

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 671 of 2020

&

I.A. No. 2116 of 2020

(Arising out of the Order dated 29th May, 2020 passed by National Company Law Tribunal, Indore Bench at Ahmedabad, Court – I, in I.A. – 458/2018 in CP (IB) 19 of 2017)

IN THE MATTER OF:

Amardeep Singh Bhatia

R/o 83, Vishnupuri Annex,
Indore 452001, MP

...Appellant

Versus

1. Abhishek Nagori

Liquidator for Asian Natural Resources (India)
Limited,
C/o JLN US & Company
330/348, Third Floor, Tower A,
Atlantis – K10, Opp. Vadodara Central,
Sarabhai Main Road,
Vadodara – 390007.

...Respondent No. 1

2. Surinder Singh Bhatia

S/o Mr. Kirpal Singh Bhatia
Residing at Flat No. 801, 8th Floor,
Le Orchid, 15th Road Khar (West)
Mumbai – 400052.

...Respondent No. 2

3. Gurvinder Singh Bhatia,

S/o Mr. Kripal Singh Bhatia,
Residing at Plot No. 1, 2, 3, 4,
Aditya Nagar, Vishnupuri Colony,
Indore – 452001.

...Respondent No. 3

4. Manjeet Singh Bhatia,

S/o Mr. Kripal Singh Bhatia,
53, Gajanand Mandir Colony,
Chandrapur,
Maharashtra – 442401.

...Respondent No. 4

5. Mr. Khalid Baig,

Flat No. 104, Amar Aangan,
Basant Vihar Colony,
Indore – 452010 MP.

...Respondent No. 5

6. Mr. Gaurav Agarwal,

204, Kalani Nagar,
Indore.

...Respondent No. 6

Present

For Appellant: Mr. Arvind Kr. Gupta, Ms. Henna George & Ms. Shivani Sharma, Advocates.

For Respondents: Mr. Ratnanko Banerjee, Sr. Advocate with Mr. Arvind Kumar Gupta, Mr. Aditya Krishnamurthy & Mr. Ashutosh Tiwari, Advocates for Intervenor.

(J U D G E M E N T)

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Appeal is to the Impugned Order dated 29.05.2020, passed by the Learned Adjudicating Authority (National Company Law Tribunal, Indore Bench, Ahmedabad, Court – I), in I.A. – 458/2018 in CP (IB) 19 of 2017. By the Impugned Order, the Adjudicating Authority, while allowing the Application has observed as follows;

“9. Observations

9.1. This Adjudicating Authority has observed that Insolvency commenced on 23.05.2017 and it is apprehended by the Liquidator and the Forensic Auditor and the allegations made by one of the Operational Creditors that certain transactions which can be termed as Undervalued Transactions, Preferential Transactions and Fraudulent Transaction had been carried out by the Members of the Suspended

Management though two years prior to the Insolvency Commencement date.

9.2. The Members of the Suspended Management are not cooperating with the Liquidator on the plea that transactions are falling beyond the two years from the insolvency commencement date i.e. 23.05.2017.

9.3. This Adjudicating Authority has also observed that Liquidator has written to Mr. Khalid Baigh, Mr. Amardeep Singh Bhatia, Mr. Gaurav Agarwal, the Directors of Asian Natural Resources India Limited on 21.07.2018 informing them that in order to study and scrutinize the transactions of the Company, he feels it is necessary and requires necessary documents, details and the information available with them in respect of 9 transactions relating to Financial Years 2009-10 to 2013-14. The Liquidator vide the aforesaid letter also desired soft copy of (i) all ledgers with narrations (ii) Bank Account Books with narrations (iii) Cash Book with narrations (iv) Sales Book with narrations and full details and (v) the Purchase Book with narrations and full details.

9.4. Mr. Khalid Baigh, the Director of Asian Natural Resources India Limited vide his reply dated 14.08.2018 has informed to the Liquidator that he has also received email from KPMG, the Forensic Auditor of Asian Natural Resources India Limited seeking all documents/papers etc from 01.04.2008 for completion of Forensic Audit. However, Mr. Khalid Baigh, has mentioned that they shall extend their full cooperation to arrange and provide information/data only for the period two years prior to the insolvency commencement date i.e., 23.05.2017 and requested the Liquidator to modify the mandate given to KPMG. to conduct the forensic audit from April 01, 2015.

9.5. It is also observed that KPMG, the Forensic Auditors appointed by the Liquidator has also asked for required data and information from the Suspended Management of Corporate Debtor from 01.04.2008.

9.6. It is observed in the application filed by the Operational Creditor, Vitol SA for execution of the

Arbitral Award, the unequivocal findings of fact by the Ld. Division Bench of the Bombay High Court in Judgment dated 29th September 2016 in Appeal (L) No. 797 of 2015 and the Ld. Single Judge of the Bombay High Court vide judgment dated 54 October, 2015 in Chamber Summons (L) No. 444 of 2014 in that the promoters of erstwhile BIL now known as Asian Natural Resources India Limited, have wilfully engineered BIL sustaining losses of approx. Rs. 180 Crores by causing the coal trading undertaking to be fraudulently hived off from BIL to BGTL for an illusory consideration and were the direct beneficiaries of such a transaction.

9.7. Moreover, while a look-back period has been provided for undervalued transactions under section 46, there is no limitation period for fraudulent transactions covered under sections 49 and 66 of the Code. The intent is that "once a fraud, always a fraud". The maxim "fraud vitiates every transaction into which it enters as well as to the contracts and other transactions". The basic essence is that any person who has carried out any wilful act should not be allowed to get away by citing reasons such as lapse of time of look back period is 2 years only.

10. Judgement

10.1. Considering the documents, papers made available, arguments of both sides, involvement of high amount, Judgment of the Hon'ble High Court of Mumbai, the operations of the Corporate Debtor scattered in different countries, Corporate Debtor having number of associate companies and in the interest of justice to all stakeholders, exercising the inherent powers under Rule 11 of NCLT Rules, the Liquidator is hereby permitted to scrutinize /investigate the transactions executed/entered by the Corporate Debtor beyond 2 years from the insolvency commencement date i.e. from 01.04.2008 as required by the Forensic Auditor M/s. KPMG. The relevant information/documents/records are required to be sought by the Liquidator from the Directors/Suspended Board and other Personnel of the Corporate Debtor in relation to those transactions which have been entered

into /executed by the Corporate Debtor from 01.04.2008.

10.2. Section 19 of the Code requires that the personnel of the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the Corporate Debtor.

10.3. The members of the Suspended Management of the Corporate Debtor are hereby directed to handover all the documents, information available with them and extend their full cooperation and assistance to the Liquidator as may be required by him in managing the affairs and completion of Liquidation Process of the Corporate Debtor in time. If the Suspended Management/Directors of the Corporate Debtor do not cooperate, handover the papers, documents etc. available with them, the Liquidator is at liberty to approach this Adjudicating Authority for issuing necessary consequential orders as it deems fit and proper.

10.4. The Forensic Auditors M/s. KPMG are also directed to complete the Forensic Audit within a period of 90 days and submit the report to the Liquidator so that the Liquidation Process is completed in time.

10.5. Since the other major company of the Suspended Management M/s. Bhatia Global International is now ordered to be liquidated as resolved by the CoC and the Liquidators of both the Companies Shri Abhishek Nagori for Asian Natural Resources (India) Limited and Shir Nitin Hasmukh Parikh Bhatia Global Trading Limited, are different, both the Liquidators are directed to coordinate with each other, if felt necessary and required, to complete the Liquidation Process in time.

10.6. More than 2 years have been passed since the initiation of Liquidation Process, the Liquidator is hereby advised to adhere to the time limit and submit the Progress Report to this Adjudicating Authority under Regulation 15 of the IBBI (Liquidation Process)

Regulations, 2016 as stipulated for completion of Liquidation process and perform all his functions and duties contemplated inter alia in Section 35, 36, 37, 38, 39, 40, 41, 43, 45, 50, 53, 54 of Insolvency and Bankruptcy Code, 2016 and Rules of 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 25, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 44, 45 & 46 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

10.5 The instant IA is disposed of accordingly with the above observations and instructions. ”

2. The Learned Counsel for the Appellant/‘Mr. Amardeep Singh Bhatia’ submitted that Section 43 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as ‘The Code’) deals with Preferential Transactions and specifies that the preference shall be deemed to be given, to a ‘Related Party’, during the period of two years, preceding the Insolvency Commencement Date (‘ICD’), or if the persons are other than a ‘Related Party’ then during the period of one year preceding the ICD. Learned Sr. Counsel submitted that Section 46 of the Code which deals with Avoidable Transactions refers to ‘Transactions’ made with any person within a period of one year preceding the ICD, or if a ‘Transaction’ is made with a ‘Related Party’, then within a period of two years preceding the ICD. It is contended that a bare reading of Sections 43 & 46 of the Code show that the ‘relevant time’ is either two years for a ‘Related Party’ or one year for any party other than a ‘Related Party’, prior to ICD. Learned Counsel, placed reliance on the Judgement of the Hon’ble Supreme Court in ‘**Anuj Jain**,

IRP for Jaypee Infratech’ Vs. ‘Axis Bank Ltd.’¹, in support of his argument, that transactions beyond two years cannot be investigated/scrutinised by the Liquidator.

3. It is vehemently contended by the Learned Sr. Counsel that even Fraudulent Transactions prior to 2 years of the ICD cannot be investigated by the Liquidator and therefore the Adjudicating Authority has erred in permitting the investigation of the ‘Transactions’ beyond two years. As the Liquidator cannot investigate a ‘Corporate Debtor’ beyond two years from the ICD, the personnel of the ‘Corporate Debtor’ under Section 19 of the Code cannot be expected to cooperate to provide documents for a period beyond this time. It is submitted that vide Order dated 01.07.2019, the Adjudicating Authority had earlier observed that as per the provisions of Section 43(4) of the Code, Forensic Audit beyond two years is not allowed.

4. It is also submitted that as per Section 35(1)(l) of the Code, the Liquidator can investigate the Financial Affairs of the ‘Corporate Debtor’ to determine ‘Undervalued’ or ‘Preferential Transactions’ which having a lookback period of two years prior to the ICD.

5. It is the case of the Respondent/Liquidator that Sections 43 of the Code indicate that the Liquidator or the Resolution Professional shall apply to the Adjudicating Authority, if in the opinion of the Liquidator or the Resolution Professional, the Corporate Debtor, has at the relevant time given a preference in

¹ (2020) 8 SCC 401

such transactions; that the definition of ‘preference’ is given in Section 43(2) and the definition of ‘relevant time’ is in Section 43(4); that the Liquidator will have to scrutinize and peruse all the relevant materials to determine and arrive at an opinion as to whether ‘preference’ has been given by the Corporate Debtor at the ‘relevant time’; that the Corporate Debtor or the erstwhile promoters as in the present case cannot refuse material documents to the Liquidator at the threshold by citing Section 43(4) of the Code; that Section 45 of the Code states that if the Liquidator or the Resolution Professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in subsection (2) of section 43 determines that certain transactions were made during the relevant period under Section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this chapter; that the relevant period is defined in Section 46 of the Code; that even for the above examination, the Liquidator must have possession of all the material documents so that he can determine if there are undervalued transactions during the relevant period; that the corporate debtor cannot deny documents at the threshold itself; and that even if there are extortionate credit transactions, the Liquidator can approach the Adjudicating Authority as per Section 50. It is important to note that Section 50 presupposes that the Liquidator has possession of all material transactions dehors the two year look back period.

6. Section 66 of the Code deals with fraudulent or wrongful trading. It is the case of the Liquidator that there is no look back period of two years and Section

66 and if the Liquidator finds that there is a fraud committed by the ‘Corporate Debtor’ at any time, then he can approach the Adjudicating Authority by filing an Application and seeking directions under Section 66(2) of the Code. It is contended that even under Section 66; there is a presupposition that the Liquidator has possession of all the documents, hence, the Liquidator cannot be denied documents by the ‘Corporate Debtor’. Regulation 9 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, provides that the personnel shall extend cooperation to the Liquidator. There is no look back period referred to in Regulation 9. Section 35(1) of the Code also empowers the Liquidator to investigate the Financial Affairs of the ‘Corporate Debtor’ and does not specify any time period.

7. It is submitted that pursuant to the appointment of M/s. KPMG, Forensic Audit of the ‘Corporate Debtor’, certain documents were requested by KPMG from the Liquidator. As these documents were not in the possession of the Liquidator, but were in the possession of the suspended Directors, and other personnel of the ‘Corporate Debtor’, they were sought for from the ‘Corporate Debtor’. The Liquidator has also filed the details which they had sought for from the ‘Corporate Debtor’ but was not receiving any cooperation.

Assessment:

8. Section 43 of the Code which refers to ‘Preferential Transactions’ is reproduced as hereunder:

“43. Preferential transactions and relevant time. –

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if–

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers–

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. – For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if –

(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.”

(Emphasis Supplied)

9. For ready reference, Sections 45 & 46 which deals with ‘avoidance of Undervalued Transactions’ is also reproduced as hereunder:

“45. Avoidance of undervalued transactions. –

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were

undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor—

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.”

46. Relevant period for avoidable transactions. –

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

—

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

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

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

10. In the aforementioned Sections, though the relevant time is provided for under the Code, the fact remains that unless the Liquidator, scrutinises and peruses the material which is relevant, to determine whether the ‘Preferential Transactions’ or ‘Undervalued Transactions’ took place at the ‘relevant time’, he cannot come

to a conclusion as to whether these transactions took place ‘during the relevant time’. We find force in the contention of the Liquidator that unless he is in the possession of all the material documents, he cannot determine whether they are ‘Undervalued Transactions’ or ‘Preferential Transactions’, during the relevant period of time, and therefore, the ‘Corporate Debtor’ cannot deny these documents at the threshold itself.

11. Now we address to ‘Fraudulent Trading’ or ‘Wrongful Trading’ as provided for under Section 66 of the Code. For ready reference, the said Section is being reproduced as hereunder:

“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 sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]

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.”

12. There is no look back period specified under Section 66, which refers to ‘Fraudulent Transactions’. If the Liquidator finds that there is a fraud committed by the ‘Corporate Debtor’ at any time, he can approach the Adjudicating Authority and file an Application seeking necessary directions.

13. At this juncture, we place reliance on the Judgement of the Hon’ble Supreme Court in ‘**State of Andhra Pradesh & Anr.’ Vs. ‘T. Suryachandra Rao’**,² wherein the Hon’ble Supreme Court while dealing with the concept of fraud, misrepresentation or false representation and suppression of material fact or document amount into fraud under the penal Code, Contract Act and ‘Companies Act, 1956’ has observed as follows:

“14. Suppression of a material document would also amount to a fraud on the court. (See Gowrishankar v. Joshi Amba Shankar Family Trust (10996) 3 SCC 310

² (2005) 6 SCC 149

and *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1.

15. *In Lazarus Estates Ltd. v. Bealsey* (1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA), Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

“No judgement of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

In the same judgement Lord Parker, L.J. observed that fraud “vitiates all transactions known to the law of however high a degree of solemnity”.

14. There is no provision in the Code for the Appellant to invoke the clause concerning relevant period of two years solely on the ground of denying documents/information directed to be given to the Liquidator. Regulation 9 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, read as follows:

“9. Personnel to extend cooperation to liquidator.

(1) The liquidator may make an application to the Adjudicating Authority for a direction that a person who-

(a) is or has been an officer, auditor, employee, promoter or partner of the corporate debtor;

(b) was the interim resolution professional, resolution professional or the previous liquidator of the corporate debtor; or

(c) has possession of any of the properties of the corporate debtor; shall cooperate with him in the collection of information necessary for the conduct of the liquidation.

(2) An application may be made under this Regulation only after the liquidator has made reasonable efforts to

obtain the information from such person and failed to obtain it.”

15. This Tribunal, is of the earnest view that the Adjudicating Authority has rightly invoked its Inherent Power under Rule 11 of the Company Law Rules, 2016 in the interest of justice to direct the Promoters to provide the relevant information.

16. Section 213 of the Companies Act 2013, reads as follows:

“213. The Tribunal may,—

(a) on an application made by—

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company’s register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

**(b) on an application made to it by any other person or otherwise, if it is satisfied
that there are circumstances suggesting that—**

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.”

17. There is no denial that the Liquidator had communicated regularly to the directors including the Appellant herein of various dates by email, and otherwise seeking information regarding the details concerning nine transactions relating to FY 2009-2019, which were necessary for the purpose of Forensic Audit being

carried out by M/s. KPMG. Having regard to the provisions of the Code and the aforementioned Section 213 of the Companies Act, 2013, it can be said that NCLT has acted outside its jurisdiction by invoking Rule 11 of the NCLT Rules, 2016.

18. Section 213 of the Companies Act, 2013, empowers the Tribunal on an Application made to it by any other person or otherwise, and if it is specified that there are circumstances suggesting that the business of the Company was conducted with an intent to defraud its Creditors, the Tribunal can pass an Order after given a reasonable opportunity of being heard, that the affairs of the Company ought to be investigated by an Inspector or Inspectors appointed by the Central Government and where such an Order is passed, the Central Government shall appoint one or more competent person as Inspector to investigate into affairs of the Company.....

19. The Judgement cited by the Learned Counsel for the Appellant in '**Anuj Jain, IRP for Jaypee Infratech' (Supra)**, is not relevant to the facts of the present case as in that case, the Adjudicating Authority has already passed an Order under Sections 43, 45 & 66 of the Code that certain transactions were 'Preferential'/'Undervalued'.

20. On an Application preferred by the Liquidator, seeking clarification as to whether the Liquidator was allowed to investigate the 'Transactions' executed or entered into by the 'Corporate Debtor', beyond two years from the ICD and relevant records can be asked for from the Promoters, the Adjudicating Authority has affirmed that the Promoters should give the necessary documents to the Liquidator and cooperate to enable the Forensic Auditors M/s. KPMG to

complete the Audit. At the cost of repetition, having regard to the fact that Section 66 of the Code does not contemplate any lookback period; and also having regard to the fact that unless the Liquidator scrutinises the documents, he would not be able to finalise or conclude whether the transaction also falls under Sections 43 or 46 of the Code, we are of the considered view that there is no illegality or infirmity in the Order of the Adjudicating Authority having exercised its Inherent Powers under Rule 11 of NCLT Rules, 2016 and hence this Appeal fails and is accordingly dismissed. No Order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

**Principal Bench,
New Delhi
28th November, 2022**

himanshu