



NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1, MUMBAI BENCH

IA (IBC) No. 2508/MB/2025 in CP (IB) No. 440/(MB)/2023

Mukesh Verna
... Applicant

v/s

Chirag Pittie & Ors.
... Respondents

In the matter between

CP (IB) No. 440/(MB)/2023

State Bank of India
... Financial Creditor

v/s

Shrivallabh Pittie Industries Limited
... Corporate Debtor

Order delivered on 28/11/2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant : Mr. Agam Maloo, Advocate

For the Respondents : Mr. Rushad Irani, Advocate

ORDER

1. This Application IA 2508/2025 was filed on 29.04.2025 by Mr. Mukesh Verma ("Applicant/RP"), the Resolution Professional of M/s Shrivallabh Pittie



Industries Limited (“Corporate Debtor”) under the Provision of Section 66 Read with 67 of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 35A of Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for fraudulent and wrongful trading seeking following reliefs:-

- a) *Be pleased to declare aforesaid transactions as done by Respondents mentioned in paragraphs 4 to 21, as fraudulent transactions under the provisions of section 66 (1) and (2) of the Code.;*
 - b) *Be pleased to pass consequential orders against Respondent No. 1 to 5 to jointly and severally contribute INR 285,61,59,000/- under the provisions of Section 67 of the Code, which has been diverted by them from the Corporate Debtor and utilized for their own purposes as their actions have been with ulterior motives with the sole intent of defrauding the Creditors and siphoning off of the entire amount and the public money was utilized by the Respondent No. 1 to 5 for their own gains, in the account of the Corporate Debtor, maintained by the Applicant.*
 - c) *For such other and further reliefs as this Hon'ble Tribunal deems fit and necessary.*
 - d) *For the cost of this Application.*
2. A Section 7 application under the Insolvency and Bankruptcy Code, 2016 was filed against the Corporate Debtor by the State Bank of India on occurrence of default in payment of its outstanding dues. The said application was admitted on 07th March 2024 by the NCLT, Mumbai Bench.
 3. Respondent Nos. 1 to 5, the directors of the Corporate Debtor as on insolvency commencement date, together were in management and control of the Corporate Debtor as on the insolvency commencement date. The Corporate Debtor had availed loans from a consortium of banks.



4. The Applicant herein had appointed JTST & Co. LLP, Chartered Accountants having office at 506, Tower A1, Spaze I-Tech Park, Sector 49, Gurugram -122 018 vide a letter dated 01.06.2024, for carrying out the transaction audit of the Corporate Debtor. On 22.11.2024, Transaction Auditor submitted the final Transaction Audit Report to the Resolution Professional after obtaining the comments of the Directors of the CD.
5. In compliance with the provisions of the Code, the Applicant observed that there are several fraudulent transactions as per the provisions of Section 66 of the Code. In compliance with the provisions of regulation 35A of the said CIRP Regulations, the Applicant RP on 11th May 2024 formed an opinion that the Corporate Debtor had been subjected to following transactions *inter alia*, covered under the provisions of sections 66 of the Code upon review of the Transaction Audit Report as well as the books of accounts of the Corporate Debtor and taking into consideration the reply of the suspended directors submitted to the Transaction Auditor :
 - a) Gross loss during financial ended 31st March 2022 and 31st March 2023 amounting to Rs. 157.95 Lacs, and Rs. 6400.60 Lacs respectively;
 - b) Embezzlement of inventory of the Corporate Debtor by Respondents amounting to Rs. 2,35,68,691/-;
 - c) Doubtful Trade Receivables amounting to Rs. 2,17,66,36,131/-.
6. The Applicant has also observed that there are no preferential transactions as per the provisions of Section 43 of the Code, undervalued transactions as per Section 45 of the Code and extortionate credit transactions as per Section 50 of the Code.
7. The Respondents have filed common and joint reply raising maintainability of the present application on the grounds (i) the application has been filed beyond the mandatory time period; (ii) the applicant has failed to have any independent exercise of opinion as required under the provisions of the Code; (iii) the Applicant/Resolution Professional has, not impleaded the erstwhile relevant



parties / companies/ vendors in its Interlocutory Application, at whose behest the said alleged avoidance transactions was entered into with the Corporate Debtor; (iv) the burden of proving such fraud lies upon the party making such allegation and the party alleging fraud must provide material particulars thereof; (v) when a person is alleging fraud, at the preliminary stage itself they are required to furnish copies of all the documents in their possession to the person being accused of fraud; (vi) once moratorium in terms of Section 94 or 95 of the Code in case of Respondent No. 1 is commenced, all proceedings, applications etc., in relation to the debt gets stayed; (vii) the Resolution Professional in the present case has filed one composite application purportedly under Section 66 of the Code, while alleging that more than one transaction in question were fraudulent; (viii) Respondent No. 1 has also been wrongly arrayed as a party merely on the ground that he served as a non - executive director on the board of the Corporate Debtor. The Respondents have submitted in their reply that yarn manufactures, like the Corporate Debtor, normally follow the business model of dealing with Agents/ intermediaries. On merits, they have further submitted that the Gross Loss in the year 2020-21 and thereafter has occurred on account of (a) COVID - 19 and nationwide lockdown and demand crash; and (b) sky high prices of cotton (base commodity for the Corporate Debtor) that had sent all Yam Manufacturers into shutdown or gross loss and lower yield; the Stock records as well as physical stocks were verified by Bank appointed auditors, stock auditors, statutory auditors and even Applicant; the applicant has wrongly calculated wastage percentage and yam production without looking into production records and therefore, calculation is based on without full facts and details; the guards as well as security person had left the job and the stock as unprotected. Further, the stock was damaged during shutdown period due to non-payment of electricity bills and poor working conditions. Besides this, the Lenders of the Corporate Debtor had taken symbolic possession of the factory; the downturn in cotton spinning industry post the Covid - 19 period and subsequently complete closure of plant, compounded the woes of Corporate Debtor and debtors started delaying payments; the Corporate Debtor has safeguarded itself with agreements as well



as balance confirmations from Parties where JV s have been recorded, thereby giving legitimacy to said transaction; more than 90% of he debtors submitted balance confirmations directly to Transaction Auditor; he Corporate Debtor had no relationship other than trade relationship with the entities mentioned by the Applicant under their report stating "Entities likely to be under the control of directors"; and the earlier forensic audit by M/s Arun M. Agarwal & Associates, ordered by the consortium banks, concluded no diversion of funds, no misappropriation, and no fraudulent activity.

8. Heard the Counsel and perused the material on record.
9. The Respondents have raised certain preliminary objections to the maintainability of the application. The timelines as prescribed in Regulations 35A of CIRP Regulations have been held to be directory by Hon’ble NCLAT in case of *Aditya Kumar Tibrewal v. Om Prakash Pandey and Ors. (2022 SCC OnLine NCLAT 142)*. It is noted that the applicant has expressed his opinion at para 7, 9 and 14 recording that the transactions in question satisfy all the essential limbs of provisions of section 66 (1)/(2) of the Code, accordingly, it can not be said that no opinion has been formed by the Applicant RP. Merely because such opinion is based on the Transaction Audit Report, which indubitably is obtained to guide/assist the Resolution Professional to make determination, cannot lead to a conclusion that there is no independent application of mind when the pleadings in the application elaborate in what manner such transaction are sought to be impugned.
10. In the case of *Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors. (2025) ibclaw.in 120 SC*, wherein it was held that “60.....*If the Resolution Professional has filed common applications under Sections 43, 45, 50 and also under Section 66, the Adjudicating Authority shall have to distinguish the same and decide as to which provision would be attracted to which of the Applications, and then shall exercise the powers and pass the orders in terms of the provisions of IBC.*” Accordingly, even common



applications impugning fraudulent transactions with avoidance transactions are not held to be not maintainable. It is for this tribunal to examine which section is attracted to the facts pleaded in the application before it for consideration. Nonetheless, in the present case, the Applicant has impugned the transaction u/s 66 of the Code, hence there is no merit in this argument as well.

11. Further, in case of *Gluckrich Capital P. Ltd. v. State of West Bengal & Ors.* [2023 SCC OnLine SC 1187], it was held that no order can be passed against third parties, except the Directors or KMPs of the Corporate Debtor, which was distinguished in case of *Royal India Corporation Ltd. v. Mr. Nandkishor Vishnupant Deshpande (RP) and Ors.*, [\(2024\) ibclaw.in 304 NCLAT](#) holding that third parties under common control can also be subjected to order of contributions in terms of section 66 of the Code. Since, the Directors of the Corporate Debtor are parties to the present application and there is no allegation as to existence of common control in relation to parties from the Book Debts are receivable, we do not find any merit in the argument that the present is not maintainable on account of non-joinder of necessary parties.
12. The Applicant has placed on record the facts and his determination that the impugned transactions falls either u/s 66(1) or 66(2) and such determination is to be tested by this Tribunal on basis of pleadings on record, which we shall examine in the later paras. The documents, on basis of which the transactions have been impugned, are primary records of the Corporate Debtor and the Respondents have not contested the facts relating to those transactions as incorrect or false. The Respondents have only contended that such facts do not substantiate existence of the fraud. Hence, the present application can not be rejected on this ground also.
13. Further, the prosecution of applications u/s 43, 45, 50 or 66 of the Code is not barred by the moratorium in terms of Section 94 or 95 of the Code as that moratorium applies only in relation to existing debts and does not prohibit determination of any liability which the person, in whose case the moratorium



has kicked in, may be liable to pay. Further, Section 66 of the Code makes any persons liable who were knowingly parties to the carrying on of the business in fraudulent manner or the director who fails to exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor when there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor. The burden lies on the director to prove that he had no knowledge to the carrying of business in fraudulent manner or was not required to exercise due diligence in minimizing the potential loss to the creditors. Accordingly, we do not find any merit in the contention of the Respondents that the present application is to be dismissed at threshold itself.

14. Having said so, we shall now examine the impugned transactions and test whether these transactions can be subjected to order of contributions from the Respondents.

15. Gross loss during financial ended 31st March 2022 and 31st March 2023 amounting to Rs. 157.95 Lacs, and Rs. 6400.60 Lacs respectively :

a. It is case of the applicant that *as per financial statements and other available material, there was no abnormal loss which resulted in impairment of inventory etc. Therefore, it can be said that continuous "gross loss" in two years was due to directors / Respondents herein, not exercising due diligence in minimizing the potential loss to the creditors of the Corporate Debtor.* After observing loss in the above two years, the applicant has reached to the conclusion that *However, due to account being declared NPA, no working capital was available to the Corporate Debtor. Therefore, based on the above facts, it can be rightly stated that during the period in which Corporate Debtor incurred gross losses, directors knew that there would be no reasonable prospect of avoiding the commencement of a corporate insolvency process in respect of the Corporate Debtor. Hence, in view of above, it is clear that the Respondents herein are liable to be held*



accountable under the provisions of Section 66 (2) of the Code to the extent of INR 6558.55 Lacs

- b. The Transaction auditor has observed on analysis of the financial statements of the Corporate Debtor that *Above data, confirms that against gross profit of about 20% in FY 2019-20 and in FY 2020-21, corporate debtor incurred gross loss at the rate of 0.39% and 122.85% respectively in 2021-22 and 2022-23. It has further been stated that Bank account of the corporate debtor became NPA in the year 2022. Due to large default to banks and pending notices / demand from Income tax department / GST, directors were well aware that there was no reasonable prospect of avoiding the commencement of a corporate insolvency process in respect of corporate debtor and therefore, directors purposefully and intentionally cause loss through fraudulent trading of Rs 15,775.54 Lacs during FY 2021-22 and FY 2022-23. It is noteworthy that application for commencement of CIRP was filed on 14.4.2023, and but directors completely shut down operation in the FY 2022-23 itself i.e. well before commencement of CIRP. It has also been observed by the Transaction Auditor that During FY 2022-23, against the sale of Rs 5,100.22 Lacs, consumption (including reduction in inventory) of raw material was of Rs 10,918,02 lacs i.e. more than 200% of sales which indicate that inventory was overvalued or non-available in earlier year i.e. FY 2021-22 also, to suppress losses through manipulation of accounts..*
- c. It is noted from the Order dated 7.3.2024 passed by this Bench admitting the Corporate Debtor into CIRP process that account of the Corporate Debtor was classified as NPA by State Bank of India on 19.7.2022, however, as per applicant also, the account of Corporate Debtor was declared as NPA on 19.4.2022. It is pertinent to note observation in the Transaction Audit report that *Level of power & fuel expense and wages indicate that plant was in operation for 2-3 months only in FY 2022-23, which means the business of Corporate Debtor was not continued after May or June, 2022. In this context, it is incomprehensible as how it can be alleged that the directors failed to*



exercise due diligence when the Corporate Debtor had stopped manufacturing operations in May/June, 2022 itself.

- d. It is also relevant to note the observation of Transaction Auditor that *During FY 2022-23, against the sale of Rs 5,100.22 Lacs, consumption (including reduction in inventory) of raw material was of Rs 10,918,02 lacs i.e. more than 200% of sales which indicate that inventory was overvalued or non-available in earlier year i.e. FY 2021-22 also, to suppress losses through manipulation of accounts.* The said observation clearly suggests that the Transaction Auditor was of the view that excess consumption of Raw-Material in the year 2022-23 was result of overvaluation of carried forward inventory or non-existence thereof. In this context, it is pertinent to note that the financial creditors, who had lent money on the security of inventory, were carrying our periodic stock audit and had also obtained independent forensic audit report, however, neither the Applicant RP nor the Financial Creditor has pointed out that there was any non-existent stock found in the past by such auditors. As regards over-valuation of carried forward inventory, that only results into reporting of higher profits in preceding year followed by huge loss (which was pile up losses being carried forward in disguise as inventory) and same constitutes falsification of accounts by deferring the losses incurred in a particular year to later years. Accordingly, the loss booked in financial year 2022-23 was, at best, build-up of earlier years, when the loss would have actually been incurred. Hence, such loss could not have been minimized even if knowledge of imminent admission into CIRP is attributed to the Respondents.
- e. In view of above discussions, we are of considered view that the Applicant has failed to make a case for order in terms of 66(2) of the Code as pleaded by him. Further, in view of facts placed on record, it can also be not said that the business of corporate debtor was carried in a fraudulent manner, as suppression of loss in earlier years resulting into reporting of higher losses in later year, particularly when the corporate debtor is stated to be engaged in a



business where prices of raw-materials fluctuate heavily. Hence, no order can be passed in terms of Section 66(1) of the Code as well considering that the Applicant has himself acknowledged the peculiarity of business of Corporate Debtor and need for huge working capital, which it didn't had due to losses.

16. Embezzlement of inventory of the Corporate Debtor by Respondents amounting to Rs. 2,35,68,691/-

- a. It is case of the applicant that *availability of inventory was confirmed by the Directors as well as statutory auditor in audited financial statements of 31st March 2023, and therefore, non-availability of said inventory is nothing but fraudulent activity to deceive creditors and other stakeholders. Shortage of inventory despite confirmation of the same in audited financial statement for the FY 2022-23 satisfies essential ingredient of provisions of section 66(1) of the Code.*
- b. It has been stated by the Transaction Auditor that *Corporate debtor shut down its operations in FY 2022-23 and there were no operations during FY 2023-24. Resolution professional has informed that directors have not handed over any inventory while handing over control and custody of plant of corporate debtor located at Jhalawar, Rajasthan. In view of this, there has been a shortage in inventory to the extent of Rs 235.68 Lacs. However, there cannot be shortage of inventory to such a large extent without malafide intent of the management.*
- c. It has been stated by the Respondents that from 2017 until 2020 (prior to COVID-19), the Corporate Debtor had huge inventory, and the purported mismatch of inventory as alleged is miniscule in the comparison to it. It is also stated that the corporate debtor had inventory worth Rs. 142.39 crores as on 31.3.2020 when the COVID-19 broke, and the inventory having carrying value of Rs. 2.35 crores just accounts for less than 2%. Accordingly, it was argued that in large-scale textile and manufacturing operations— particularly in sectors involving bulk raw materials like cotton



and yarn—losses arising from pilferage, deterioration, handling, or recording discrepancies are common.

- d. We note that the factory of the Corporate Debtor was not functioning since May/June 2022 as observed by the Transaction Auditor. The Corporate Debtor was admitted into CIRP in April, 2024. Undisputedly, the existence of such inventory is acknowledged in the financial statements as on 31.3.2023. The Respondents have also pleaded that the stock was damaged during shutdown period due to non-payment of electricity bills and poor working conditions, which cannot be dismissed at face, unless there is specific finding that such stock was in fact sold by the management out of book, however it is noted that no account of damaged inventory was also furnished to the Applicant by the Respondents. As regards contention that the losses also arose from pilferage, deterioration, handling, or recording discrepancies, however, it was incumbent upon the Respondents to exercise reasonable diligence to ensure that the whole of inventory does not get washed out. It is pertinent to note that nothing in relation to inventory was found by the Applicant. Even if the inventory would have damaged, such damaged inventory had to be there. We do not find any substance in the explanation of respondents, which is merely a bald statement considering that both the applicant as well as Transaction Auditor have reported non-availability of stock records. Further, the explanation regarding incorrect reporting of quantitative particulars of inventory in Tax Audit Report has no substance as the Respondents have failed to place on record any step they had taken to revise the said Tax Audit Report, which is duly signed by a Chartered Accountant. In our considered view that the facts placed on record clearly substantiate the case of the applicant that the inventory worth Rs. 235.68 Lacs has either been embezzled by the Respondents or they have failed to exercise due diligence to prevent pilferage of such inventory, which they were obligated to do so.
- e. Accordingly, we are of considered view that the Respondents are liable to contribute a sum of Rs. 235.68 Lacs jointly or severally to the Corporate



Debtor in terms of Section 66 of the Code. Accordingly, the Respondents, either jointly or severally, shall pay a sum of Rs. 235.68 Lacs to the Corporate Debtor within 30 days from the date of this order, failing which the amount remaining unpaid shall carry the interest @ 12% p.a. on the balance amount, which shall also be payable by the respondents along with the amount remaining unpaid.

17. Doubtful Trade Receivables amounting to Rs. 2,17,66,36,131/-

- a. It is case of the Applicant that *The Corporate Debtor has trade receivables / dues from debtors, outstanding for a period for more than three (3) years that must be considered doubtful amounting to INR 2,17,66,36,131/- as per the audited balance sheet of the Corporate Debtor. Corporate debtor, as on CIRP commencement date, had total doubtful debtors / receivables to the extent of Rs 2,17,66,36,131/-*. Undisputedly, all these parties are stated to be unrelated. It is further stated by the applicant that there is no clarity whether any legal action for recovery of these trade receivables has been taken by the Corporate Debtor and no confirmation from debtors have been received and debtors account have been deliberated kept unreconciled. Accordingly, it is alleged that *conduct of aforesaid debtor account, extent of outstanding amount in each debtor's account alongwith long period of outstanding seems to suggest indulgence of directors in misappropriation of funds in connivance of debtors and accordingly, business was being carried on with intent to defraud creditors.*
- b. The Respondents, in their reply, have placed on record two confirmations in relation to balances due from the debtors. The Transaction Auditor has found active many of these parties on MCA portal as well as GST portal.
- c. It is noted that the Corporate Debtor had sold goods worth Rs. 41,762.74 Lacs, Rs. 34,277.86 Lacs and Rs. 39,487.15 Lacs in financial year ending 31.3.2020, 31.3.2021 & 31.03.2022 respectively. It is pertinent to note that the amounts receivable from Jhalawar Cotton Traders P Ltd., Adhit



Mercantile Private Limited, Mudra Denim Pvt Ltd., AKR Cotspin Private Limited, Indo Industries Ltd., and Mohota Industries Limited together are due from financial year 2022-23 and aggregates to Rs. 103,07,93,492/-, which constitutes approx. 26% of its gross revenue in immediately preceding financial year. Further, a balance of Rs. 71,60,00,817/- is due from Utsav India Exports Private Limited since Financial year 2020-21, which alone constitutes approx. 17% of the gross revenue in immediately preceding financial year 2019-20. Accordingly, out of total receivables of Rs. 217.66 lacs due as on insolvency commencement date, Rs. 174.67 crores are receivable from these 7 parties.

- d. Undisputedly, the Corporate Debtor was under financial stress and had working capital constraints, the non-realization of amounts from these parties and failure in placing on record the steps taken to realize these amounts from these parties substantiate the allegation of the applicant that there seems to be indulgence of directors in misappropriation of funds in connivance of debtors.
- e. In *M. Siddiq v. Suresh Das 2020 1 SCC 1*, a Constitution Bench of Hon'ble Supreme Court has described the standard of 'preponderance of probabilities' in the following terms:

"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence.] In Miller v. Minister of Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372], Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms: (All ER p. 373 H)



“(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “of course it is possible, but not in the least probable” the case is proved beyond reasonable doubt, but nothing short of that will suffice.” (emphasis supplied)

721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater [Bater v. Bater, 1951 P 35 (CA)], where he formulated the principle thus: (p. 37) “...

So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter.” (emphasis supplied)

- f. It is pertinent to note that the facts placed in the application as well as transaction audit report have not been disputed by the Respondents. These facts clearly establishes that the Respondents have either taken the money in cash or in another account from these parties from whom the money is stated to receivable as on Insolvency Commencement Date. It is incomprehensible that a business man, when reeling under the financial constraints, shall not realize these substantial amounts from its debtors.
- g. We do not find any substance in the explanation offered by the Respondents explaining its business mode whereby the sale takes place through the agents and setting off balances with the other parties. It is pertinent to note that the applicant has impugned the said set off as preferential transactions, but has impugned such set off as fraudulent transaction in terms of section 66 of the Code. It is noted that the applicant has not contested the business model of the applicant, hence the possibility of such adjustment in balances



recoverable from selling agents can not be ruled. Accordingly, we consider it appropriate to allow benefit of doubt to the respondents in this relation, as the necessary material for impugning such set off as preferential transaction is not record.

- h. Accordingly, we are of considered view that the Respondents are liable to contribute a sum of Rs. 1,98,25,56,131/- jointly or severally to the Corporate Debtor in terms of Section 66 of the Code. Accordingly, the Respondents, either jointly or severally, shall pay a sum of Rs. 1,98,25,56,131 to the Corporate Debtor within 30 days from the date of this order, failing which the amount remaining unpaid shall carry the interest @ 12% p.a. on the balance amount, which shall also be payable by the respondents along with the amount remaining unpaid.

18. In terms of the foregoing, IA 2508 of 2025 is partly allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)