THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 2427 of 2025

Section 66(1) and Section 66(2) r/w Section 60(5) of the IBC, 2016

GANESH VENKATA SIVA RAMA KRISHNA REMANI
(Resolution Professional of Barracks Retail India Private Limited)

...**Applicant**

V/s

PUNEET P. BHATIA & ANR.

…**Respondent**

In the matter of
COMPANY PETITION NO. CP (IB)/280(MB) 2023

ASREC (INDIA) LIMITED

…Petitioner

V/s

BARRACKS RETAIL INDIA PVT. LTD.

…Respondent

Order delivered on: 27.10.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Devarajan Raman
For the Respondent	:	Attendance not marked

ORDER

1. The present Application IA 2427 of 2025 is filed by Resolution Professional ("RP"), under Section 66(1) and 66(2) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") in the Corporate Insolvency Resolution Process of Barracks Retail (India) Private Ltd. ("Corporate Debtor"). After approval of the resolution plan on 4.11.2025 in the case, the Financial Creditor, namely Asrec (India) Limited ("Asrec"), was substituted to prosecute the application further in terms of the approved resolution plan. The RP as well as Asrec are referred to as *Applicant hereinafter*. The Applicant has made the following prayers:-
    a) *That this Hon'ble Tribunal be pleased to direct the Respondents to jointly or severely make contribution of Rs.2660.75 Lacs to the assets of the CD as transactions in para-Nos.7, 9, 10, and 12 are fraudulent in nature;*
    b) *That this Hon'ble Tribunal may be pleased to direct the Respondents to jointly or severely make such contribution to the assets of the CD as it may deem fit u/ss.66 (1) and 66 (2) of the I & B Code, 2016 by exercising the powers vested in the tribunal under section 67 of the Code.*
    c) *That this Hon'ble Tribunal may be pleased to pass such further orders u/s.67 of the Code for giving effect to the order passed u/ss.66 (1) and 66 (2) of the Code;*
    d) *Any other order or further direction that this Hon'ble Tribunal may deem fit and proper.*
2. A company petition CP (IB) No. 280/MB/2023, filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, for initiation of CIRP against the Corporate Debtor, was admitted by the Adjudicating Authority

on 09.01.2024, initiating CIRP and appointing the Applicant as the Interim Resolution Professional (IRP). After the Hon'ble NCLAT dismissed the appeal against the admission of the Corporate Debtor into CIRP, the Applicant was confirmed as the Resolution Professional on 31.12.2024 at the 1st meeting of the Coc. The Resolution Professional appointed M/s. Maheshwari Rander & Associates to conduct the transaction undertaken by the Suspended Directors.

3. This Tribunal passed an order dated 09.01.2024 initiating the Corporate Insolvency Resolution Process of the Corporate Debtor Barracks Retail India Pvt. Limited and appointed the applicant as the Interim Resolution Professional to conduct the CIRP in accordance with the provisions of the Code.
4. The present application has been filed by the Applicant - in relation to the Fraudulent and Wrongful transactions against the suspended directors of Barracks Retail India Pvt. Ltd. The Resolution Professional appointed M/s. Maheshwari Rander & Associates to conduct a transaction audit to unearth avoidance transactions undertaken by the Suspended Directors. The auditors have submitted a transaction audit report dated 21.04.2025, identifying the transactions as fraudulent; the details of these transactions are provided in the application.
5. The Applicant has impugned the following transactions :
    a. Rs. 23.15 Lakhs withdrawn by respondent no. 1 during FY 2023-24 and not refunded, impugned u/s 66 of the Code;
    b. Write-off of Stocks worth Rs.369.94 Lacs in FY 2023-24, impugned u/s 66 of the Code;
    c. Write off of Trade receivables worth Rs.2225.16 Lacs in FY 2023-24, impugned u/s 66 of the Code;
    d. Write back of Trade payables worth Rs.934.48 Lacs in F.Y. 2023-24, impugned u/s 66 of the Code;

e. Amount of Rs.42.50 Lacs paid to Mangal Bullion Pvt, Ltd. on 31.03.2020 and not returned as per books but not reflecting in the ledger recoverable also, impugned u/s 66 of the Code.

6. The Applicant states that the Respondents, being Promoters and Directors of the Corporate Debtor, were involved in the day-to-day functioning of the Corporate Debtor and knew that a fraud was being committed by inflating stock value and creating bogus sales to inflate sales in the books of account, with a view to availing additional working capital from the bank or maintaining the drawing power. This undoubtedly is an act to defraud the creditors of the CD. The Respondents had complete knowledge of the manner in which the business of the Corporate Debtor was carried out, yet they took no steps to rectify the same. Therefore, it can be deduced that the Respondents carried on the business of the Corporate Debtor with intent to defraud the creditors of the Corporate Debtor, thereby making them liable to contribute to the assets of the Corporate Debtor in terms of Section 66 (1) of the Code.

7. The Applicant has also sought to invoke 66(2), stating that since the Respondents were involved in the day-to-day functioning of the Corporate Debtor and had knowledge of how the business of the Corporate Debtor was being carried out, they were well aware that CIRP might be initiated against the Corporate Debtor. However, despite having such knowledge, the Respondents did not take any steps or exercise due diligence to minimise the potential loss to the creditors of the Corporate Debtor.

8. The Respondent No. 1 & 2, husband and wife, are directors of the Corporate Debtor as on commencement of the Corporate Insolvency Resolution Process ("CIRP") and have filed a common reply. They have denied all allegations, and they have always acted in the best interests of the Corporate Debtor and its stakeholders. It is also stated that all impugned transactions were conducted in the ordinary course of business, with complete transparency and necessary due diligence.

9. Heard the learned counsel and perused the material on record.

10. Section 66 of IBC reads as under :

> ***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.*
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> *(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—*
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> *(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*
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> *(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.*
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> *Explanation. —For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor."*

11. All the impugned transactions, except transfer of money to Mangal Bullion Pvt. Ltd., had taken place in FY 2023-24. The corporate debtor's existing loan

facilities were restructured by its lender, namely, Bharat Co-op Bank Ltd., vide sanction letter dated 17.3.2020, converting cash credit facilities into working capital term loans, rescheduling existing term loan facilities, and granting an additional cash credit facility. On perusal of a snapshot of the Balance Sheet and Profit & Loss Account for the year(s) 2017-18 to 2022-23, it is observed that the operations of the corporate debtor started declining from FY 2020-21 itself when its gross revenue dropped to less than half of the preceding year, and came down in FY 2021-22 and FY 2022-23 to less than 1% of its operations in FY 2019-20. The corporate debtor is stated to have written off its book debts, inventory, and creditors amounting to Rs. 2225.16, Rs.369.94 Lacs and Rs. 934.48 Lacs in FY 2023-24, all of which are impugned as fraudulent in the present application, and the contribution for the loss caused to the corporate debtor has been sought.

12. It is noted that the revenue from operations during the FY 2017-18 to 2020-21 were Rs. 728.26 Lakhs, Rs. 1780.77 Lakhs, Rs. 1964.04 Lakhs and Rs. 807.05 Lakhs respectively. As against this, it had Book Debts amounting to Rs. 997.06 Lakhs, Rs. 1315.47 Lakhs, Rs. 2011.16 Lakhs and Rs. 2195.04 Lakhs during those years, and inventories of Rs. 77.59 Lakhs, Rs. 96.90 Lakhs, Rs. 301.34 Lakhs, and Rs. 378.34 Lakhs. It follows therefrom that its revenue from operations jumped by about 244% from FY 2017-18 to FY 2018-19, the year immediately preceding the year in which its existing credit facilities were restructured, and additional credit was sanctioned. It is also relevant to note that its book debts for FY 2019-20 exceeded its total revenue for that year, and its inventory holding suddenly jumped to about 15% of its revenue. Against this backdrop, the observation of the transaction auditor regarding the genuineness of its vendors and customers assumes significance.

13. The said report, in relation to purchase & sale transactions with parties during FY 2019-20, observes as follows :

5.4 SALES TRANSACTION

For the Financial Year 2019-20, the total sales amounted to Rs. 1964.03 Lakh. Of this total, certain transactions were made with companies or firms that are directly or indirectly related to Barracks Retail India Pvt Ltd, as follows:

Rs. In Lakh

Name of the Parties	GST No	Amount	Proprietor/ Partner/ Director
Madhav Enterprise	27AXAPS0433N1ZA GSTN Cancelled Last Return filed till September 2021	431.58	Proprietor Kishana Rambabu Sharma was a past director of Cut & Curves Fashionwear Private Limited, where Amit Kumar Omprakash Kasera, a Director of Barracks Retail India Pvt Ltd, also served as a director
Radius Tradcon Pvt Ltd	27AAHCR1017Q1Z2 GSTN Cancelled Last Return filed till August 2021	223.03	Amit Kumar Omprakash Kasera, a Director of Barracks Retail India Pvt Ltd, also served as a director in Radius Tradcon Pvt Ltd
Universal Exports	27ANOPD0562B1ZE GSTN Cancelled Last Return filed till October 2020	144.39	Deep Himanshu Desai (Common Directorship with Sanjay Ramjidas Juneja and Amit Kumar Kasera)
Bhagwati Creations	27AFFPD7934J1Z9 GSTN cancelled Last Return filed till September 2021	327.07	Rishab Santosh Dhanderia
Elegant Ventures Pvt Ltd	27AADCE9109J1ZG GSTN cancelled Last Return filed till January 2020	233.34	Amit Kumar Omprakash Kasera and Sanjay Ramjidas Juneja a Director of Barracks Retail India Pvt Ltd, also served as a director in Elegant Ventures Pvt Ltd
		1359.41	

Further Major Sales in FY 2020-21 is made to Cut & Curves Fashionwear Private Limited, Madhav Enterprise and Radius Tradcon Pvt Ltd.

However, Amount not received from these parties in a manner it should receive.

Suspended management Reply: We are not having any relation with the above-mentioned entities.

Auditor's Comment: Based on our analysis, it appears that there were relationships between the company and the entities mentioned above. Furthermore, the simultaneous cancellation of GST registrations for these entities raises suspicions about the nature and legitimacy of the transactions. Reason to believe for the applicability of Section 66 are reasonable but due to non-availability of information we are unable to make any view on the same.

5.5 PURCHASE TRANSACTION

For the Financial Year 2019-20, the total purchase amounted to Rs. 1948.53 Lakh. Of this total, certain transactions were made with companies or firms that are directly or indirectly related to Barracks Retail India Pvt Ltd, as follows:

Rs. In Lakh

Name of the Parties	GST No	Amount	Proprietor/ Partner/ Director
Ambition Enterprise	27ABPFA5349E1Z9 GSTN cancelled Last Return Filed till March 2021	352.27	Partnership Firm. (Details not available at Portal)
Pretty Women Fashion House Pvt Ltd	27AAICP5122F1ZK GSTN cancelled Last Return Filed till August 2021	468.62	Amit Kumar Omprakash Kasera and Nisha Rajesh Munjal a Director of Barracks Retail India Pvt Ltd, also served as a director in Pretty Women Fashion House Pvt Ltd
Rohan Design	27AWKPJ5404D1ZR GSTN cancelled Last Return Filed till December 2021	168.04	Kashish Sanjay Juneja proprietor of Rohan Design seems to be relative of Sanjay Ramjidas Juneja director of Barracks Retail India Pvt Ltd
Bipin Enterprise	27ARIPM9360Q1ZU GSTN cancelled Last Return Filed till September 2020	181.14	BIPIN HARILAL MARU (Proprietor)
Dharmendra International	27BDKPS7650C1ZA GSTN cancelled Last Return Filed till January 2020	252.27	DHARMENDRA BACHUBHAI SHAH (Proprietor)
Kritika Overseas	27GMXPS2268K1ZW GSTN cancelled Last Return Filed till December 2020	195.66	Kritika Shankar Sahu (Proprietor)
		1618.03	

Suspended management Reply: We are not having any relation with the above-mentioned entities.

Auditor's Comment: Based on our analysis, it appears that there were relationships between your company and the entities mentioned above. Furthermore, the simultaneous cancellation of GST registrations for these entities raises suspicions about the nature and legitimacy of the transactions. The Notice received from department u/s 74(9) for ineligible ITC confirms the same. Reason to believe for the applicability of Section 66 are reasonable considering order of statutory authority and no effort of the suspended management to substantiate on their reply apart from mere denial. We believe burden of proof lies on the suspended management and especially considering such misrepresentation of the books of accounts.

14. The above observations clearly indicate that sale-purchase transactions during FY 2019-20 were entered into with persons having suspicious credentials, and the genuineness of these transactions is under cloud. It is pertinent to note that the purchases during FY 2019-20 led to a three-fold increase in Inventory holding; the parties from whom purchases were made had not claimed outstanding from the corporate debtor, leading to its write-back; and the corporate debtor also had to write off receivables arising from sale transactions.
15. Further, the Respondent No. 1 transferred a sum of Rs. 23.15 Lakhs during FY 2023-24 when the corporate debtor had negligible business. The explanation of Respondent that the funds were temporarily transferred during an unprecedented financial crisis faced by the Corporate Debtor, and that these amounts were utilised for critical business expenses, is false, as no evidence or details of expenditure or payment against such sums have been placed on record.
16. In case of ***Renuka Devi Rangaswamy vs Mr. Madhusudan Khemka (NCLAT Chennai), (2023) ibclaw.in 384 NCLAT***, the necessary ingredients for impugning a transaction in terms of Section 66 of the Code were laid down. The relevant part of said decision reads as follows *:*

> *"**33.** To be noted that, the expression `Party to the carrying on business', indicates `taking positive steps', in carrying on `company's business', in a `fraudulent manner'. The intent to `defraud', is to be judged, by its `effect' on a `Person', who is the `object of conduct', in question.*
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> ***34.** A `preponderance of probability suffices', but the degree of probability must be such that the `Tribunal', is satisfied and further that under Section 66 of the I & B Code, 2016, it is not essential to attract that there ought to be a `Debtor' and a `Creditor' relationship.*
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> *xxx xxx xxx*

38. *The Appellant has a `duty', to establish to the satisfaction of this `Tribunal', that a `person', is knowingly carrying on the business with the `Corporate Debtor', with an `dishonest intention', to `defraud', the `Creditors'. For a `Fraudulent Trading' / `Wrongful Trading', necessary materials are to be pleaded by a `Litigant' / `Stakeholder', by furnishing `Requisite Facts', so as to come within the purview of the ingredients of Section 66 of the I & B Code, 2016. Suffice it, for this `Tribunal', to pertinently point out that the ingredients of Section 66 (1) and 66 (2) of the I & B Code, 2016, operate in a different arena."*

17. 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 Civil cases 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. Ministerof 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)

18. These factors taken together *carry a high degree of probability* that the transactions of purchase and sale during the year from FY 2018-19 onwards were not genuine, and were only entered to post a rosy picture to persuade the lender for restructuring of debt and sanction of additional credit facilities, the object which got achieved in terms of sanction letter dated 17.3.2020. Accordingly, the facts lead to a conclusion, which is more probable than not, that the business of the corporate debtor was carried out after default in credit facilities leading to restructuring with an intent to defraud the creditors. Further, it can also be said that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor, and Respondent Director, knowing it fully well, failed to exercise reasonable diligence to minimise the loss. Accordingly, we hold that the write-off of Sundry Debtors amounting to Rs. 2225.16 Lakhs and Inventories amounting to Rs. 369.94 Lakhs falls within the scope of sections 66(1) and 66(2) of the Code. Besides this, withdrawal of Rs. 23.15 Lakhs by Respondent No. 1 also falls within the scope of section 66(1) as well as 66(2) of the Code. As regards write back of payables to creditors amounting to Rs. 934.48 Lakhs, since such balances were result of fraudulent conduct of business whereby the inventory came into existence or debtors in form of sale came into existence, we are of considered

view that the loss caused to the corporate debtor by write off of inventory and sundry debtors stand reduced by such amount. Accordingly, Respondent No. 1 & 2 are liable to contribute a sum of Rs, 1660.62 Lakhs within 30 days from the date of this order. Besides this, Respondent No. 1 is liable to contribute a further sum of Rs. 23.15 Lakhs to the corporate debtor within 30 days.

19. As regards the amount of Rs.42.50 Lacs paid to Mangal Bullion Pvt. Ltd. on 31.03.2020 and not returned as per books and alleged to be not reflecting in the ledger recoverable also, it is noted that books of a company are maintained on double-entry basis; accordingly, the said amount claimed as paid would either have been accounted for as purchases or in the absence of any supply, would have been written off. The Respondents have stated that Mangal Bullion had purchased goods worth Rs.42.50 lakhs but failed to return or pay for the same. Mangal Bullion had approached the Director of the company through the Bank itself and Bharat Bank (the previous debtor) was fully aware of the transaction. However, the Applicant has not disputed this explanation, and has not provided any cogent evidence to support the case even on preponderance of probability in this relation. The Transaction Auditor has only stated that, *as of January 08, 2024, it has been noted that the payment of Rs. 42.50 Lakh made by the Company to Mangal Bullion Pvt Ltd on March 31, 2020, has not been reflected in the balance sheet for the period under review. Furthermore, this amount remains unrecovered as of the audit date, and there is no indication of its adjustment or reflection in the current year's financial statements. Reason to believe for the applicability of Section 66 are reasonable but due to non-availability of information we are unable to make any view on the same*. Accordingly, if the explanation of Respondent is believed, the said amount receivable from Mangal Bullion Pvt. Ltd. may be part of total receivables written off and impugned in the application. Hence, no separate order for contribution may be required in such case as well. As the facts relating to this transaction

are not clear, and relevant year's complete financial statements have not been placed on record, the case of the applicant in relation to this transaction fails u.s 66 of IBC.

20. In view of the aforesaid, we direct Respondent No. 1 & 2, jointly or severally, to contribute a sum of Rs, 1660.62 Lakhs within 30 days from the date of this order. Besides this, Respondent No. 1 is directed to contribute a further sum of Rs. 23.15 Lakhs to the corporate debtor within 30 days. These amounts shall carry interest @ 12% p.a. if not paid within 30 days, and interest accrued thereupon shall first be appropriated from any payment made after 30 days.
21. In terms of above, IA 2427 of 2025 is partly allowed and disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)