vide the Order dated 15/09/2023.
4. Heard Learned Counsel for the Applicant and perused the records available. This tribunal has perused the Transaction Audit report attached along with the application. The findings of the report are reproduced below for convenience
- SECTION 43- Preferential Transactions.
- a. Mylari Agro Products – Associate of the Corporate Debtor.

The financials of the Corporate Debtor reveal that Mylari Agro Products are the Associate and proprietorship concern of Mahesh as per GST website, hence related party under the Section 5(24). Further, during the 'relevant time' i.e from 9/03/2019 to 09/03/2021, the Corporate Debtor has received a loan of Rs 1,20,59,100/-, against which 48,34,983/- was adjusted and Rs 36,35,00/- was repaid through cash and Bank account, Sales and Purchase. In all totalling Rs 85,84,998/-.

b. Shri Mahesh – KMP (Director) of the Corporate Debtor.

As on 09/03/2019, a loan of Rs 4,72,90,202/- was payable to Mahesh. During the period from 09/03/2019 till 08/03/2021, additional Loan of Rs 41,56,970/ was availed, out of which Rs 30,80,930 was repaid to Shri Mahesh.

Further, during the relevant period; Rs 60,000/- was received, Rs, 39,84,036 was adjusted by passing credit journal entries and Rs 7,91,472 was adjusted by passing debit journal entries. Rs 2,00,000 was paid and 43,000 was adjusted against the current account.

During the FY 2020-21, Rs 25,36,300 was repaid to Shri Mahesh by the Corporate Debtor for the payments made by Shri Mahesh to the third parties. And Rs 10,00,000 of Debtors was adjusted against Mahesh Advance Account.

c. As per the narration in the accounting entry dated 18/11/2020, it was mentioned that. "Opening Balance (as on 9th March, 2020) payable was NIL, however an unsecured loan of Rs 90,000 was availed during F.Y 2019-20. As per the narration in the accounting entry dated 18/11/2020; it was mentioned that, Being cash paid to Mrs Rekha Rani(Respondent No.3), though Shri Prasanna Kumar towards interest on borrowed amount" However, it should be noted

that no interest was found to be charged in the profit and loss account of the Corporate Debt and hence, amount paid to Mrs Rekha Rani is in the nature of repayment of loan and not interest. The said transactions took place during the period of one year preceding from the date of CIRP and hence satisfy the requirement of preferential transaction with non-related party.

d. Corporate Debtor has repaid the loan of Rs 52,000 availed from Sheshadri Gowda Respondent No. 4 , within the relevant period of one year prior to the date of initiation of CIRP. Opening balance (as on 9th March, 2020) payable was NIL, however a loan of Rs 100,000 was taken in F.Y 2019-20.

5. On perusal of the document it is seen that the CIRP against the corporate debtor commenced on 09/03/2021. As per the report of the transaction auditor the transactions happened between 08/03/2019 to 08/03/2021. It is seen that the contents of the Transaction Audit Report as well the observations made by the Auditors and the figures arrived are supported by the Bank Statements. The transactions also satisfy the conditions given in Section 43(4) regarding the 'relevant time'.

With respect to the transactions of Corporate Debtor with Mylari Agro Products, already being disclosed as an associate of Corporate Debtor being a proprietorship concern of Shri Mahesh (Director of Corporate Debtor), hence is a 'related party' under Section 5 (24) of the Code. Accordingly, Respondent No.1, who is the proprietor of Mylari Agro Products is liable to pay a sum of Rs 85,84,998/- to the Corporate Debtor.

6. Even though the relevant document of Appointment of Shri Mahesh is not provided for perusal, the financials provided with the Transaction Audit report reflect that Shri Mahesh is the Director of the Company, and "related party" under section 5(24) of the Code.

Also, the said The Respondent Nos.1, failed to dispute the said Bank Statements basing on which the Auditors have prepared the Transaction Audit Report. Hence the amount referred above falls under the ambit of preferential transaction of Section 43 for Respondents 1 thus is liable to refund Rs 76,08,402/- to the RP for the Preference Transactions. Further, the payment made to Respondent No.3 is not explained by the Management of the Corporate Debtor and hence Respondent No.3 is liable to pay Rs 25,000/-.

7. With regards to the claims against the Respondent No.4 it is observed as per the Transactions Audit Report, the Balance against Respondent No. 4 as at 09/03/2020 was NIL, however, in the F.Y 2019-20, the Corporate Debtor has repaid the loan of Rs 52,000/- availed from Respondent No.4 within the relevant period of one year. This is also shown in the financials submitted along with the Transaction Audit Report. Hence Respondent No. 4 is liable to pay Rs 52,000/- to the RP for preference transactions.
8. Hence, the prayers with reference to Section 43 of IBC are disposed of with the following directions:
 - a) **the Respondent 1 is directed to pay a sum of Rs 1,61,93,400/- in respect of the benefits received from the Corporate Debtor to the RP.**
 - b) **Respondent No 3 is directed to pay a sum of Rs 25,000/- to the RP.**
 - c) **Respondent No 4 is directed to pay a sum of Rs 52,000/- to the RP.**

Section 45 – Undervalued Transaction

9. As per the Chapter 4 of the Transaction Audit Report – Analysis of Loss incurred, the Auditor has reviewed the sales and purchase transactions from 9th March 2019 to 8th March 2021 (review period)

under the heading “Analysis of Loss incurred.” It is observed as under:

“We have requested for certain vouchers, invoices, e-way bill, delivery challans and other supporting documents from the team of Resolution Professional. However, till date of this report, so such details were made available to us. However, we have analysed the transactions on an overall basis to ascertain the profitability and found that Company has incurred overall loss during the period of 9/03/2019 to 08/03/2021”

At the end of a Table, the loss was quantified at Rs 1,72,36,070/- only on the basis of the material consumption cost and no overheads. The clarification from the management of the Corporate Debtor, was that it was due to sale at lower price and the supporting documents as called for was provided to the earlier IRP. However, the following conclusion was drawn in the report by the Auditor:

“Management has responded that goods were sold at a lower price due to issue in product quality. However, we have not been provided with any supporting documents for such remarks and the same appears to be very generic. Further, in absence of underlying transaction documents, it appears that Corporate Debtor is unable to produce any substantial documents for such gross loss incurred by him during the course of review period and hence Rs 1,72,36,070 may be classified as undervalued transaction as per Section 45 of IBC, 2016.” On the basis of the same, the Resolution Professional, is seeking for declaring the loss incurred in sales and purchase by the Corporate Debtor as ‘Undervalued Transaction.’

10. In this regard it is relevant to extract Section 46- Relevant period for avoidable Transactions

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that—

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

Further, it is considered necessary to rely upon the observations of the Hon'ble Apex Court in the judgement of *Anuj Jain, IRP for Jaypee Infratech Limited Vs. Axis Bank Ltd. & Ors., (2020) 8 SCC 401* dated 18/08/2020,

“32.1. However, we are impelled to make one comment as regards the application made by IRP. It is noticed that in the present case, the IRP moved one composite application purportedly under Sections 43, 45 and 66 of the Code while alleging that the transactions in question were preferential as also undervalued and fraudulent. In our view, in the scheme of the Code, the parameters and the requisite enquiries as also the consequences in relation to these aspects are different and such difference is explicit in the related provisions. As noticed, the question of intent is not involved in Section 43 and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time. However, whether a transaction is undervalued requires a different enquiry as per Sections 45 and 46 of the Code and significantly, such application can also be made by the creditor under Section 47 of the Code. The

consequences of undervaluation are contained in Sections 48 and 49. Per Section 49, if the undervalued transaction is referable to subsection (2) of Section 45, the Adjudicating Authority may look at the intent to examine if such undervaluation was to defraud the creditors. On the other hand, the provisions of Section 66 related to fraudulent trading and wrongful trading entail the liabilities on the persons responsible therefor. We are not elaborating on all these aspects for being not necessary as the transactions in question are already held preferential and hence, the order for their avoidance is required to be approved; but it appears expedient to observe that the arena and scope of the requisite enquiries, to find if the transaction is undervalued or is intended to defraud the creditors or had been of wrongful/fraudulent trading are entirely different. Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority.”

11. As it is evident from Section 46, that the RP has to demonstrate as to the period of such avoidable transactions and clearly demarcate such transactions into ‘Related Party and Non-related party’ Transactions. In the present case, the Resolution Professional has failed to satisfy this requirement of Section 46, which is an integral requirements for Section 45 of the IBC. Further, it is noticed that merely because the purchase and sale transactions during the impugned review period resulted into a gross loss, the RP is recommending it to be treated as undervalued transaction under the provisions of Section 45 of the IBC. However, the management has clearly explained that the loss occurred due to selling the produce at a lower rate and have also submitted all the relevant documents like e-way bills,

delivery challans, invoices etc. to the erstwhile IRP. However, without considering this explanation, the RP has made this recommendation and wrongly stated that the supporting documents have not been provided. Occurrence of profit and loss in business transactions is a normal phenomenon. Price fluctuations in purchases and sales due to the usual business dealings as well as the variation in the quality is also a natural phenomenon. It occurs during a normal and usual course of business and the management of the Corporate Debtor has explained the reasons, while also stating that the relevant documents have already been submitted to the Erstwhile IRP. The RP has not made any efforts to procure these document from the Erstwhile IRP.

12. Moreover, the Hon'ble Supreme Court in the judgment of Anuj Jain (Supra) has clearly explained the differentiations between the provisions of Sections 43, 45 & 66 of the Code. While the provision of Section 43 does not involve any question of 'intent', since it is a deeming provision based on the legal fiction, Sections 45 and 46 of the Code clearly required the existence of an 'intent' for determining any under valuation. The RP has not brought on record any such existence of intent, and merely proceeded to give a finding of a loss which was incurred during the normal business transactions, and duly recorded in the Books of accounts; as an 'undervalued transaction' so as to attract the provision of Section 45 of the IBC. This proposition is found to be unacceptable in view of the above discussed reasons. Even further considering the Transaction Audit Report has failed to clarify as to how an overall business Loss incurred by the present company is out of 'Ordinary course of business' and further failed to provide any records basis on which the Auditor has derived the above conclusions.

13. Considering the facts and circumstances discussed above, we are of the considered view that the RP has failed to establish the issue in the petition are 'Undervalued' transactions as per Section 45 of the Code. In light of the

same, the prayer against the Respondent Nos 1 & 2 to pay a sum Rs 1,72,36,070/- to the resolution professional to reverse the effect of the undervalued transactions against Corporate Debtor Under Section 45 of the IBC is **dismissed**.

Section 66 - Fraudulent Transactions

14. The provisions of Section 66 (1) and 66 (2) of the IBC reads as under:

“66(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business 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 the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

66(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 contributions 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.”

Therefore, a cursory examination of Section 66 of the Code reveals that to prove that a transaction qualifies as fraudulent, the directors' deliberate attempt to deceive the creditors is a necessary component.

15. The RP has identified an amount of Rs.24,25,26,509/- under the head of 'Sundry Debtors' shown in the books of accounts as being covered as 'fraudulent transactions' under Section 66 of the IBC based on the Transaction Audit Report. It is noticed from the Audit Report that this amount represents the entire Sundry Debtors for this period. It is contended that the details like name, address, GST numbers, contact details etc. were not available in the accounting software, and no supporting documents for the corresponding sales made was available. Further, the RP did not receive any response from some of the Debtors to whom he wrote letter for the Balance confirmation on a sample basis. Against these observations, the management responded that this represented the outstanding amount from 15 Branches spread all over Karnataka for the goods sent to those Branches for sale, with the sale remained to be confirmed, and the unsold products were stored in the Branch Offices. It is further stated that some of these products also got expired and actions were taken against some of the Branch Managers for failing to sell the goods in time. However, the RP's report has observed that these goods transferred to the Branch should not have from part of Company's revenue from operations, and it is wrongly represented as sales. Moreover, no documents were provided in respect of the legal action initiated against the Heads of these Branches, and therefore in the absence of the recovery measures and necessary documents it was observed that "*it might be possible that said receivables are fictitious receivables we are unable to comment on the genuineness of the same*". On the basis of the above observations of the Auditor, the RP has proposed that the provisions of Section 66 of the Code maybe attracted for the above amount.

16. It was further stated by the RP that a sum of Rs.82,11,463/- was shown as receivables from the related party Maylari Construction, which does not appear to be under a normal course of business. The contention of the RP that these amounts were as a result of diversion of funds of the Corporate Debtor for their personal use of the management, creating these entries has

not been supported by the required documentary evidence. The amount stated to be receivables from Maylari Construction a related party, being a sum of Rs.82,11,463/- has been explained by the Management to be certain goods which have been purchased on behalf of this sister concern, for which all the supporting documents like purchase orders, sell invoices and bill etc. were submitted to the Erstwhile IRP. Labelling by the RP of these transactions as fraudulent transactions on the basis that the goods which were supplied to the sister concern comprised of steel and metal products; and PVC cables, which did not relate to the normal business of the Corporate Debtor, holds no water since in normal business dealings sometimes some goods may be purchased on behalf of a sister concern and supplied to them, subject to recovery of the resultant consideration from the sister concern. By no stretch of imagination such a transaction can be covered within the scope of an ambit of “fraudulent transaction”.

17. Further another contention of the RP that funds have been removed from the Corporate Debtor as questionable advances to unknown parties without PAN, TDS, address details etc. and without proof of actual receipt of goods and services amounts to fraudulent transactions is also untenable and without any basis. No such instance has been pointed out in the Transaction Audit Report shown of “questionable advances to unknown party” and the amount which has been shown in the Audit Report only reflects outstanding Sundry Debtors which has been recorded in the books of accounts.

18. Similarly, an amount of Rs.20,81,000/- was also classified as fraudulent transaction based on the Audit Report due to the mismatch in the valuation of the inventory at the end of Financial Year i.e March 2020; comparing the Audited Financial Statement vis-à-vis the accounting software in Tally which was available. However, without going into the reasons of the same and as to what were the inclusions in the closing stocks as on 31.03.2020 as per the Audited Report as against the what was mentioned in the accounting

software, along with the method of valuation of inventory which varies, it is not correct that this difference could be classified as 'fraudulent transactions' within the meaning of provision of Section 66 of the IBC.

19. As already observed in the case of undervalued transactions, for coming within the scope of 'fraudulent transaction' under Section 66 of the Code also the 'intent' to defraud the creditors is a necessary ingredient, as held by the Hon'ble Apex Court in the case of judgment of Anuj Jain (supra). Section 66 of the Code is only attracted if the business of the Corporate Debtor has been carried out with the clear cut intention to defraud the Creditors, or for any other fraudulent purposes, and the persons carrying on the businesses were knowingly parties to such transactions. The RP has not been able to establish that these transactions pointed by him in the Application fulfil these requirements for which 'intent' has to be clearly established.

20. In this regard it would not be out of place to cite an order of Coordinate Bench of the NCLT Mumbai, in *Anuj Bajpai v. Surendra Loda, (2023) ibclaw.in 479 NCLT*, wherein it was held that:

"on perusal of the application and section 66 of the Code, we are of the view that the Applicant/RP has placed no substantial proof on record to satisfy the ingredients of Section 66. The Resolution Professional has solely relied upon the forensic report to substantiate the alleged fraud whereas, the transaction auditor itself states that the report should not be considered a definitive pronouncement on the individual or the company. The veracity of the report is not even affirmed by the auditor itself. Therefore, such a report cannot be relied upon solely to prove the under section 66 of the code."

In this case, the RP herein has not provided any substantial evidence for proving the applicability of Section 66, other than the Transaction Audit Report. **In the Transaction Audit Report also,**

the Auditor has used the expressions like “it might be possible that the said receivables are fictitious receivables” and “we are unable to comment the geniuses of the same.” Considering the facts and circumstances of the case as discussed above, we are of the view that the applicant has not been able to establish that the Transactions mentioned in the application can be classified as fraudulent in nature, so as to attract the provisions of Section 66 of IBC, 2016. In view of the foregoing discussions, the prayer in terms of Section 66(1) and (2) of the Insolvency and Bankruptcy Code, 2016 directing the Respondent Nos.1 and 2 to pay a sum of Rs 25,07,37,972/- to the Resolution Professional as contribution to the assets of the Corporate Debtor of is hereby **dismissed** as it is untenable with the law.

21. Accordingly, **IA No. 89 of 2022 is disposed of** with the above directions.

-Sd-

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

-Sd-

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