



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IA(IBC)/487(CHE)/2021 in IBA/1424/2019**

*(filed under Section 25 and 66 of the Insolvency & Bankruptcy Code,  
2016)*

*In the matter of Regen Infrastructure and Services Private Limited*

**Mrs. Renuka Devi Rangaswamy,**  
Interim Resolution Professional (IRP)  
M/s. Regen Infrastructure and Services Private Limited  
No.9, Arthillam, Jothi Nagar, 3<sup>rd</sup> Street,  
Uppillipalayam,  
Coimbatore – 641 015

*.....Applicant*

**Vs**

1. **Mr. Madhusudhan Khemka**  
Suspended Director of  
M/s. Regen Infrastructure and Service  
Y-202, Anna Nagar,  
Chennai-600 040
2. **Mr. Sundaresh Ramanathan**  
Suspended Director of  
M/s. Regen Infrastructure and Services Pvt. Ltd.  
3A 3B. Sarangapani Street,  
Thiyagaraya Nagar, Chennai-600 017
3. **M/s Lakshmiranga Perumal Renewable Energy (P) Ltd.,**  
Having its Registered Office at  
S7, Krishna Arcade,  
Old No. 36, New No.10,  
Rajabather Street, T.Nagar.  
Chennai-600 017  
Rep by its Director
4. **Mr. Ravinder Pareek**  
Director and Shareholder of  
M/s Lakshmiranga Perumal Renewable Energy (P) Ltd.,  
25/7B, Old Post Office Road, Venkatapuram,  
Ambattur, Chennai-600 053



5. **Mr. Arunachalam Saravanakumar**  
Director of  
M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd.,  
No.F1, First Floor, Baba Flats,  
III Cross Street, Pammal,  
Chennai-600 075,
6. **Mr. Muniaraj Kala**  
Director of  
M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd.  
Jawahar Thenvadal Street,  
Aruppukottai - 626 101
7. **Mr. Gopinath Sellapan**  
Authorised Signatory of  
M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd.  
Ishwaryam Apartments,  
Flat No.10B, BLN Prasad Nagar,  
Kaikankuppam, Valasaravakkam,  
Chennai-600 087
8. **Mr. Govindaraj Narayanasamy**  
Ex-Director and Shareholder of  
M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd.,  
293, 21 Street, MGR Nagar,  
Periyakuppam,  
Tiruvallur - 602 001

..... Respondents

Order pronounced on **1<sup>st</sup> July 2022**

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant : E. Om Prakash, Senior Advocate  
B. Dhanaraj, Advocate

For Respondent : Mithra, Advocate for R1 and R2

**ORDER**

**Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

The present Application is filed by the Applicant under Section 25 and 66 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;





- (i) To declare the following Sale of Immovable Properties for a total extent of 16.02 Acres in favour of the 3 Respondent M/s.Lakshmiranga Perumal Renewable Energy (P) Ltd., (LPREPL) as fraudulent, null and void and consequently, direct that the said Immovable Properties as detailed below are transferred and vested with the Corporate Debtor M/s Regen Infrastructure and Services (P) Ltd.,
- (a) Sale Deed Doc. No. 174/2017 dated 30.03.2017 executed by Shri Jayantilal Amarshibhai Kaila in respect of 1.65 Acres (00.66.77 Hectares) in Location PVKH61, S.No.92/1 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State
- (b) Sale Deed Doc. No.163/2017 dated 28.03.2017 executed by Shri.Hardasbhai Manjibhai Tentiya in respect of 2.90 Acres (1.17.36 Hectares) in Location PVKH64, S.No. 106/1 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State.
- (c) Sale Deed Doc. No.162/2017 dated 28.03.2017 executed by Shri.Labhuben Maganbhai and Shri Kantaben Maganbhai in respect of 1.65 Acres (00.66.77 Hectares) in Location PVKH65, S.No.1102 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State.
- (d) Sale Deed Doc. No.172/2017 dated 30.03.2017 executed by Shri.Nanjibhai Jeevabhai Ghaghania and Shri.Sukhabhai Jeevabhai Ghaghania, in respect of 2.60 Acres (1.05.37 Hectares) in Location PVKH53, S.Nos 915 Part 4 & 915 Part 5 resp., Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State.
- (e) Sale Deed Doc. No.173/2017 dated 30.03.2017 executed by Shri Dineshbhai Thakarshibhai Saravadiya, in respect of 2:47 Acres (1.00:16 Hectares) in Location PVKUM12, S.No.303 Part 3, Kumbhariya Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State.
- (f) Sale Deed Doc. No.1519/2017 dated 24.03.2017 executed by Shri Vasubhai Manjibhai Kobi, in respect of 2.18 Acres (0.58.94 Hectares & 0.29.34 Hectares) in Location PVS18, S.Nos.11/1 & 11/2, Rayadhra Village, Halvad Taluk, Morbi Registration District in Gujarat State.
- (g) Sale Deed Doc. No.2089/2017 dated 16.03.2017 executed by Shri Rahu!bhai Ranchhodbhai Kobi, in respect of 2.57 Acres (0.23.26 Hectares & 0.80.94 Hectares) in Location PVS40, S.Nos.337/3/Part1/Part 1 & 337/3/Part



2, Ranchhodgarh Village, Halvad Taluk, Morbi Registration District in Gujarat State.

- (h) To direct the Respondents 1 to 8 to jointly and severally contribute to the assets of the Corporate Debtor by paying a sum of Rs.1.12,70,700/- into the Bank account of the Corporate Debtor under CIRP and
- (i) To pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.

2. The Learned Counsel for the Applicant submitted that the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 19.02.2020 and the Applicant herein was appointed as the IRP. Upon perusing the Books of the Corporate Debtor, it was submitted that several land purchases reflecting in the Financials, the Corporate Debtor had purchased lands at 9 location from the farmers and that 21.35 acres of land was purchased with the funds of the Corporate Debtor to the tune of Rs.1,97,97,187/- which funds were paid to the farmers during the months of February 2017 to March 2017.

3. In this regard, it was submitted that this Applicant was surprised to find that no documents were available in the records of the Corporate Debtor and the Assets could not be traced. Further, it was submitted that the Suspended Directors, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein, never furnished these details to this Applicant, during all her attempts to procure the Asset details of the Corporate Debtor. It was submitted that with no response forthcoming from



the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein, the Applicant immediately arranged to obtain the certified copy of the Registered Sale Deeds from the Sub-Registrar Office of Morbi, Maliya (Miyana) in Gujarat.

- (a) Sale Deed Doc. No.174/2017 dated 30.03.2017 executed by Shri Jayantilal Amarshibhal Kalla in respect of 1.65 Acres (00.66.77 Hectares) in Location PVKH61, S.No.92/1 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State. (Annexure II (5))
- (b) Sale Deed Doc. No.163/2017 dated 28.03.2017 executed by Shri.Hardasbhai Manjibhai Tentiya in respect of 2.90 Acres (1.17.36 Hectares) in Location PVKH64, S.No.106/1 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State. (Annexure II (6))
- (c) Sale Deed Doc. No. 162/2017 dated 28.03.2017 executed by Shri.Labhuben Maganbhai and Shri.Kantaben Maganbhai in respect of 1.65 Acres (00.66.77 Hectares) in Location PVKH65, S.No.1102 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State. (Annexure II (7))
- (d) Sale Deed Doc. No. 172/2017 dated 30.03.2017 executed by Shri Nanjibhai Jeevabhai Ghaghania and Shri Sukkhabhai Jeevabhai Ghaghania, in respect of 2.60 Acres (1.05:37 Hectares) in Location PVKH53, S.Non.915 Part 4 & 915 Part 5 resp.. Khakharchi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State. (Annexure II (8))

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- (e) Sale Deed Doc. No.173/2017 dated 30.03.2017 executed by Shri Dineshbhai Thakarshibhai Saravadiya, in respect of 2.47 Acres (1.00.16 Hectares) in Location PVKUM12, S.No.303 Part 3. Kumbhariya Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State (Annexure II (9))
- (f) Sale Deed Doc. No.1519/2017 dated 24.03.2017 executed by Shri Vasubhai Manjibhai Kobi in respect of 2.18 Acres (0.58.94 Hectares & 0.29.34 Hectares) in Location PVS18, S.Nos. 11/1 & 11/2, Rayadhra Village, Halvad Taluk, Morbi Registration District in Gujarat State. (Annexure II (10))
- (g) Sale Deed Doc. No.2089/2017 dated 16.03.2017 executed by Shri Rahulbhai Ranchhodbhai Kobi, in respect of 2.57 Acres (0.23 26 Hectares & 0.80.94 Hectares) in Location PVS40, S.Nos 33773/Part1/Part 1 & 337/3/Part 2, Ranchhodgarh Village, Halvad Taluk, Morbi Registration District in Gujarat State. (Annexure II (11))

4. It was submitted that the Applicant identified that though the funds have been paid to the Seller/ Farmers directly from the account of the Corporate Debtor M/s.Regan Infrastructure and Services (P) Ltd.. (RISPL), all the Sale Deeds were registered in the name of the 3 Respondent M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd., instead of being registered in the name of the Corporate Debtor. It was submitted that the 3<sup>rd</sup> Respondent is a Related Party of the Corporate Debtor by virtue of having common Directorship and is represented by the 4<sup>th</sup> to 6<sup>th</sup> Respondents



Directors. It was submitted that the 4<sup>th</sup> Respondent who is the Director of the 3<sup>rd</sup> Respondent, is the Director of 2 Wholly Owned Subsidiaries of the Corporate Debtor viz., (i) M/s. Marthanda Wind Power AP (P) Ltd., and (ii) M/s. Varshini Wind Power (P) Ltd., and is an Ex-Employee of M/s. Regen Powertech (P) Ltd., (RPPL) which is the Holding Company of the Corporate Debtor.

5. It was submitted that the Applicant by her email dated 07.01.2021, informed all the CoC members about the Lands mentioned in Inventory & Manual Category, as having been purchased with the funds of the Corporate Debtor but registered in the name of the Related Party Company, the 3<sup>rd</sup> Respondent herein. All available records as procured by the Applicant were all shared with the CoC members. Such an illegal asset transfer in the name of a Related Party is done with the knowledge of all the Respondents. That subsequently on 08.01.2021, by an email, this Applicant brought the fact about a Letter of Authority dated 10.10.2019 issued by the 7<sup>th</sup> Respondent, in his position as the authorized signatory of the 3<sup>rd</sup> Respondent.

6. It was submitted that the Respondent is the Director of 2 Wholly Owned Subsidiaries of the Corporate Debtor viz Renewable Energy (Phoolwadi) Private Limited and Mandsaur Wind Energy (P) Ltd., and he is an Ex-Employee of M/s. Regen Powertech (P) Ltd,



which is the Holding Company of the Corporate Debtor. Further, the said Authority Letter issued by this 7<sup>th</sup> Respondent authorizes one Mr.Vivek Dadu to execute a Sale Deed in favour of a Purchaser, as regards the Land originally funded from the Corporate Debtor but registered in the name of the 3<sup>rd</sup> Respondent. It is given to note that the said Mr.Vivek Dadu is also an Ex-Employee of RPPL, Holding Company of the Corporate Debtor and presently is the Consultant of RPPL.

7. It was submitted that the Applicant has come across a Sale Deed Doc. No.438/2018 dated 22.06.2018 executed between the 3<sup>rd</sup> Respondent represented by Mr.Vivek Brahmanand Dadu (authorized by letter dated 21.06.2018) and one M/s Madhusika (P) Ltd, in respect of 2.65 Acres (1.07 24 Hectares) in Location PVKH52 S.No.1608, Khakharechi Village, Mallya (MI) Taluk, Morbi Registration District in Gujarat State. The 3<sup>rd</sup> Respondent is shown as the Purchaser in Sale Deed Doc. No.150/2017 dated 28.03.2017 executed by Shri Mangaljibhai Sidhabhai Mewada, in respect of the said Immovable property. It was submitted that this property originally purchased for Rs.27,49,375/- during February March 2017 has been sold by the 3<sup>rd</sup> Respondent for a sum of Rs.56,08,700/- in June 2018 i.e., for almost double the cost and this is completely a loss to the asset of the Corporate Debtor.





8. It was submitted that the Applicant has come across another Sale Deed Doc. No.590/2019 dated 10.10.2019 executed between the 3<sup>rd</sup> Respondent represented by Mr. Vivek Brahmanand Dadu (authorized by the 7 Respondent vide letter dated 10.10.2019) and one M/s.Kushal Ltd., in respect of in respect of 2.67 Acres (1.08.2025 Hectares) in Location PVKH15, S.No.893 Part 1, Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State. The 3<sup>rd</sup> Respondent is shown as the Purchaser in Sale Deed Doc. No. 168/2017 dated 30.03 2017 executed by Shri Amarshibhai Devjibhai Vitthalapara, in respect of the said Immovable property. It was submitted that this property originally purchased for Rs.25,07,812/- during March 2017 has been sold by the 3<sup>rd</sup> Respondent for a sum of Rs.56,62,000/- in October 2019 i.e. for more than double the cost and this is completely a loss to the asset of the Corporate Debtor.

9. It was submitted that the Applicant has observed the execution of Lease Deed Doc. No.481/2018 dated 09.07.2018 executed by and between the 3<sup>rd</sup> Respondent represented by Mr.Vivek Brahmanand Dadu (authorized by letter dated 07.07.2018) and one M/s. Hitech Extrusion LLP, for a period of 25 years at the rate of Rs 20,000/- per annum. The rights alleged to have been conferred on the 3<sup>rd</sup> Respondent is by virtue of the Sale Deed Doc. No. 172/2017 dated 30.03.2017 executed by Shri Nanjibhai



Jeevabhai Ghaghania and Shri Sukkhabhai Jeevabhai Ghaghania, in respect of 2.60 Acres (1.05.37 Hectares) in Location PVKH53, S.Nos.915 Part 4 & 915 Part 5 resp., Khakharechi Village, Maliya (MI) Taluk, Morbi Registration District in Gujarat State, which fraudulent execution is being contested in the present Application.

10. It was submitted that all the above-mentioned facts along with documents were placed before the Coc during their VI Meeting on 02.02.2021 and were discussed at length. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents merely stated that they would have discussions and revert on the queries related to the registration in the name of the 3<sup>rd</sup> Respondent. It was submitted that pursuant to the discussion in the VI COC Minutes on the issue of Sale registration in favour of the 3<sup>rd</sup> Respondent, the 1<sup>st</sup> Respondent herein issued a response email dated 19.02.2021, wherein he merely stated that the monies paid to the Farmers to the tune of Rs.9,12,49,999/- were received from the Holding Company M/s Regen Powertech Private Ltd. (RPPL) and as such, the lands are held in one of the SPV's of RPPL.

11. It was submitted that a Special Purpose Vehicle (SPV) is a Subsidiary of a Company which is floated for a specific purpose by the Parent Company, in the present case, the 3<sup>rd</sup> Respondent M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd., is not a subsidiary of M/s.Regan Powertech Private Ltd. (RPPL) and hence, is



not a SPV. Such a response is a mere afterthought by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents since there is no document furnished by them in support of their explanation that the 3<sup>rd</sup> Respondent is one of the SPV's of RPPL. Also, the response is silent as to how the said Assets would still reflect in the Books of the Corporate Debtor under the Lands in Inventory and Manual category, without any proof to substantiate such explanation.

12. It was submitted that it is evident from the conduct of the Suspended Directors of the Corporate Debtor from the date of commencement of the Corporate Insolvency Resolution process, that they were hesitant, reluctant, negligent and non-cooperative in providing any details / documents as sought for by this Applicant Resolution Professional. The intent of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in being silent to the requirements of this Applicant for more than a period of one year, only confirms their involvement in carrying out the business of the Corporate Debtor with an intent to defraud Creditors. It is an undisputed fact borne by records that both the Suspended Directors of the Corporate Debtor are also the Suspended Directors of the Holding Company RPPL, which is also under CIRP w.e.f. 09.12.2019.

13. It was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the suspended directors of the Corporate Debtor and its Holding



Company RPPL. The 4<sup>th</sup> and 7<sup>th</sup> Respondents are the ex-employees of the Holding Company RPPL. The 8<sup>th</sup> Respondent is the current employee of RPPL. The 4<sup>th</sup> and 8<sup>th</sup> Respondents have floated the Respondent Company Promoters and owns 50% shares each. It was submitted that the course of events go to state that the purpose of floating the 3<sup>rd</sup> Respondent Company Ms Lakshmirangs Perumal Renewable Energy (P) Lid is only to usurp the assets of the Corporate Debtor by fraudulently executing illegal Sale Deeds and by enjoying an illegal gain out of subsequent Sale and/or Lease.

14. It was submitted that the Respondents have been acting in connivance with each other, detrimental to the interests of the Corporate Debtor, its Creditors and Stakeholders is with complete knowledge, the 1<sup>st</sup> to 8<sup>th</sup> Respondents have played a role in the commencement of CIRP against the Corporate Debtor. The entire transactions viz., Direct funds transfer by the Corporate Debtor to the Farmers, Registration of Sale in favour of Related Party LPREPL instead of RISPL, citing reason that funds were given by RPPL, is not justified. Thus, it was submitted that the entire sequence of events make it clear that no due diligence in minimizing the potential loss to the Creditors of the Corporate Debtor was ever exercised by the Suspended Directors of the Corporate Debtor RISPL and the registration of land assets in the name of the 3<sup>rd</sup> Respondent Related Party, is entertained by all the Respondents willfully with a *malafide*



intent for fulfilling a fraudulent purpose. It was submitted that the Balance Sheet of the 3<sup>rd</sup> Respondent as at 31.03.2019 does not reflect any Land Fixed Assets. Hence, the current Application is yet another instance of the fraudulent intent of the Suspended Directors in deviating the CD Assets to the benefit of a Related Party. Under such circumstances, the Learned Counsel for the Applicant prayed that the present Application be allowed.

15. The Learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent submitted that the Corporate Debtor is a wholly owned subsidiary of Regen Powertech Pvt Ltd. (RPPL) and is involved in operation, management and maintenance of wind power projects including wind turbine generators, project sites and infrastructure relating thereto. The parent Company i.e. Regen Powertech Private Limited was engaged *inter alia* in the business of development, manufacturing, erecting, installing and commissioning of Regen make wind turbine generators and wind power projects including related infrastructure etc. It was submitted that pertinent the Corporate Debtor and RPPL have several subsidiaries / affiliate entities which collectively comprise the Regen group.

16. The Learned Counsel for the Respondent submitted that the business and assets of Regen group was always kept within the group wherein Special Purpose Vehicles were appropriately set up



for each project undertaken by Regen for its customers. It is submitted that the 3<sup>rd</sup> Respondent is one such SPV floated by the Regen Group for the purpose of acquiring lands for setting up projects for the Regen group's customers. Any transactions held in terms of sale or lease of the properties owned by Regen Group were within the Regen group itself.

17. It was submitted that neither the answering Respondents nor Directors / shareholders of the 3<sup>rd</sup> Respondent were personally benefitted as alleged by the Applicant and has not filed any evidence to prove the same. It was submitted that the money for the lands that were purchased by the 3<sup>rd</sup> Respondents were given by RPPL to the Corporate Debtor who in turn provided that money to 3<sup>rd</sup> Respondent which is one of the SPVs created by the Regen group. It was in fact RPPL's money that has been transferred / provided to Corporate Debtor which is now claiming to cancel the Sale / Lease Deeds executed by the 3<sup>rd</sup> Respondent. The money used for the purpose of purchasing lands is not the 3<sup>rd</sup> Respondent and for this reason alone the present must be dismissed as baseless and devoid of any merit.

18. It was submitted that since RPPL funded the Corporate Debtor for development of projects, it must be construed as a transaction within the group and since 3<sup>rd</sup> Respondent is an SPV floated by the



Regen group, all the assets always stayed within the group. It was submitted that by the very nature of the industry all companies in the wind power business create SPVs for the purpose of availing tax benefits, entering into PPAs and to avoid any land ceiling issues that may arise while purchasing lands in various states for the purpose of implementation of projects undertaken for their customers. Therefore, the transaction in question was in fact was made for and or behalf of their customers i.e., Madhisilka Pvt. Ltd and Tushal Pvt. Ltd.

19. It was submitted that having received the money from the parent Company for the purpose of purchasing lands by the 3<sup>rd</sup> Respondent for the Regen group customers, the Applicant today cannot question the very transaction. The lands purchased by the 3<sup>rd</sup> Respondent from various farmers were registered in the name of the 3<sup>rd</sup> Respondent, which were further transferred to the Regen group customers for which the consideration has been received by the Regen group including the Corporate Debtor from the customers. Both Madhusilka Private Limited and Tushal Private Limited are the said customers of Regen group who paid the consideration to Corporate Debtor directly for its part of the project activities.

20. It was submitted that the Applicant despite having all information with her including the bank statements is only



attempting to blame the suspended Directors for anything and everything to escape from discharging the obligations as a Resolution Professional. It was further submitted that perusal of the statement of accounts of the Corporate Debtor for the relevant time will disclose as to how the money was received from RPPL and also will disclose the monies received by the Corporate Debtor from the Regen customers till date.

21. Further, it was submitted that the allegations by the Applicant are beyond the look back period under Section 46 of the IBC, 2016. The RP seek to get over this statutory bar by merely pleading fraud of which she has produced no evidence at all. It is submitted that every decision taken in respect of Regen Group by the erstwhile management was in their commercial wisdom and was solely for the purpose of benefit to these Companies and its customers and the same cannot be questioned at this point of time.

22. Further, it was submitted that in order to attract fraudulent transaction under Section 66 of the Code, the essential ingredient of *dishonest intention* to defraud creditors or for any fraudulent purpose must be present in any case of alleging fraudulent transactions, as held by this Tribunal in **Ashish Rathi Vs Rajiv Rai & Ors- 2022 SCC OnLine NCLT 21** while dealing with the requirements of fraud. In the present case, the intention of the



answering Respondents to defraud the Corporate Debtor and its creditors is completely absent and neither established either on facts nor by proof and it was merely stated as an allegation by the Corporate Debtor that the answering Respondents involved in a fraudulent transaction.

23. It was submitted that the answering Respondents have never gained personally from any transaction with the 1<sup>st</sup> Respondent. No proof to that effect have been filed by the Applicant to substantiate such allegations. It is therefore clear that the Applicant has not been able to provide any evidence other than mere allegations and assumptions against the answering Respondents. Under such circumstances, the Learned Counsel for the Respondents seeks dismissal of the present Application.

24. Heard the submissions made by the Learned Counsel for both the parties. As already alluded *supra*, the Applicant has filed the present Application under Section 66 of IBC, 2016. In this context it is relevant to extract Section 66 of IBC, 2016, which is as follows;

**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.

25. A careful perusal of Section 66 of IBC, 2016 would manifest the fact that it deals with two transactions; Section 66(1) of IBC, 2016 deals with 'Fraudulent Trading' and Section 66(2) of IBC, 2016 deals with 'Wrongful Trading'. Section 66(1) of IBC, 2016 imposes liability on 'any person' who were knowingly parties to the carrying on the business with a dishonest intention to defraud the creditors, to make contribution to the assets of the Corporate Debtor. Thus, essentially for a transaction to qualify under Section 66(1) of IBC, 2016, the following conditions should be satisfied;



- (a) Liability can be fixed upon 'any person';
- (b) The said person should knowingly carry on the business with the Corporate Debtor;
- (c) The said person should have a dishonest intention to defraud the creditors;

26. It can be seen that Section 66(1) of IBC, 2016 is *pari materia* to the provisions of Section 213 of UK Insolvency Act, 1986, which is extracted hereunder;

**213 Fraudulent trading.**

(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

27. On analysing Section 66(2) of IBC, 2016 it is to be seen that it deals with 'Wrongful Trading' and for a transaction to qualify under Section 66(2) the following conditions must be satisfied;

- (a) Liability can be fixed upon only 'Director' or 'Partner';
- (b) They knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings;
- (c) They did not take due diligence with a view to minimising the potential loss to the company's creditors;



28. It can be seen that Section 66(1) of IBC, 2016 is akin to the provisions of Section 214 of UK Insolvency Act, 1986, which is extracted hereunder;

### **214 Wrongful trading.**

(1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

(a) the company has gone into insolvent liquidation,


(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and

(c) that person was a director of the company at that time; but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that he had knowledge of the matter mentioned in subsection (2)) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are





those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
- (b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(6A) For the purposes of this section a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.

(7) In this section "director" includes a shadow director.

(8) This section is without prejudice to section 213.

29. Thus, there seems to be a stark contrast in relation to Section 66(1) and 66(2) of IBC, 2016. It is needless to say that even the scope of sub – section (1) and (2) of Section 66 of IBC, 2016 are different. As to the present case, the Applicant sought the Respondents to make contribution to the Corporate Debtor, under Section 66(2) of IBC, 2016.





30. The essence of sub-section (2) of Section 66 of IBC, 2016 seems to be that the Directors and Partner should have acted reasonably and responsibly in the time preceding the company's insolvency to avoid wrongful trading proceedings. They must always have put creditors' interests first, and not work for their own benefit. In other words, the Creditor could recover the money from the Director or Partner, if they have traded irresponsibly and acted without care or consideration for the creditors and in doing so, increased the debts of the Company. In short, it is where directors continue trading despite being aware that the company is insolvent.

31. Further, sub-section (3) of Section 66 suspends the operation of sub-section (2) till such time the period as mentioned in Section 10A of IBC, 2016 is in force. Interestingly, the UK Insolvency Act, 1986 has also suspended Section 214 which deals with Wrongful Trading for the period from 01.03.2020 till 30.09.2020. The object behind inserting sub-section (3) in Section 66 of IBC, 2016 seems to be that the Directors and Partners of the Company may continue their business or trading during the Covid - 19 pandemic without having the risk of being prosecuted under wrongful trading. However, it may be noted that the same benefit of suspension is not granted to 'Fraudulent Trading' defined under Section 66(1) of IBC, 2016 and also under Section 213 of UK Insolvency Act, 1986.

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32. For a transaction to qualify under sub – section (2) of Section 66 of IBC, 2016 the Resolution Professional has to substantiate before this Tribunal that the Director or the Partner of the Corporate Debtor is aware the company is insolvent and continues to trade and increases the debt of the Company. Further, it is to be noted that on examining Section 66(2) of IBC, 2016 the element of 'Fraud', 'dishonest intention' and 'defrauding the creditor' is conspicuous by its absence, as compared to Section 66(1) of IBC, 2016.

33. The definition of Wrongful Trading as found in Section 66(2) of IBC, 2016 is somewhat seems to be exhaustive since it does not clearly delineate as to which act committed by a Director or a Partner of the Company would constitute 'Wrongful Trading'. It is to be noted here that there is no significant Judgment of the Appellate Tribunal and the Hon'ble Supreme Court in relation to the 'Wrongful Trading', in view of the fact that the concept of 'Wrongful Trading' is being imported from the UK Insolvency Act, 1986 into the IBC, 2016 which is still at a nascent stage in this Country. Thus, it becomes imperative for this Tribunal to refer to the decision of the English Court. Thus, by taking a cue from the judgments rendered by the English Court in this regard, the following acts, but not limited to, would amount to 'Wrongful Trading';





- (i) Repaying the director loan made to the company while other creditors were not paid;
- (ii) Repayment of a loan to a family member;
- (iii) A director paying his own salary whilst the salary for the employees was not paid;
- (iv) Buying goods on credit when there is no means to pay for them;
- (v) Using customer deposits for cash-flow purposes with no means of supplying goods;
- (vi) Repaying bank personal guarantees over other creditors;
- (vii) Not keeping proper accounting records;
- (viii) Falsification of company records;
- (ix) Any transfer or sale of assets at anything less than a fair and reasonable commercial value;

34. The Applicant in the present Application has failed to state as to whether the present Application has been filed under Section 66(1) or 66(2) of IBC, 2016. By keeping in mind the scope Section 66 of Section 66 of IBC, 2016, this Tribunal is required to examine as to whether the transactions as alleged by the Applicant in the present Application against the Respondents would fall within the confine of 'Fraudulent Trading'. In this context, it is significant to refer to the decision of the Supreme Court in the matter of **Anuj Jain IRP for Jaypee Infatech Limited –Vs- Axis Bank Limited Etc.**, in *Civil Appeal No. 8512 – 8527 of 2019*;

29.1. 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 under valuation are contained in Sections 48 and 49. Per Section 49, if the undervalued transaction is referable to sub-section (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.

35. From the above judgment of the Hon'ble Apex Court, it is to be noted that specific material fact in relation to the transaction which is sought to be challenged by the Resolution Professional is required to be pleaded in the Application. As to the present case, the Applicant sought to reverse the transactions purported to be done by the Respondents under Section 66 of IBC, 2016.



36. From the averments and in the submissions made by the Applicant, it is seen that the Applicant has submitted that the agricultural lands at 9 locations belonging to the farmers were purchased with the funds of the Corporate Debtor during the month of February 2017 and March 2017 for a sum of Rs.1,97,97,187/-. It was submitted that the 3<sup>rd</sup> Respondent is a related party of the Corporate Debtor by virtue of having a Common Directorship and is represented by the 4<sup>th</sup> to 6<sup>th</sup> Respondent Directors. However, on the contrary the Learned Counsel for the Respondent has submitted that the money for the lands that were purchased by the 3<sup>rd</sup> Respondent were given by RPPL to the Corporate Debtor which in turn provided that money to the 3<sup>rd</sup> Respondent which is one of the SPVs created by the Regen Group. It was submitted that the RPPL has funded the Corporate Debtor for the development of the project and that the transaction has happened within the group. It is required to be noted that a transfer of assets within the group companies *per se* would not constitute 'fraudulent trading' as stipulated under Section 66(1) of IBC, 2016. In the present case, the reason given by the Respondent in respect to transfer of assets among its group companies appears to be plausible and cannot be brought under Section 66(1) of IBC, 2016.



37. Further, the Hon'ble High Court of Himachal Pradesh in the matter of "**Hypine Carbons Limited -Vs- J.C. Bhatia and others**", decided on 13.11.1998 has held that;

34. Mere failure on the part of the Respondents to initiate legal steps against the debtors would not bring the case within the ambit of Section 542 of the Act, unless it is shown that the respondents had failed to do so with fraudulent intentions to defraud the creditors, or any other person(s), or for any other fraudulent purpose.

38. Thus, the Applicant has not made a case of fraud or dishonest intention on the part of the Respondents except making sweeping allegations and hence Section 66 of IBC, 2016 cannot be invoked under such circumstances. Hence for the aforesaid reasons, we find no merits in the present Application. Accordingly, IA(IBC)/487(CHE)/2021 stands **dismissed**. No costs.

- Sd -

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

- Sd -

**Justice (Retd.) S. RAMÁTHILAGAM**  
MEMBER (JUDICIAL)