

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 984 (ND)/2019
IN
IA/102/2021

IN THE MATTER OF:

M/s AC Goel Distributing Company Private Limited

... Operational Creditor

Versus

M/s Web Tech Packagings (INDIA) Private Limited

Corporate Debtor

AND

IN THE MATTER OF:

Mrs. Ashu Gupta,

Resolution Professional

(Web Tech Packagings (INDIA) Private Limited)

... (Resolution Professional / Applicant)

Versus

Mr. Sunil Tangri
210, Sukhdev Vihar,
New Delhi-110025

.... Respondent No. 1

Mrs. Ramni Tangri
210, Sukhdev Vihar,
New Delhi-110025

....Respondent No.2

Order delivered on: 12/11/2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT: -

Adv. Vinod Khanna for R.P.,

Adv. Ivan for Resolution Applicant,

(IB) 984 (ND)/2019

IN

IA/102/2021

Y

Adv. Mr. Kunal Karungo, Adv. Nageeb Nawab, Adv. Himanshu Deora, Adv. Raghav Vig and Adv. Shashwat Rakshit for Respondent No.-3
Adv. Pallav Mongia for the CoC.

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present Application under Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "the Code") is filed by the Applicant/Resolution Professional Mrs. Ashu Gupta of the Corporate Debtor i.e. M/s Web Tech Packagings (INDIA) Private Limited seeking following reliefs:

- To direct the respondent no.1 & 2 to return the sum aggregating to Rupees 29,75,73,550/-(Rupees twenty Nine Crore Seventy Five Lacs Seventy Three Thousand Five Hundred Fifty Only), which has been misappropriate/embezzled and deposit to the account of the corporate debtor.
- To prosecute the Respondent No. 1 & 2 as per law.
- To pass any further order as this Tribunal may deem fit and proper under the facts and circumstances of the present application.

2. That vide orders dated 25.07.2019, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and Mrs. Ashu Gupta was appointed as Resolution Professional ("RP") in the ongoing Insolvency Resolution process. The CIRP of the Corporate Debtor was subsequently extended by 90 days from 21.01.2020 vide order dated 22.01.2020 in C.A 611/2020.

3. That the Committee of Creditors (COC) in its 8th meeting held on 02.07.2020 had resolved and authorized the Resolution professional to appoint a forensic auditor for forensic audit of the corporate debtor.

Accordingly, on 13.08.2020, M/s VMRS & Associates, Chartered Accountants were appointed to conduct the forensic audit and inter-alia analyse all financial transactions of the corporate debtor with related parties and other transactions etc.

4. It is further stated that after examining and analysing the data of corporate debtor, the forensic Auditor submitted a forensic audit report of the corporate debtor to the Applicant for the year 2016-2017, 2017-2018 and 2018-2019 and for partial year from 01.04.2019 to 02.09.2019. The copy of forensic audit report dated 22.09.2020 is placed from page 32-222A of the application.

5. It is submitted by the Applicant that the Forensic Report reveals that the Respondent No. 1 & 2 had given preference in transactions in terms of section 43 to 51 and Section 66, 72 of the Code, while running the affairs of the company. The details of the observations made by the forensic auditor are given as under: -

- **Diversion of stock of Rs.5,48,50,824/-:** It appears from the forensic audit report's Finding no. 1 that the Corporate Debtor manipulated the Stock Valuation and Material consumption including their Opening and Closing stock, which consist of Work in Progress and rest is Finished Stock Inventory. The corporate debtor excessively consumed 193% as compared to previous year trend i.e. 73%, 79%, 70% raw material in financial year 2018-2019 and further also the excessive consumption of finished goods i.e. 97% in financial year 2018-2019 as compared to previous year trend i.e. 22%, 19%, which shows that the stock has been manipulated to the tune of Rs. 5,48,50,824/- and the same had been sold by the corporate debtor in cash and the amount received was pocketed in cash hence, an attempt made by the Respondent no. 1 and 2 to harm the various stakeholders.
- **Fund Misappropriation worth Rs. 24,02,726/- under related party transaction:** It appears from the "forensic audit report" Finding no. 2 that M/s Arthah Trading Company, Respondent No. 3 is owned by Mr. Aaditya Tangri (Ex - Director of corporate debtor)

son of Mr. Sunil Tangri & M. Ramani Tangri (Directors of corporate debtor) and his registered office showing under tally record is 163, 2nd Floor, Kailash Hill, New Delhi which is a common address of Corporate Debtor i.e. (Webtech Packagings India Private Limited) and M/s Arthah Trading Company. It is submitted that the proprietorship firm is a related party under the provision of the Companies Act, 2013, which is owned by the son/promoter Cum Ex-director of the Corporate debtor. Further, it appears from the tally books that books were manipulated by the Respondent No 1 and 2. To quantify the impact of fund misappropriation, the opening balance as on 01.04.2017 and suspense account credit balance accumulated Rs.11,59,726+12,43,000 = Rs. 24,02,726/- are not genuine funds, as per the Forensic Audit Report, page 22&23.

- **Recovery from Sundry debtor is doubtful:** - It appears from the "forensic audit report" Finding no. 3 that The Respondent No. 1 and 2 have Sundry Debtors of Rs. 2,20,46,314 /- as on 31.03.2018 to the following parties and out of which 95% (approximate) are outstanding for a period exceeding 6 months, thus the recovery of the amount from such parties are doubtful.

S. No	Name of Debtor
1	A S Equipment Private Limited
2	Basantar Breweries Private Limited
3	Creative Graphics
4	Crown Art Printers
5	Esko Graphics PTE limited
6	Flexo image graphic private limited

7	Lartec JSL
8	Laxmi Dying and printing works
9	Modern trading and manufacturing
10	Pine Pharma Private Limited
11	R.L. Cargo & Courier

It is submitted that the above debtors are more likely to be considered as bad debts and the corporate debtor has not made any provision against the above doubtful debtors, with the mala-fide intention to defraud the stakeholders.

- **Electricity Expenses are overstated worth Rs. 21,70,949/-** : It appears from the "forensic audit report" Finding no. 4 that manufacturing expenses are linked to production as per general accounting principles. However, the electricity expenses booked in the books of accounts are in abnormal percentage, as compared to production and very high, in financial year 2017-2018 i.e. 9%, which is abnormally high as compared to the previous year. Thus, the respondent no. 1 and 2 have overstated the electricity expenses.
- **Excessive remuneration charged worth of Rs 1,89,14,000/-** : It appears from the "forensic audit report" Finding no. 5 that the key managerial personnel (KMP) including their relatives diverted money from the corporate debtor's accounts in the name of remuneration, whereas vide email dt 02.08.2020, Mr Sunil Tangri has stated that his wife is a sleeping partner and their son Mr. Saurabh and Mr. Aaditya Tangri played no role in the affairs of the corporate debtor, then, how board of directors have shown the remuneration of Rs. 36,06,000/ in financial years from 2011-2012 to 2013-2014 and Rs. 41,52,000/- to Mr. Saurabh and Mr. Aaditya Tangri. Further, the Director's remuneration of Rs 1,11,56 ,000/- to Mr. Sunil Tangri is

A

very much excessive as compared to the profit of the corporate debtor. It is alleged that the said amount is booked with mala-fide intention to withdraw the money form the accounts of corporate debtor.

- **Excessive charge of other expenses worth Rs. 5,91,60,261/-:** It appears from the "forensic audit report" Finding no. 6, pages 28 to 30 that the trend analysis of other expenses shown below; to sale is abnormal and doubtful and made with mala- fide intention to reduce the net profit of the corporate debtor.

Account Head	Amount in Rs.
Bad debts	38,86,246
Computer expenses	96,32,289
Misc. expenses w/o FF	3,23,848
Discount rebate	4,31,82,765
Other expenses	21,35,113
Total	5,91,60,261

- **Eroded net worth is a red flag:** It appears from the "forensic audit report" Finding no.8 that the net worth is completely eroded by the Directors specifically during the period from 01.04.2017 to 02.02.2019. The Net worth of the corporate debtor became negative (RS. (-)2.30 Crore) in the financial year 2018-2019, the period which is very close to the CIRP initiation date i.e. 25/07/2019.
- **Unsecured loan from Directors and their relatives on progressive trend is a red flag:** It appears from Finding no. 9 "forensic audit report" that the Directors of the corporate debtor were using family network to withdraw the money from the company and bogus entries

booked under financials of the corporate debtor to make adjustments on the account of loans received from the related parties. In the financial year 2018-2019, there was sale of Rs. 94,04,229 only beside the loan from Directors and related parties is Rs.4,15,15,162/- which established extortionate credit entries.

- **Trade payable outstanding since long is also a red flag:** It appears from "forensic audit report" Finding no. 10 that the corporate debtor was not interested to make the payment and settle the dues of the Creditors, which resulted in the court cases and the insolvency process against the directors. The corporate debtor-director need to be held liable for such misdeed done towards private and public authorities.
- **Negative balance of cash in hand reveals a red flag and amount is recoverable worth Rs. 15,92,574:** it appears from "forensic audit report" Finding no. 12 that the negative balance of cash between the period 01.04.2017 to 02.09.2019 is reported, which indicates cash misappropriation by the Directors of corporate debtor. The details are given in the report.
- **Continuous sale purchase of Tangible assets is a red flag:** it appears from "forensic audit report" Finding no.11, especially for the period ended 31.03.2019, 31.03.2018, 31.03.2017, and even the independent auditor report for the year ended on 31.03.2019, 2018,2017, indicate that the respondent no. 1 and 2 have not provided any fixed assets' register to the auditor showing their details, thus the transfer of fixed assets indicates fraudulent trading to defraud the stake holders.
- **Suspense account debt side amount credited in banks not identifiable but accounted in book as per suspense during FY 16-17 worth Rs 14,88,975 is Recoverable:** It appears from "forensic audit report" Finding no. 13 that the debit balance under suspense account head from the period ended 31.03.2016 to till date of CIRP where no clarification is given by the corporate debtor is indicated as



a red flag account.

- Miscellaneous balances written-off worth Rs. 1,85,31,876 / - (Period 01.04.2017 to 02.09.2019)** : It appears from "forensic audit report" Finding no.14 that as per the audited financials and tally books for the period 01.04.2017 to CIRP date 02.09.2019 corporate debtor in routine procedure had written-off the expenses and balances outstanding towards debtors and creditors under their books to the tune of Rs. 1,85,31,876/- which means that several fraudulent entries have been made in the books of account of the corporate debtor and the books of accounts does not give true and fair view and the said account is also a red flag account.
- Concealment of statutory dues worth Rs.1,29,11,964:** it appears from a "forensic audit report" Finding no.16 that the records via online portal of income tax and other statutory dues in view of books of account worth Rs. 1,29,11,964 / - are outstanding at present:

S.No	Dues Towards	Amount
1	ESI payable (as per tally books of CIRP Date)	65,413
2	Income tax demand from website	63,64,895
3	Sales tax (as per tally books of CIRP date)	32,14,354
4	TDS payable (as per Tally books of CIRP date)	6,84,887
5	Excise duty payable (as per tally books of CIRP date)	8,33,875
6	GST payable (as per tally books of CIRP date)	16,55,887

7	Provident fund payable (as per tally books of CIRP date)	92,653
	Total	1,29,11,964

Further, the respondent no. 1 and 2 have committed non-compliance of various statutory detail and intentionally not shown there in liability in the balance sheet of corporate debtor.

- **Summarized email exchange between resolution Professional and director of Corporate Debtor:** it appears from "forensic audit report" Finding no. 17 that the corporate Debtor deferring giving facts on one ground or another and delayed the process of IBC, which established non-cooperation of the directors toward the applicant /RP.
- **Saurabh Tangri, director's son of corporate debtor's account adjustment worth Rs. 57,22,478/- (01.04.2017 to 02.09.2019):** It appears from "forensic audit report" Finding no.18 that the material amount adjustments deliberately made in the accounts of corporate debtor to misappropriate the funds of corporate debtor between director of the corporate debtor and their son, hence the 3 entries amounting to Rs. 57,22,478 are accommodation entries just to withdraw the money and the said account is also a red flag account.
- **Sunil Tangri current account adjustment worth Rs 3,13,178/- is a red flag:** It appears from "forensic audit report" Finding no. 19 that the directors of corporate debtor used the company fund for their personal expenses and booked the same into the company, which reveals the diversion of funds and said amount adjusted through current accounts.
- **Sunil Kumar Tangri loan account adjustment account for Rs.1, 24,99,000/-:** It appears from "forensic audit report" Finding no. 20 that the Directors withdrew the fund from corporate debtor using their authority in the month of Jan, 2020 just few month back of CIRP date. The respondent no. 1 and 2 were very well aware about

the situation of the corporate debtor's affairs and non-payment of public money. The 2 entries of Rs.1,24,99,000/- on 31.01.2019 as loan received from respondent no. 1 is a red flag account and the said entries are only accommodation entries and the said account is a red flag account.

- **Sunil Tangri Imprest account worth Rs. 57,18 ,641/- is a red flag:** It appears from a "forensic audit report" Finding no.21 that the director has shown adjustments and again doubtful entries made by them in the imprest account, which is significant and has impact on the corporate debtor's financial statement at large and further the screenshot of the tally indicates that various transactions of cash exceeding to Rs. 20,000 / - have been shown in the respondent no. 1 imprest account with other entries total amounting to Rs 57,18,641/- is a red flag account. Moreover, the cash entries above Rs.20,000 in cash is contrary to the provisions of section 269SS of the Income Tax Act.
- **Ramani Tangri adjustment under account is recoverable Rs. 54,54,000/- :** it appears from a "forensic audit report" Finding no.22 that the director diverted the fund in the name of home loan dated 31.07.2018 & 20.08.2018 along with other debits and credits of significant amount and also withdrew the fund amounting to Rs 54,54,000/ - from the account of corporate debtor with mala-fide intention to defraud the stakeholders.
- **Aditya Tangri's Rs.81,68,500/- opening balance as on 29.09.2017 :** It appears from a "forensic audit report" Finding no 23 that the fictitious amount balance is created to get funds from the corporate debtor and paid gradually from CD account worth Rs. 6,61,660/- & settle business loan of Rs.1,31,726/ - and rest is unpaid and further, the screen shot of tally of corporate debtor indicates the balance of Rs. 81,68,500/- in the account of Mr. Aaditya Tangri son of respondent no. 1 & 2 is a red flag account.



- **Entries post CIRP date is a red flag:** It appears from "forensic audit report" Finding no. 25 that the tally books of corporate debtor were manipulated by the respondent no.1 & 2 and 17 entries amounting to Rs.8,53,67,678/- **between 02.09.2019 to 31.03.2020** have been posted/adjusted in the books of account even after the initiation of CIRP i.e. 25/07/2019. These 17 entries are self-explanatory that the respondent no.1 and 2 have manipulated books of account to defraud the various stakeholders. The screen shot of tally of corporate debtor books of accounts annexed as page 48 of the Forensic Audit report.
- **Sewa Ram & Sons inter Transfer of Rs 25,35,000/- is red flag:** It appears from "forensic audit report" Finding no. 26 that the said firm is related party of a corporate debtor and receipts and payments were made to settle the opening balances hence, these can be said to be the tactics of diversion of fund which is also a red flag account.
- **Fund diversion through non-show of actual sales consideration and liable for recovery from corporate debtor worth Rs. 50 lakh:** It is submitted by the Applicant that the Respondent no. 1 & 2 have sold the property bearing no. F-21 Site-C, Surajpur, Industrial Area, Greater Noida for the value Rs. 1,00, 00,000/- as per the registered sale deed dated 06.02.2019. However, the circle rate/ stamp duty is considered for Rs. 1,87,44 ,000/- has affixed on the said sale deed thus, an undervalued transaction has been done with buyer of the property i.e Modern trading & Manufacturing Company having its office at 19 / 73, west Moti Bagh, Sarai Rohilla, Delhi-35.
- It further, appears from the "forensic audit report" Finding no. 27 and 28 that two table of payments are not reconciled with each other and it appears that the cash and cheque payment are also not matched which is legally vetted by the buyer Mr Neeraj Gupta, Proprietor of Modern Trading & Mfg Co. situated at 19/73 West Moti Bagh, Sarai Rohilla, Delhi. It also appears that the sale between corporate debtor and buyer is over and above Rs. 2.25 Crore and hence, it is said to be undervalued shown by the corporate debtor and buyer. Further, the corporate debtor under their books shown a total transfer of Assets

worth Rs. 1.75 Crore in place of actual sales consideration worth Rs. 2.25 Corers by the buyer, **it clearly appears that Corporate Debtor diverted funds worth Rs. 50 Lakhs.**

6. It is submitted that on perusal of the Forensic Report, the Applicant is of the opinion that the respondent has at the relevant time made undervalued transactions as provided under section 45 to 49 of the Code 2016.

7. It is stated that the directors had been enjoying the funds of company for their personal interest. The transaction between directors and corporate debtor are doubtful and treated as red flag, hence, the financials are dressed to evade taxes and siphoning the funds in the name of different accounts under books of account of corporate debtor. Thus, financial statements are misleading and eye-wash only. Further, in terms of the above mentioned facts, the Respondent no. 1 & 2 have misappropriated/embezzled the following amounts:

S. No.	Particulars	Amount
1.	Diversion of stock	5,48,50,824
2.	Fund Misappropriation under related party transaction	24,02,726
3.	Sundry Debtor	2,20,46,314
4.	Excessive remuneration	1,89,14,00 / -
5.	Excessive expenses charged	5,91,60,261 / -
6.	Negative balance of cash in hand	15,92,574 / -
7.	Miscellaneous balances written-off	1,85,31,876 / -
8.	Saurabh Tangri director's son	57,22,478 / -
9.	Sunil Tangri current account	3,13,178 / -
10.	Sunil Tangri loan account	1,24 ,99,000 / -
11.	Sunil Tangri Imprest account	57,18,641 / -

12.	Ramani Tangri account is recoverable	54,54,000 / -
13.	Entries post CIRP date	8,53,67,678 / -
14.	Non-shown of actual sales consideration of plant	50,00,000 / -
	TOTAL	29,75,73,550 /

8. The respondents have raised the following objections against the prayers of the applicant:

- i. The present Application as filed by the Resolution Professional (RP) suffers from non-maintainability and is beyond the ambit of limitation vide Section 66 of the Code read-with Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter 'Regulations 2016').
- ii. It is submitted that in the matter at hand, CIRP commenced on 25.07.2019 and thus, the mandatory timelines vide Regulation 35A are as follows;
 - a) 8th September 2019 [CIRP + 75th day]
 - b) 17th November 2019 [CIRP + 115th day]
 - c) 7th December 2019 [CIRP + 135th day]

It is claimed that the applicant had to perform the functions vide Section 66 within the time-frame outlined above and therefore, the present application suffers from severe delay of more than 500 days, hence barred by limitation.

- iii. It is stated that applicant had filed the present application after the Resolution Plan had been presented before this Hon'ble Tribunal for approval with the sole purpose of scuttling the resolution of the corporate debtor and to guide it towards liquidation. There remains no doubt therefore, the present application is in the nature of a roving inquiry being conducted by the Applicant and is as such grossly time-barred under the law.

V

- iv. The respondents have placed reliance on the order passed by the Hon'ble High Court of Delhi in M/s Venus Recruiters Pvt Ltd v. Union of India & Ors, WP(C) No. 8705/2019 dated 26.11.2020 and submitted that the Hon'ble Delhi High Court has laid down the law in that regard and stated that in not scrupulously and strictly following the timelines as per the CIRP Regulations, the very purpose of such applications will be defeated. In consonance with the same, the Hon'ble Delhi High Court further adjudged that the RP cannot file such applications under Chapter III of the IBC, 2016 indefinitely.
- v. In any case, the relaxation in timelines as per the Hon'ble Apex Court's judgments in Essar Steels (2020) as well as in Surendra Trading Company v. JK Jute Mills Company Ltd & Ors, (2017) 16 SCC 143 pertains to very specific circumstances, as relate to the initiation of the CIRP and its continuation wherein resolution of the CD is in sight. Therefore, those judgements are a step towards the stated intention of the IBC. Yet, the enunciation there cannot be said to apply across the entire spectrum of the Insolvency and Bankruptcy Code for certainty and timelines therein are of utmost importance towards driving the CD into resolution rather than liquidation. The above rulings in no manner must be considered to be guiding factors when it comes to avoidance applications under Sections 43, 45, 50.
- vi. It is further stated that the timelines vide Reg. 35A serve the purpose of ensuring that any supposed benefits/recovery arising out such applications is reflected in the Resolution Plan as approved by the CoC. In fact, the Hon'ble High Court in the aforementioned judgment has stated that,

"70. An avoidance application for any preferential transaction is meant to give some benefit to the creditors of the Corporate Debtor. The benefit is not meant for the Corporate Debtor in its new avatar, after the approval of

the Resolution Plan. This is clear from a perusal of Section 44 of the IBC, which sets out the kind of orders which can be passed by the NCLT in case of preferential transactions. The benefit of these orders would be for the Corporate Debtor, prior to approval of the Resolution Plan. Any property transferred or sum acquired in an order passed in respect of a preferential transaction would have to form part of the final Resolution Plan.

- vii. It is stated that the CoC has approved the Resolution Plan with a 100% voting share and as such the commercial wisdom of the CoC reigns paramount. It is further prayed that any attempts to scuttle the duly approved plan on basis of a time-barred application would amount to winding the clock back to the date of CIRP commencement and would surely condemn the Corporate Debtor to liquidation.
- viii. It is alleged that the Forensic Audit Report is full of blatant falsehoods based on incorrect accounting entries and assumptions. The RP along with the Forensic Auditor has failed to take note or even remotely consider the detailed replies and clarifications sent over to it via email and the same shows a predisposed outlook on part of the RP and the Forensic Auditor. The report is grossly not in line with newly laid down Forensic Accounting & Investigation Standards (FAIS) and are under approval by Institute of Chartered Accountants of India (ICAI).
- ix. It also pointed out that the Applicant has failed to consider the conclusion of the Independent Statutory Auditor's Report wherein it has been stated that,

"During the course of our examination of the books and records of the company, carried in accordance with the auditing standards generally accepted in the India, we have neither come across any instance of fraud by the company or on the company by its officers or employees noticed or

reported during the course of our audit nor have we been informed of any such instance by the Management."

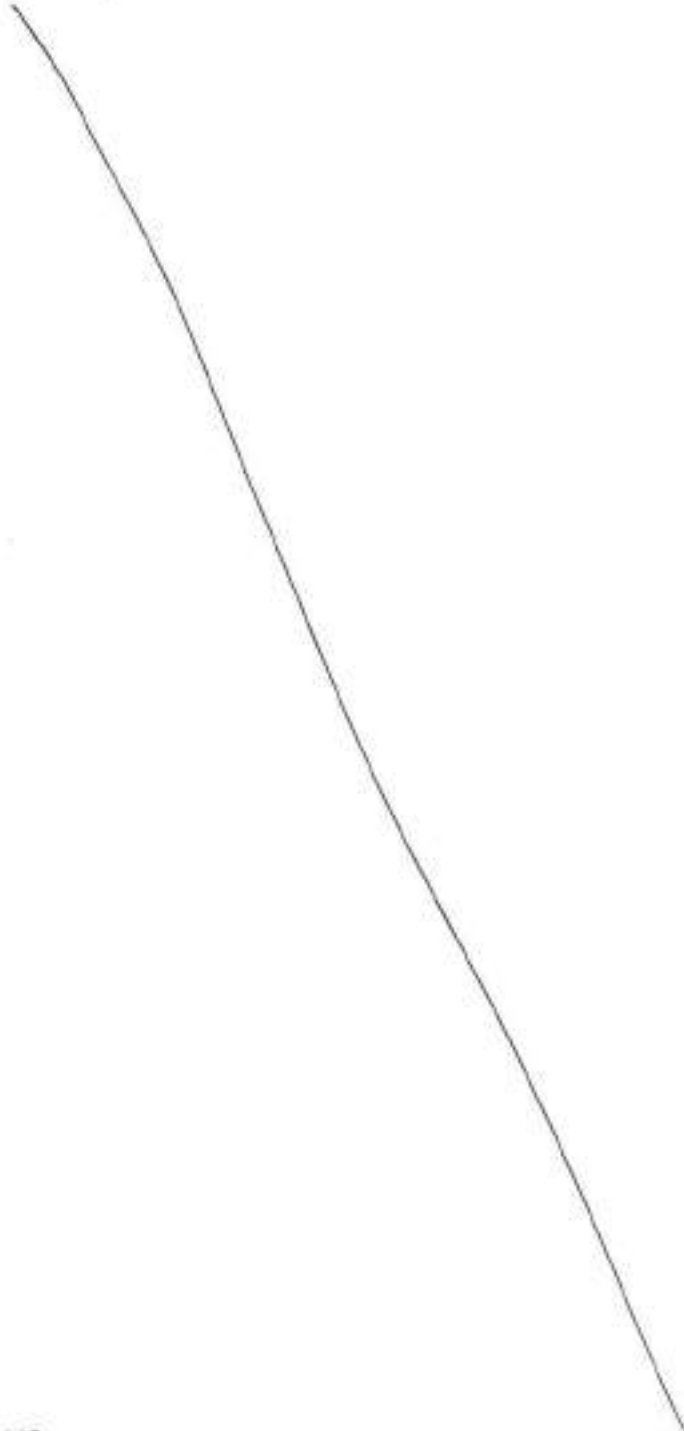
- x. It is further alleged that the applicant has given a contradictory finding vis-à-vis preferential transactions as per the report. The FAR concludes clearly that no 'preferential transactions' have been found by way of the audit so conducted. Yet the Applicant RP ignoring the same has come to the conclusion that 'related party transactions' amounting to Rs. 24,02,726/- exists.
 - xi. It is submitted that the value of the property stated to be undervalued by the RP cannot be / and is never considered in isolation and only on the basis of stamp duty cost of the building structure which is a depreciating factor. In the present case the ownership of the land is on a leasehold basis from UPSIDC and was sold separately by issuing a transfer letter in the name of the Buyer. In fact the Respondents herein have paid the balance amount of Rs. 1,75,00,060/- from the distress sale of mortgaged property was paid to the Axis Bank loan account of the corporate debtor. In fact the Respondent Promoters herein have further paid the balance amount of Rs. 1,39,99,940/- as received from the sale as above in compliance of DRT order by selling of their Residential flat and internal accruals of the corporate debtor.
9. The applicant in the rejoinder argument has submitted as follows:
- i. It is submitted that Reply of the Ex-Management of the Corporate Debtor is without merit and ought to be rejected in its entirety as the erstwhile directors did not made any denial of the allegations/issues raised in the forensic audit report/ Application except seeking rejection of the said application on the sole ground of that application is barred by limitation.
 - ii. That the applicant submits that the present application is very much maintainable itself on the ground that the time line mentioned in Regulation 40A of the Regulations read with

Regulation 35A is not mandatory in nature and it is only directory in nature. It is further stated that the so far as deciding or rejecting the application is concerned, the time line is directory in nature.

- iii. The applicant has also placed reliance upon the Hon'ble Supreme Court's judgment in the case of "Surendra Trading Company Versus Juggilal kamlapat Jute Mills Company Limited & ors., in civil appeal no. 8400 of 2017" and also in PT. Rajan Vs. T.P.M. Sabir and Ors. (2003) 8 sec 498, wherein it was observed that where Adjudicating Authority has to perform a statutory functions like admitting or rejecting an application within a time period prescribed, the time period would have to be directory and not mandatory.
- iv. That the applicant has been continuously chasing the Respondent No. 1 & 2 for providing the requisite information and documents including tally data, the books of accounts and other information. Vide reminder e-mail dated 07.09.2019, wherein the applicant requested the Respondents to provide the information/ documents which she had been asking in her earlier communication (s) and also asked about the whereabouts of the registered office of the Corporate Debtor as the existing one was under demolition and the address where books of accounts and other records are kept. However, no co-operation was made by the Respondents. Thus Applicant filed an application under Section 19(2) vide C.A No. 1531/2019 for seeking necessary directions against the respondent.
- v. That Statutory auditor of CD on 13.08.2020 provided Financial Statements of the corporate debtor for the financial years 2016-17, 2017-18 and 2018-19 with draft Audit Report, and applicant instantly shared all the Financial Statements/documents were signed on 21.09.2020 and the forensic audit report was finalised on 22.9.2020. Thus, the

delay in filing the present application has occurred due to non-co-operation of the Respondents.

10. The scanned copy of the additional written submissions filed on behalf of Corporate Debtor/Respondent are reproduced below:-



1. The present written submission is being filed on behalf of the ex-directors/promoters of the Corporate Debtor in I.A. No. 102/2021 in I.B. No. 984/2019. At the very outset it must be brought out that the scope of engagement of the Forensic Auditor was solely with regard to F.Y. 2016-17, 2017-18 & 2018-19. However the Forensic Auditor vide its Forensic Audit Report (FAR) has unilaterally extended the same to already duly audited previous years and the same has been done without any basis and completely lacks significant findings, evidence in the engagement years and has been done just to harass the suspended directors of the CD (who is also the Resolution Applicant herein with a duly approved Resolution Plan) resulting in significant CIRP cost burden for the Small Scale Unit CD emanating from the prolonged process thereof.
2. Furthermore it must be pointed out herein that the Applicant RP has failed to consider the conclusion of the Independent Statutory Auditor's Report wherein it has been stated that,

"During the course of our examination of the books and records of the company, carried in accordance with the auditing standards generally accepted in the India, we have neither come across any instance of fraud by the company or on the company by its officers or employees noticed or reported during the course of our audit nor have we been informed of any such instance by the Management."

Yet the RP in complete disregard of the same has blindly followed the flawed assumptions of the FAR and prepared without having carried out any due diligence as to the nature of the CD's business or having carried out actual site visit and/or physical/virtual meeting with the Respondents herein to ascertain facts. In fact the Forensic Auditor has raised only a single query that too via email and despite the same having been duly answered it has proceeded ahead with its own unjustified conclusions and assumptions vis-a-vis the FAR in scant regard for the norms governing the same.

3. Further the RP has given a contradictory finding vis-à-vis preferential transactions as per the report. The FAR concludes clearly that no 'preferential transactions' have been found by way of the audit so conducted. Yet the Applicant RP ignoring the same has come to the conclusion that 'related party transactions' amounting to Rs. 24,02,726/- exists. However the RP has completely failed to provide any cogent evidence on basis of which the same has been alleged so against the CD.
4. The following must be taken into consideration vis-à-vis the FAR herein:
 - i. There is no evidence in the FAR of any diversion of funds invested outside the company or of any assets created by the promoters/directors in the country or abroad
 - ii. There is no evidence in the FAR of any diversion of fund taken in or through any other subsidiary/sister concern in the country or abroad.
5. Again to add further, the value of the property stated to be undervalued by the RP cannot be / and is never considered in isolation and only on the basis of stamp duty cost of the building structure which is a depreciating factor. In the present case the ownership of the land is on a leasehold basis from UPSIDC and was sold separately by issuing a transfer letter in the name of the Buyer.
 - i. In fact the Respondents herein have paid the balance amount of Rs. 1,75,00,060/- from the distress sale of mortgaged property was paid to the Axis Bank loan account of the CD. In fact the Respondent Promoters herein have further paid the balance amount of Rs. 1,39,99,940/- as received from the sale as above in compliance of DRT order by selling of their Residential flat and internal accruals of the CD. There is a net contribution to the CD account by the Promoter in the year preceding the CIRP date to pay off the debts. The said values are in accordance with the 'Realisable Value' as outlined by the registered valuer appointed by Axis Bank and heavily relied upon by the Applicant RP.
 - ii. The above facts clearly exhibit deliberate ignorance and malafide intent on part of the RP in filing a baseless petition and burdening the CD, a Small Scale Unit, by wasting time & increasing the CIRP costs.
6. Another crucial aspect that ought to be considered herein pertains to the fact that RP has alleged excessive remuneration. However the said issue pertains to FY 2012-13, 2013-14 and 2014-15 and is as such beyond the purview of the FAR. In any case it is beyond the purview of the RP or even of the Forensic Auditor to question the remuneration paid to the suspended directors in these years when the CD small scale unit was making profit and the same is clearly reflected in the books of account duly audited by the Statutory Auditor. Furthermore, the Applicant RP in cohorts with the FAR has deliberately failed to report non-payment of any salaries to the suspended directors of the CD in the years of losses.
7. Notably, the revised tally data provided to the RP after corrections in accounting errors in these years and as per the laid down accounting norms which clarified all the queries raised by the RP was never considered. The suspended directors of the CD have signed these financial reports for onward submission to the ROC subject to corrections due to accounting errors and the detailed replies to the queries of the auditor.
8. Recently new standards for conducting forensic audit, known as Forensic Audit and Investigation Standards (FAIS), have been proposed by the Digital Accounting and Assurance Board (DAAB) of the Institute of Chartered Accountants of India (ICAI)



whereby the existing standards will be rendered untenable, especially where ambiguous and inconclusive reports are used to classify borrower loan accounts as fraud as is the case herein.

- Furthermore, as per the new standards, the FAH is required to be precise and unambiguous in nature backed by reliable evidence and relevant documents collected by the auditor. However as is evident in the matter at hand, the FAR is purely based on conjectures and surmises and only raises red flags without drawing any conclusions. In fact the RP has also not applied his mind at all to the said report and blindly reported the same vide its application without having determined any such allegation indecently.
 - The FAIS further prescribes that the FAR shall not express any opinion or pass any judgement on guilt or innocence, whereas herein the report clearly seems based on a predisposed opinion of the auditor towing the line of the RP. In fact the tenets of natural justice have not been followed at all by the auditor and views of the CD have not been incorporated at all vide the present report.
 - It is to be noted that currently, there are no standards or guidelines prescribed by any regulator or authority to monitor or regulate the functions of forensic audit. In the absence of such regulations, any and every self-acclaimed forensic audit expert/firm is appointed to conduct forensic audit as per their own rules and procedures and present reports based on their own judgements and in most such cases, the reports are inconclusive, ambiguous and devoid of reliable evidence.
9. In fact, in the matter at hand, the conduct of the RP must be taken note of by this Hon'ble Tribunal in driving the CD towards liquidation rather than resolution despite there being a viable and duly approved (by 100% voting share of the CoC) Resolution Plan before this Hon'ble Tribunal.
10. Not only is the present application grossly time barred and not in line with the stated intention of the IBC, it is an underhanded effort on part of the RP to scuttle the present Resolution Plan of a Small Scale MSME Unit.

11. The scanned copy of the short synopsis filed on behalf of the Resolution Professional/Applicant are reproduced below:-

- 1) The present Short synopsis is being filed by the Resolution Professional in the above-referenced application, LA No. 102/2021 under section 66 of the IBC Code, 2016 for the Fraudulent Trading and Wrongful Trading etc. on the basis of forensic report prepared by Mr. Vaibhav Gupta C.A.
- 2) At the outset, it is submitted that Reply of the Ex-Management of the Corporate Debtor is without merit and ought to be rejected in its entirety as the erstwhile directors did not make any denial of the allegations/issues raised in the forensic audit report/Application except seeking rejection of the said application on the sole ground of that application is barred by limitation.
- 3) That the applicant/R.P. submits that the present application is very much maintainable itself on the ground that the time line mentioned in Regulation 40A of the IBC (Resolution Process for corporate persons) Regulation, 2016, read with Regulation 35A is not mandatory in nature and it is only directory in nature. It is further stated that the so far deciding or rejecting the application is concern, the time line is directory in nature.

The applicant is also relying upon by The Hon'ble Supreme Court's judgment in case of "Suresh Trading Company Versus Juggilal kamlapat Jute Mills Company Limited & ORs. in civil appeal no. 8400 of 2017" and also in *PT. Rajan Vs. T.P.M. Sahir and Ors. (2003) 8 SCC 498*, which observed that where Adjudicating Authority has to perform a statutory function like admitting or rejecting an application within a

time period prescribed, the time period would have to be directory and not mandatory.

Further, in the other judgment of The Hon'ble Supreme Court judgment in case of **"Brilliant Alloys Private Limited Vs MR. S. Rajagopal & Ors."** the Hon'ble Court observed that the regulations 30A states that withdrawal cannot be permitted after issue of invitation for Expression of Interest. *According to us, the regulation has to be read along with the main provision section 12A which contains no such stipulation. Accordingly, this stipulation can only be construed as directory depending on the facts of each case. Accordingly, we allow the settlement that has been entered into and annul the proceedings.*

- 4) That the Applicant/R.P further continuously chasing the Respondent No. 1 & 2 for providing the requisite information and documents including tally data, the books of accounts and other information vide reminder e-mail dated 07/09/2019, wherein requested to Respondents to provides the information/ documents which she had been asking in her earlier communication(s) and also asked about the whereabouts of the registered office of the Corporate Debtor as the existing one was under demolition and the address where books of accounts and other records are kept. However, no co-operation was made by the Respondent thus Applicant/R.P approach to this Hon'ble Court under Section 19(2) vide C.A No. 1531/2019 for seeking necessary directions against the respondent. However, even after repeatedly requesting for finalization and audit of the balance sheets of the corporate debtors for the financial year 2016-2017, 2017-2018 & 2018-2019 and till the date of CIRP, the ex-management have not co-operated to the applicant/R.P as well as their auditor.
- 5) That Statutory auditor of CD, on 13.08.2020 provided Financial Statements of CD for the financial years 2016-17, 2017-18 and 2018-19 with draft Audit Report, and R.P instantly shared all the Financial Statements/ documents were signed on 21/09/2020 and the forensic audit report was finalised on 22/9/2020 thus the delay in filing the present application has occurred due to non co-operation of the Respondents.

12. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply and rejoinder as well as written submissions filed by the respective parties.

13. On perusal of the pleadings of the parties, we notice that the main ground taken by the respondents is that, the application filed by the applicant is barred by limitation, in view of the Regulation 35 A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in support of that, Ld. Counsel for the respondents have placed reliance upon the decision of Hon'ble Delhi High Court in the matter of M/s Venus Recruiters Pvt Ltd Vs. Union of India & Ors in WP(C) No. 8705/2019. The other ground taken by the respondents is that the prayer of the applicant is

based upon the Forensic Audit report (FAR) and the applicant has not formed his own opinion, therefore, the present application is not maintainable.

14. Apart from these two grounds, by filing additional written submissions, Ld. Counsel for the respondents has also referred to the conclusion of the Statutory Auditor's Report in para 2 of his written submissions and submitted that the Independent Statutory Auditor in its report observed that they have not come across any instance of fraud by the company or on the company by its officers or employees notices or reported during the course of our audit.

15. He further claimed that the FAR concludes clearly that no preferential transactions have been found.

16. Whereas, the claim of the RP is that the timeline given in the Regulation 35 A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 is not mandatory rather directory in nature and in support of his contention, Ld. Counsel for the RP has placed reliance upon the two decisions of the Hon'ble Supreme Court, Surender Trading Company reported in (2003) 8 SCC 498 and another in the matter of Brilliant Alloys Private Limited and submitted that Hon'ble Supreme Court, in the two decisions, have held that the Regulations are not mandatory rather they are directory in nature.

17. Therefore, before considering the prayer of the applicant, we would like to consider this objection of the respondent that whether the application is maintainable in terms of Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 or not ?

18. The relevant Regulations 35 A and 40 A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 are quoted below:-

¶35A. Preferential and other transactions.

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.]

[40A. Model time-line for corporate insolvency resolution process.

The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:



Section / Regulation	Description of Activity	Norm	Latest Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	---	T
Regulation 6(1)	Public announcement inviting claims	Within 3 Days of Appointment of IRP	T+3
Section 15(1)(c) / Regulations 6(2)(e) and 12(1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90 th day of commencement	T+90
¹⁾ Regulation 12(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
	Verification of claims received under regulation 12(2)		T+97]
Section 20(6A)(b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 12(1)	Report certifying constitution of CoC		T+23
¹⁾ Section 23(1) / Regulation 19(2)	1 st meeting of the CoC	Within 7 days of filing of the report certifying constitution of the CoC, but with five days' notice.	T+30]
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	-----
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed.	If RP is not appointed by 40 th day of commencement	T+40
⁷⁾ Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 47 th day of commencement.	T+47]
Section 12(A) / Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later.	W+7
	Filing application of withdrawal, if approved by CoC with 90% majority voting, by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36(1)	Submission of IM to CoC	Within 2 weeks of appointment of RP, but not later than 54 th day of commencement	T+54
Regulation 36A	Publish Form G		T+75

	Invitation of EoI	Within 75 days of commencement	
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90
	Provisional List of RAAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final List of RAAs by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T+180

AA: Adjudicating Authority; AR: Authorized Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; EoI: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan]

19. On conjoint reading of these two Regulations, we observe that the word 'on or before the seventy fifth day of the insolvency commencement date' in Regulation 35A (1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, 'on or before the one hundred and

fifteenth day of the insolvency commencement date' in Regulation 35A (2) and 'on or before the one hundred and thirty-fifth day of the insolvency commencement date' in Regulation 35A (3) are based upon the **Model timelines** given in the Regulation 40A. It is seen in Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the model timelines prescribed in respect of Regulation 35A is, 75th day of the insolvency commencement date, 115th day of the insolvency commencement date and 135th of the insolvency commencement date as referred to in sub Regulation 1, 2 & 3 of Regulation 35A respectively.

20. It is further seen that the **model timeline** for the Corporate Insolvency Resolution Process shown in Regulation 40A are based on the assumption that the CIRP should be completed within 180 days (one hundred and eighty days), as it is mentioned in Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 same is reproduced below:- ***"The following Table presents a model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days"***

21. It is further seen that the IBBI has made this Regulations by exercising its power under Section 5, 7, 9, 14, 15, 17, 18, 21, 24, 25, 29, 30, 196 and 208 read with Section 240 of the IBC, 2016.

22. Whereas, Section 12 of the IBC, 2016 has prescribed the time limit for completion of the Corporate Insolvency Resolution Process. For better appreciation of the provision of law, the said section is quoted below:-

IBC Section 12- Time-limit for completion of insolvency resolution process.

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend

the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

23. A bare perusal of the provision shows that in view of Section 12 (1), the time prescribed to complete the CIRP is 180 days from the date of

admission of the application to initiate such process but in view of Section 12 (3) read with Section 12(2) of the IBC, on the approval of the Committee of Creditors (CoC) by vote of 66% of the voting shares, the Adjudicating Authority is empowered to extend the period of CIRP beyond the period of 180 days but not exceeding 90 days. And by amendment w.e.f. 16.08.2019, a proviso is added, which extends the total period of CIRP for 330 days.

24. We observe that while framing the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the IBBI has not exercised its power under Section 12 of the IBC, 2016, which means while making the Regulations for Insolvency Resolution Process for Corporate Persons, though, the IBBI has added the Regulation 40A w.e.f. 04.07.2018 and made an amendment in Regulation 35A w.e.f. 04.07.2018 but has failed to consider, the amended provision, by which the total period for completion of CIRP may extend to 330 days. Whereas, the model timelines are prepared on the assumption of completion of CIRP within 180 days.

25. Now, the question is if the legislature after making the amendment in Section 12, has extended the period of CIRP up to 330 days subject to approval of the CoC and the Adjudicating Authority, then under what authority, the IBBI could reduce the time period for completion of the CIRP from 330 days to 180 days?

26. Here we notice that the proviso in Section 12 of IBC is added by the Amendment no. 26/2019 w.e.f. 16.08.2019, **whereas the model timelines and Regulation 40A and Regulation 35A were inserted/amended w.e.f. 03.07.2018.** This shows that after the amendment in Section 12 of IBC, the model timelines in Regulations 35A and Regulation 40A have not been amended by IBBI in terms of the extension of total period for completion of CIRP.

27. At this juncture, we would like to refer to Section 240 of the IBC, which says that **"the Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code."**

28. On conjoint reading of the Regulation 35A and 40A of the IBBI Regulations and Section 12(3) of the IBC, we observe the Regulations made

by the IBBI are not updated and consistent with the provision of Section 12 (3) of the Code.

29. At this juncture, we have gone through the decision of Hon'ble Delhi High Court (supra), and we notice that aforesaid facts were not placed before the Hon'ble Delhi High Court.

30. We would also like to refer to the two decisions of the Hon'ble Supreme Court (supra) on which the Ld. Counsel for the RP/applicant has placed reliance and it is seen in both the decisions, the Hon'ble Supreme Court, by considering the regulations, held that the Regulations are directory in nature and not mandatory in nature and we find, these two decisions have not been considered by the Hon'ble Delhi High Court in the decision referred to Supra.

31. At this stage, we would like to refer to Section 66 of the IBC, 2016, which is quoted below:-

IBC Section 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.

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.

32. A bare perusal of the said provision shows that 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.

33. When we read Section 66 of the IBC along with the Regulation 35A and Regulation 40A of the IBBI Regulations, we are of the considered view that the time limit prescribed for consideration of preferential transaction

and other transaction is inconsistent with the provision of Section 66, because Section 66 IBC clearly says that the Adjudicating Authority may pass an order, on the application of the Resolution Professional, during the CIRP or a liquidation process. And it is seen that the period of CIRP comes to end after the approval of the Resolution Plan and not before that or the period of liquidation comes to end after the dissolution of the corporate debtor under Section 54 of the IBC. And these facts and law were not placed before the Hon'ble Delhi High Court.

34. Therefore, in our considered view, in view of the decisions of Hon'ble Supreme Court (Supra), the Regulation is not mandatory rather directory in nature.

35. At this juncture, we would also like to consider the reasons submitted by RP for not filing the present application earlier. The applicant/RP in its written submissions has specifically mentioned that despite the repeated request and reminders, the suspended Board of Directors of the Corporate Debtor did not furnish information or handed over the financial statements. These were provided by the Statutory Auditor of the Corporate Debtor on 13.08.2020 and the Forensic Auditor's Report was finalised on 22.09.2020. Therefore, we are of the considered view that the delay has been explained by the RP, which is due to the non-furnishing of the information by the suspended Board of Directors of the Corporate Debtor.

36. So, for the reasons discussed above, in view of the decisions of the Hon'ble Supreme Court (supra) in our considered view, the decision upon which the respondents have placed reliance i.e. the decision of Hon'ble Delhi High court, is not applicable in the case in hand.

37. ***For the reasons discussed above, we have no option but to hold that the present application filed by the applicant is maintainable under the law.***

38. Next question is that whether the respondents are liable under Section 66 of the IBC or not?

39. At this juncture, we would like to refer to the relevant extracts of the Forensic Auditor's Report, which are reproduced below:

4 EXECUTIVE SUMMARY**FACTS IN BRIEF**

The Resolution Professional Mrs. Ashu Gupta (RP, Registration Number (BBI/PA-002/SP-1400339/2017-2018/10943), (RP) had approached VMRS & Associates for conducting a Forensic audit of the company named as Web Tech Packagings (India) Private Limited (in short the "Company" WPTL (Corporate Debtor) which is a Private limited company incorporated on 27 Feb, 1998 under the provisions of the Companies Act, 1956.

During the course of Corporate Insolvency Resolution Process, need was felt by Resolution Professional to appoint a Forensic Auditor to facilitate investigation into the financial affairs of WPTL primarily to ascertain existence of any preferential Transactions, under-valued Transactions, diversion of funds and Resultant creations of assets in India or abroad etc.

As per the information available to the Resolution Professional & based on possible resources, the audit is conducted. The Corporate Debtor is irregular in complying the provisions of different applicable laws and irregular in making payment to creditor is a big red flag for showing guilty mind of directors and siphoning of funds.

Under these circumstances, it was felt necessary to conduct a Forensic audit of the Company and the team of the undersigned were appointed vide an Engagement letter was signed between RP and VMRS & Associates dated 14.07.2020.



The Summary of Findings are as under :-

KEY Findings
Sections 43 & 44 - Preferential Transactions
NIL
Sections 45 to 48 Undervalued Transactions
Exist
Section 50 Exorbitant credit Transactions
No Such Transaction noticed
Section 66 & 69 Fraudulent and wrongful trading and Transactions Defrauding Creditors
FINDING NO.1 Diversion of Stock Worth Rs 5,48,50,824/-
FINDING NO.2 Fund Misappropriation Worth Rs 24,02,726/- Under Related Party Transactions
FINDING NO.3 Debtor Analysis - Recovery from Debtors is Doubtful
FINDING NO.4 Electricity Expenses is Overstated Worth Rs 21,70,949/-
FINDING NO.5 Excessive Remuneration Charged Worth Rs 1,89,14,000/- and Employee Benefit Expenses Worth Rs 1,72,615/- is recoverable
Finding No.6 Excessive Charged Other Expenses Worth Rs 5,91,60,281/-
Finding No.7 No Change in Shareholding Pattern
Finding No.8 Errored Net Worth is a Red flag
Finding No.9 Unsecured Loan from Debtors and their Relatives on Progressive Trend is a Red Flag
Finding No.10 Trade Payable Outstanding Since Long is also a Red Flag
Finding No.11 Continuous Sale/Purchase of Tangible Assets for Last Seven Years is a Red Flag
Finding NO.12 Negative Balance of Cash in Hand reveals a Red Flag and Amount is Recoverable Worth Rs 5,92,574/-

Dr. S. JEEVAN, AUDIT PARTNER, VMRS & ASSOCIATES, CHARTERED ACCOUNTANTS

VMRS & ASSOCIATES CHARTERED ACCOUNTANTS	Private & Confidential
FINDING NO.13 Suspense Accounts- Debit Side # Amount credited in Banks, not identifiable but accounted in books as suspense during FY 16-17 Worth Rs. 15,83,973/- is Recoverable	
FINDING NO.14 Miscellaneous Balances Written Off Worth Rs. 1.85,11,874/- (Period 01.04.2017 to 02.09.2019)	
FINDING NO.15 Indirect Income Based Under Financials is also a Red Flag (Period 01.04.2017 to 02.09.2019)	
Finding No.16 Concealment of Statutory Debt Worth Rs.1,28,11,964/-	
FINDING NO.17 Email Exchange Secondary Between Resolution Professional and Director of Corporate Debtor	
FINDING NO.18 Saurabh Tange - Director Son of Corporate Debtor - Account Adjustment Worth Rs.57,22,478/- 01.04.2017 to 02.09.2019	
FINDING NO.19 Sund Kumar Tange Current Account Adjustment Worth Rs.313,179/- is Red Flag	
Finding No.20 Sund Kumar Tange Loan Account - Adjustment Account - Red Flag for Rs.1,24,99,000/-	
FINDING NO.21 Sund Tange Interest Account Worth Rs.57,18,641/- is Red Flag	
FINDING NO.22 Karam Tange Adjustment Under Account is recoverable Rs.54,54,000/-	
FINDING NO.23 Aditya Tange - (B) A6,500/- Opening Balance as on 29.09.2017	
FINDING NO.24 Payments made post CRP Date - Cash Payments and Receipts Under Corporate Debtor Account is a Red Flag	
FINDING NO.25 Entries Post CRP date is a Red Flag	
FINDING NO.26 Sawa Ram & Sons Inter transfer of Rs.25,15,000/- - Red Flag	
FINDING NO.27 Fund Diversion Through Non-Sign of Actual Sales Consideration and Invoice For Recovery from Corporate Debtor Worth Rs.1,73,00000/-	
FINDING NO.28 Fund diversion towards sale of Land and Building worth Rs.30 Lacs	
Finding No.29 Rectification of Bank Statement is a Red Flag	
WITFUL AND MATERIAL OMISSIONS	
Finding no.1 application of deemed dividend under section 202(a) of Income tax act, 1961A. Full share of dividend No.2 Non-Compliance of Applicable Law to Corporate Debtor	
Finding No.3 Income Tax Proceedings Pending before Income Tax Department is a Red Flag	
Finding No.4 Red Flag in Books of Accounts	
Finding No.5 Financial Statements Are Misleading	
Finding No.6 Reproduced Audit Report for the Period 31.03.2019 to 31.03.2018 & 31.03.2017	
Finding No.7 Civil and Criminal Cases Filed Against Corporate Debtor and Their Directors Under Miscellaneous Proceedings of Law	
Finding no.8 personal credit card of directors used for business purpose and payment made from corporate debtor account	
FINDING NO.9 comments on the statutory auditor communication to corporate debtor and reply by corporate debtor there of	
Finding no.10 Non-maintenance of registered office by corporate debtor by their directors - Red Flag	
FINDING NO.11 Non-Compliance of Directors of Corporate Debtor and Not Given Physical Documents and Supporting Assets in Audited Financials of Corporate Debtor to Resolution Professional	



VMRS & ASSOCIATES CHARTERED ACCOUNTANTS	Private & Confidential
7. FINDINGS IN BRIEF (Period Covered is Financial Year 01-04-2015 to CRP Date)	
A) Sections 43 & 44 - Professional Transactions	
B) Sections 45 to 46 Undervalued Transactions	
C) Section 50 Extraneous credit Transactions No Such Transaction noticed.	
D) Section 66 Fraudulent and wrongful trading read with section 69 Transactions defrauding creditors	
FINDING NO.1 DIVERSION OF STOCK WORTH RS. 1,48,59,824/-	
The main assertions in the financial statements relating to inventory are existence, ownership, completeness, valuation and audit procedures should be designed and performed with the objectives of verifying such assertions.	
It appears from the Audited Financials that the corporate Debtor manipulated the stock valuation and Material Consumption including their Opening and Closing Stock which consists of Work in Progress (significant Material) and red is Finished Stock Inventory. The Conclusion of Stock Manipulation Drawn on the basis of following points which is evident from books of Corporate Debtor and Audited Financials as under:-	
1.	The Trend Analysis of Cost of Raw Material Consumption to Sales Ratio is Abnormal (Refer Table 1.1)
2.	The Inventory maintained from the Financial Year 2013-14 ended Was Rs.2,61,46,062 which is maintained upto Financial 2015-16 and thereafter it is adjusted gradually from the financial year 2014-17 to CRP date of CRP. (Refer Table 1.2)
3.	The Stock Register maintained under tally books by corporate debtor did not reconcile with the audited financial statement and the comparative analysis is also not linked with the figures shown under audited stock statement and Tally Books Extract (Refer Table 1.3)
4.	The Inward movement of stock is also not reconciled with purchase and sales shown under audited books from financial year 2015-16 to CRP date of CRP.
5.	The Statutory auditor also shared the information towards corporate debtor misdeeds where Under notes of Accounts from Financial Year 2016-17 Inwards shown that the low quantity of inventory and their value is not available with the corporate debtor. (Refer Table 1.4)
6.	The Statutory Audit Report also stated that the corporate debtor intentionally made a with attempt to divert the stock from their factory - Refer Table 1.5 where disclaimer of opinion of statutory auditor reproduce thereof.
7.	Under Table 1.5 & 1.2 the Inventory is presented under audited financial in two parts: one is Raw Material and Second is Work in Progress and Finished Stock. The Manipulation of each Inventory is done by the corporate debtor.
8.	The Trend of Inventory also shows high material consumption and low value realization which is appeared from the audited financial statements.
9.	Table 1.7 Extract of Management Representation Letter which is pending for signature till date of reporting As At 31.03.2019 also confirmed the said figures of inventory shown under Table 1.1 to 1.10
10.	Table 1.8 Showing Sales Register Extract where figures are not comparable under audited financials.
11.	Table 1.9 Showing Purchase Register Extract where figures are also not comparable under audited financials.
 True Copy	
 DR. S. FORENSIC AUDIT EXPERT - M.L.W.	

12. Table 1.10 shows the valuation of Inventory rate which is not comparable for Financial Year 2016-17 & 2017-18.
13. The Raw Material Stock at the financial year ended 2017 is 4,67,51,722 and Work in progress and Finished stock worth Rs. 2,76,55,773 is an adjustment under books of accounts gradually made by the corporate debtor on yearly basis to settle down the stock which is evident also as a modification in statutory audit report.
14. Table 1.6 Extract of Annexure 'A' to Independent Auditors' Report As at 31.03.2017,31.03.2018 & 31.03.2019 is also state towards physical presence of stock and their existence in that period.

Conclusion : On the date of above para 8 it appears that the Stock manipulation concluded as the underlying stock as on 31.03.2016 of WIP and Finished Goods worth Rs 2,76,55,773/- and as on 31.03.2017 of Raw Material worth Rs 4,67,51,722/- & sold by corporate debtor including their directors in Cash and the Amount Received in Cash hence a wilful attempt made by the corporate debtors to harm the various stakeholders. The Final Figure of Stock Discretion in our opinion may be computed as follows:

S.No.	Particulars	As On	Amount	Computed Figure	Remarks
1	Raw Material Stock	31.03.20	4,67,51,722	2,27,26,105	20% Stock assumed to be realized in books in view of trend analysis and 70% Stock Discreted by corporate debtor.
2	WIP and Finished Stock	31.03.20	2,76,55,773	2,21,24,818	Being an old inventory now showing 20% Grosses reduction thereof assumed to get marketable value.
	Total		7,44,07,495	4,48,50,923	

Statement Showing Cost of Raw Material Consumed Vs Revenue from Operations

A	B	C	D	E	F	G
Financial Year	Revenue from operations Divd	Cost of raw materials consumed	Ratio (C/B)	Changes in inventories of finished goods and stock-in-process	Ratio (E/B)	R:1
As 31st March, 2016	41 94,94,229	3,81,78,612	19%	91,26,622	87%	
As 31st March, 2018	41 1,57,11,171	1,44,05,454	77%	43,80,042	22%	33%
As 31st March, 2017	41 7,09,56,914	3,59,61,186	7%	1,22,40,109	1%	98%
As 31st March, 2016	41 12,95,74,113	9,04,51,447	70%	3,63,627	0%	70%
As 31st March, 2015	41 15,17,58,528	12,66,25,692	82%			82%
As 31st March, 2014	41 15,95,13,814	14,10,13,596	72%	1,80,71,742	-5%	92%

Table 1.10 Extract of Financial for Raw Material Consumption and Average Valuation Rate.

Type of Materials	Units	Year ended 31.03.2017		Average Rate	Year ended 31.03.2016		Average Rate
		Quantity	Value		Quantity	Value	
Paper / Board	Kgs	4,32,128	2,47,78,028	34.86	6,24,368	4,12,77,048	65.94
BCMP Fims	Kgs	2,66,944	89,67,495	34.82	3,06,448	5,51,14,990	112.40
Roll Stamping Roll	Sqm	16,488	1,68,487	9.06	4,14,161	24,34,942	5.82

FINANCIAL NO-2 FUND MISAPPROPRIATION WORTH RS 24,02,726/- UNDER RELATED PARTY TRANSACTION

TRANSACTION - WEBTECH SOLD GOODS TO ARJUN TRADING CO AND RECEIVED FUNDS

Arjun Trading Company: The Firm is owned by Mr. Anilysa Singh (Ex-Director of Corporate Debtor) son of Mr. Sunit Singh (Director of Corporate Debtor) and registered office showing under Tally Records is 163rd floor, Kalish 148, New Delhi which is a common address of Corporate Debtor (Webtech Packaging India Private Limited) & Arjun Trading Company.

This Proprietorship firm is a related party under the provisions of Companies Act,2013 which is owned by the Promoter cum Ex-Director of Corporate Debtor.

The Audited Financials up to Financial Year 2016-17 was not having break up of Sundry Debtors and Sundry Creditors. The Tally Records submitted to us showing for Sundry Ledger up to Financial Year 2016-17 but the opening balance as on 01.04.2017 was Worth Rs 11,50,19.24 Credit Balance (Annexure 8A Copy of Tally Ledger) showing under books which means liability payable by Corporate Debtor to said related party. Further A Suspense Entry Passed into Tally Books of Accounts as on 01.04.2017 worth Rs 4,60,000 extending liability under books of corporate debtor. The Liability Payable is further extended by transferring funds into said related party bank account or paid by such related party to third party on account of expenses and payment of trade which is settled under books passing sale of goods to corporate Debtor, Bank Accounts. On the basis of such peculiar transactions made between two related parties is Suspicious and red flag for funds misappropriation. The Summary of Tally Book is under :-

Extract Summary of Tally Books-Ledger Arjun Trading Co. FY 2017-18

Bank Labels	Sum of Debit	Sum of Credit
Bank of India (A/C 8029001000000000)		3,50,000.00
Electricity Expenses		50,000.00
Export	31,59,000.00	
GST Interstate Sales	21,06,873.90	
M/S Prakash Publications	7,54,000.00	
Agarwal Agri Foods		3,00,000.00
CBC Bank A/C 30331132000155	24,76,000.00	11,62,116.00

Opening Balance		11,85,736.34
Surgeon & C		12,43,000.00
Corporate Financial Services Interest		1,09,000.00
10% Corporate P&L Share Capital		45,131.00
Grand Total	45,75,933.90	25,47,233.34

It appears that from Tally Books, books were manipulated by Corporate Debtor through their Directors/Promoters. To quantify the impact of fund misappropriation the Opening Balance as on 01.04.2017 and Suspense Account Credit Balance accumulates (11,59,726 - 12,43,000) Rs. 24,08,736/-

For Reference (Copy of Tally Ledger Enclosed As per Annexure 8A)

Financial Year 2018-19: Total Sale of Rs. 27,43,194 made by Corporate Debtor to Arthan Trading Co. and Payments against such sale made by them Rs. 25,83,000/- The Closing Balance stands as on 31.03.2019 is Rs. 11,48,913/- (Annexure 8B)

Financial Year 2019 to CRP Date: The Amount Rs. 6 Lacs recovered from them closed balance still stand as recoverable under loans is Rs. 5,48,913/- (Annexure 8C)

FINISH NO.3 DEBTOR ANALYSIS - RECOVERY FROM DEBTORS IS GOING ON

1. A S Equipment Private Limited

Office at 41, Gopesh Tower, 123, Rajendra Place, New Delhi (GSTIN: 07AACCAB941132C)

Advance Payment made by Corporate Debtor in the month of April 2018 Worth Rs. 44231/- against which a Purchase Amount Worth Rs. 21,854/- booked in the month of April 2018 & Amount Rs. 3443 booked in the month of August 2018 and till the time rest amount Worth Rs. 14804/- is pending for recovery. (Copy of Ledger Enclosed Annexure 8D)

2. Resonator Breweries Private Limited

Amount Worth Rs. 1,37,523/- is pending for recovery since April 2016. More than 4 Years passed still recoverable. (Copy of Ledger Enclosed Annexure 8E)

3. Creative Graphics

An Amount Worth Rs. 7,44,405/- Credit balance stands in Corporate Debtor Account as on 01.04.2017 in respect of invoice and Cheques issued as on 31.03.2018 Worth Rs. 5,00,000/- to decrease the liability due to Rs. 2,44,405/- as on 31.03.2018 thereafter a Payment of Rs. 7,32,950/- made to said party by Corporate Debtor against which no purchase made by firm and hence said amount Worth Rs. 5,08,451/- is recoverable as on CRP Date 02.09.2019 (Copy of Ledger Enclosed Annexure 8F)

4. Crown Art Printers

Under the Books of Corporate Debtor, the balance stands worth Rs. 34,53,863/- which is settled between A.C. Good Paper Distributing Company Private Limited and said party vide communication to RP dated 20.08.2019. No Balance is Recoverable. It appears that the transaction passed under loans is suspected in view of non-submission of communication by Crown Art Printers setting aside of CONRO-19 (Copy of communication Enclosed 8G)



True Copy

PG 71 10819ND/2019/IN IA/102/2021 M/S VMRS & ASSOCIATES CHARTERED ACCOUNTANTS (INDIA) PRIVATE LIMITED

The final communication is not Reply by the said party to us towards their settlement of accounts.

5. Etek Graphics PTL Limited

Amount Recoverable Rs. 53,443/- Since April 2016.

6. Hero Image Graphics Private Limited

Amount Worth Rs. 5,03,036/- stands as on 01.04.2019 where corporate debtor recovered a sum of Rs. 5,81,000/- in the month of April-May 2019 and only nominal Amount Worth Rs. 2016 is recoverable now. (Copy of Communication Enclosed 8H)

7. Larkes J&L

Amount Worth Rs. 6,743/- pending for recovery as on 01.04.2017 where corporate Debtor makes advance payment Rs. 28,351/- in the month of May 2018 and the purchase Worth Rs. 11,197/- hence balance recoverable is increased to Rs. 8,496/- which is not recoverable yet. (Copy of Ledger Enclosed 8I)

8. Laxmi Dying and Printing Works

Amount Recoverable Rs. 2,75,215/- Since April 2016.

9. Modern Trading and Manufacturing

A Total Asset Transferred by Corporate Debtor under their Books of Accounts Worth Rs. 1.77 Crores against a Receipt of Rs. 1.75 Crores. A Nominal Balance needs to settle Rs. 1,95,940/- as on CRP Date. The Annual Transactions and entry passed under books also not reconciled each other which is covered under report separately. (Copy of Ledger Enclosed 8J)

10. Pina Pharma Private Limited

The Corporate Debtor sold Goods Worth Rs. 14,18,660/- against receipt of Rs. 13,99,900/- during FY 2017-18 to CRP date. A Nominal Amount Rs. 18,760/- is recoverable. (Copy of Ledger Enclosed 8K)

11 R.L. CANGO & COMPANY

Amount Recoverable Rs. 43,073/- Since April 2016.

12. Surgeon Account Debit Balance

As on CRP Date the Amount of Rs. 34,85,966/- is recoverable from directors/promoters of corporate Debtor.

Extract of Statutory Auditor Comments.

The balances in accounts receivables & payables are subject to confirmation in majority of the cases as on 31.03.2019.

The Company has trade receivables of Rs. 1,83,42,274/- as at 31st March 2019. All are outstanding for a period exceeding 6 (Six) months from due date and approx. 10% of total receivables as at 31st March 2019 are outstanding for more than 2 years from their due date. The auditors have not made any provision against these doubtful debts, effect of which may be material.

Debtors, Loans and Advances

The following items appearing in the books as at 31.3.2019 are considered good and fully recoverable.

True Copy



Particulars	Description	Amount in Rs.
Trade Receivables	Outstanding for a period exceeding 6 Months from Due Date	1,43,42,274/-
	Outstanding for a period upto 6 Months from Due Date	Nil
Loans and Advances	Advance to Suppliers	12,47,475/-
	Other Advances	2,52,821/-

The Company has trade receivables of Rs. 2,20,46,314/- as at 31st March 2018, out of which 95% (Approx) are outstanding for a period exceeding 6 (Six) Months and in our opinion their recoverability is doubtful. The company has not made any provision against these doubtful debts, effect of which may be material.

The Company has trade receivables of Rs. 2,19,96,700/- as at 31st March 2017, out of which 90% (Approx) are outstanding for a period exceeding 6 (Six) Months and in our opinion their recoverability is doubtful. The Company has not made any provision against these doubtful debts, effect of which may be material. The directors of corporate debtor is responsible for non-recovery of the said outstanding in Books of Accounts.

FINDING NO.4 Electricity Expenses is Overstated Worth Rs 21,70,945/-

The Manufacturing Expenses is linked to production as per General Accounting Principles. The Extract of Profit and Loss account of Corporate debtor showing abnormal trends and appears the misdeeds made by directors willfully to overstate the expenses in their books. To conclude the Abnormal Behavior of Manufacturing Expenses, It Comes to our notice that Corporate Debtor overstated the electricity expenses in the financial year 2017-18 & 2018-19 which is Rs 21,70,945/- (17,56,939+4,14,410) Refer Table 1.11 & 1.12.

Extract of Statutory Auditor Comments.

In addition to above, the reliability of Company's books of account, produced before us for audit, in absence of supporting evidence is in question with glaring errors like total Salary & Wages being only Rs 1.72 lakhs against sale of Rs. 94 lakhs from manufacturing activities, even electricity expenses of more than 4 lakhs are not justified. There are no other labor or job work expenses to support this sale.



TRU P
TRU P

Table 1.11 Statement Shows the Ratio of Manufacturing Expenses to Revenue

A	B	C	D
Financial Year ended	Revenue from operations (net)	Manufacturing expenses	Ratio (C/D)
As at 31st March, 2019	94,04,029	5,38,344	4%
As at 31st March, 2018	1,92,13,371	17,80,123	9%
As at 31st March, 2017	7,09,50,514	27,48,070	4%
As at 31st March, 2016	12,99,74,119	47,19,625	4%
As at 31st March, 2015	15,17,58,528	28,50,194	2%
As at 31st March, 2014	19,90,13,614	1,16,32,186	6%
As at 31st March, 2013	13,91,62,858	99,09,097	7%
As at 31st March, 2012	14,61,09,758	79,68,879	5%

A	B	C	D
Financial Year ended	Revenue from operations (net)	Electricity Expenses	Ratio (C/D)
As at 31st March, 2019	94,04,029	4,14,410.00	4%
As at 31st March, 2018	1,92,13,371	17,56,139.00	9%
As at 31st March, 2017	7,09,50,514	25,27,889.04	4%
As at 31st March, 2016	12,99,74,119	19,26,262.00	2%
As at 31st March, 2015	15,17,58,528	34,41,478.00	2%
As at 31st March, 2014	19,90,13,614	19,33,940.00	10%
As at 31st March, 2013	13,91,62,858	34,34,827.76	2%
As at 31st March, 2012	14,61,09,758	25,27,584.00	2%

Table 1.12 Statement Shows the Ratio of Electricity Expenses to Revenue

FINDING NO.5 Excessive Remuneration Charged Worth Rs 1,89,14,600/- and Employee Benefit Expenses Worth Rs 1,92,412/- is unreasonable.

During Our detailed analysis of Audited Financial Statement, It appears that the Key Managerial Personnel including their relatives diverted money from the corporate Debtor Account in the name of remuneration whereas per Written Statement of Mr. Sunil Tangri posted on us email on 02.08.2020 (Annexure A) where he stated that his Wife is a sleeping partner and their son Mr. Sunish and Aaditya Tangri no role played in the affairs of corporate debtor then how the board of corporate debtor booked the remuneration into benefits of corporate debtor. It is nothing but a mode of withdrawal of money in the name of different family members. Further to deep check the profit under books of corporate debtor and profit withdrawal from books of corporate debtor, Mr. Sunil Tangri (Director of Corporate Debtor) charged excessive remuneration which is insufficient figure in our opinion. In Our Opinion the Reasonable figure as per Industry norms and the corporate debtor turnover is 36 Lakhs Per Annum and over and above it excessive charged.

The Table 1.13, 1.14, 5.15 is prepared to calculate the excessive figure of remuneration to Mr. Sunil Tangri and their Family Members is Rs 1.89 Crores hence liable for recovery.

Further Statutory Auditor under their report also comment the non-linking of employee overhead to the turnover of corporate debtor, hence it appears that the figure of Rs 1,92,412/- charged in the financial year ended 31.03.2019 is excessive booked under accounts.



TRU P
TRU P

[Handwritten signature]

VMRS & ASSOCIATES CHARTERED ACCOUNTANTS			Private & Confidential			
Financial Year Ended	Revenue from operations (net)	Employee benefits expense	(1) Remuneration to Directors		(2) Remuneration to Relatives	Total
			Mr. Sunil Kumar Tengar	Mrs. Namra Tengar	Mr. Sunil Kumar Tengar	
31 March 2019	9424,729	172,857	-	-	-	-
31 March 2018	1,87,18,371	-	-	-	-	-
31 March 2017	7,09,50,914	2,32,980	-	-	-	-
31 March 2016	12,96,74,113	23,56,578	-	-	-	-
31 March 2015	15,17,58,028	36,01,067	-	-	-	-
31 March 2014	18,35,11,614	2,11,92,191	54,00,000.00	12,00,000.00	13,80,000.00	76,80,000.00
31 March 2013	13,29,67,608	1,87,91,425	40,00,000.00	12,00,000.00	13,80,000.00	65,80,000.00
31 March 2012	14,61,09,758	1,51,34,747	17,56,000.00	12,00,000.00	19,32,000.00	40,54,000.00
			1,11,56,000	36,00,000	41,52,000	1,89,14,000.00

Table 1.15 Calculation of Excessive Remuneration Paid to KMP and their Relatives

Extract of Statutory Auditor Comments.

In addition to above, the reliability of Company's books of account, produced before us for audit, in absence of supporting evidence is in question with glaring errors like total Salary & Wages being only Rs 1.72 Lakhs against sale of Rs. 94 Lakhs from manufacturing activities, even electricity expenses of more than 4 Lakhs are not justified. There are no other Labor or job work expenses to support this sale.

Finding No. 8 Excessive Charged Other Expenses Worth Rs 5,91,00,201/-

The Trend Analysis of Other Expenses to Sales is abnormal and Doubtful Balance/ Whole indicates Red flag of Validity of Such Expenses. To find the abnormality we have study the pattern on each year basis. The Reasons of abnormal behavior is overcharged of expenses in the different account head and production of fake vouchers and records before statutory auditor.

The Red Debt Written off in negligence of Corporate Debtor Directors (Period 31.03.2012 to 31.03.2019) is Rs 38,86,746/- and Computer expense worth Rs 96,12,264/- (31.03.2017). The decision making of Capital Expenditure (Computer Expense) is negligence or willful attempt of Corporate debtor including their directors. The Miscellaneous Balances Written off is also point out as negligence of director of Corporate debtor which is Rs 5,23,868/- (Period 31.03.2012 to 31.03.2019).

VMRS & ASSOCIATES CHARTERED ACCOUNTANTS			Private & Confidential																																									
<p>It Appears that The Discount and Rebate Expenses head under other expenses is significant figure and internally fabricated and managed by corporate debtor including their directors which is willful attempt. The expenses are booked in the three financial year ended on 31.03.2016, 31.03.2015 & 31.03.2014. The Accumulated figure worked out Rs 4,31,82,765/-</p> <p>There is no activity occur in the financial year ended as on 31.03.2019 except audit fees, the other expenses booked under Tally books and Audited financial Statement appears bogus booking and excessive booked by the corporate debtor hence said excessive may be recoverable worth Rs 21,35,113/-</p> <p>The detailed Chart Prepared and Shown as per Annexure B.</p> <table border="1"> <thead> <tr> <th>A</th> <th>B</th> <th>C</th> <th>D</th> </tr> <tr> <th>Financial Year ended</th> <th>Revenue from operations (net)</th> <th>Other expenses</th> <th>Ratio (C/D)</th> </tr> </thead> <tbody> <tr> <td>As at 31st March, 2019</td> <td>9424,729</td> <td>22,56,019</td> <td>24%</td> </tr> <tr> <td>As at 31st March, 2018</td> <td>1,87,18,371</td> <td>2,09,434</td> <td>1%</td> </tr> <tr> <td>As at 31st March, 2017</td> <td>7,09,50,914</td> <td>3,11,53,106</td> <td>44%</td> </tr> <tr> <td>As at 31st March, 2016</td> <td>12,96,74,113</td> <td>1,28,45,103</td> <td>10%</td> </tr> <tr> <td>As at 31st March, 2015</td> <td>15,17,58,028</td> <td>3,72,94,845</td> <td>24%</td> </tr> <tr> <td>As at 31st March, 2014</td> <td>18,35,11,614</td> <td>3,06,59,711</td> <td>17%</td> </tr> <tr> <td>As at 31st March, 2013</td> <td>13,29,67,608</td> <td>3,63,77,279</td> <td>27%</td> </tr> <tr> <td>As at 31st March, 2012</td> <td>14,61,09,758</td> <td>39,59,483</td> <td>2%</td> </tr> </tbody> </table> <p>Table 1.16 Statement showing Trend Analysis of Other Expenses to Sales.</p> <p>Extract of Statutory Audit Report as on 31.03.2019</p> <p>During the year under consideration, the company has written off Rs. 1,00,38,827/- by crediting to unclaimed credit balance written off against Trade payables and outstanding loan accounts balances, for which no clarification or supporting evidence was available from the management. Further supplier's outstanding balance of Rs. 49,82,402/- has been written off by crediting to 'Rebate and Discount' for which no clarification or supporting evidence was available from the Management.</p> <p>It Appears from the trend analysis that the Financial Cost to Sales Ratio is abnormal during 2013-14 and 2012-13. To find out the reason we make a table of Loans where the fund provided under audited financials taken and interest booked under financial are taken thereof. The size of Loans are significantly high in the financial year 2013-14 compare to financial year 2012-2013 & 2011-2012. The Interest Charged during financial year 2013-14 is overcharged comparing to term value which accumulates Rs 48,43,123/- however company is loss making in the financial year 2013-14 onwards too hence the Interest charged by the Directors of Corporate debtor is inappropriate and not justified in our opinion. To apply this Head of Expense, Directors withdrew huge amount of fund and diverted in their personal account which is a loss to private and public authorities. The Comprehensive figure of Rs 1,51,64,275/- is also to be recoverable. (Refer Table 1.17 & 1.18)</p>					A	B	C	D	Financial Year ended	Revenue from operations (net)	Other expenses	Ratio (C/D)	As at 31st March, 2019	9424,729	22,56,019	24%	As at 31st March, 2018	1,87,18,371	2,09,434	1%	As at 31st March, 2017	7,09,50,914	3,11,53,106	44%	As at 31st March, 2016	12,96,74,113	1,28,45,103	10%	As at 31st March, 2015	15,17,58,028	3,72,94,845	24%	As at 31st March, 2014	18,35,11,614	3,06,59,711	17%	As at 31st March, 2013	13,29,67,608	3,63,77,279	27%	As at 31st March, 2012	14,61,09,758	39,59,483	2%
A	B	C	D																																									
Financial Year ended	Revenue from operations (net)	Other expenses	Ratio (C/D)																																									
As at 31st March, 2019	9424,729	22,56,019	24%																																									
As at 31st March, 2018	1,87,18,371	2,09,434	1%																																									
As at 31st March, 2017	7,09,50,914	3,11,53,106	44%																																									
As at 31st March, 2016	12,96,74,113	1,28,45,103	10%																																									
As at 31st March, 2015	15,17,58,028	3,72,94,845	24%																																									
As at 31st March, 2014	18,35,11,614	3,06,59,711	17%																																									
As at 31st March, 2013	13,29,67,608	3,63,77,279	27%																																									
As at 31st March, 2012	14,61,09,758	39,59,483	2%																																									

A	B	C	D
Financial Year ended	Revenue from operations (net)	Financial costs	Ratio (C/D)
As at 31st March, 2019	94,04,279	1,54,566	2%
As at 31st March, 2018	1,87,13,371	37,620	0%
As at 31st March, 2017	7,09,50,914	48,87,909	7%
As at 31st March, 2016	12,95,74,113	57,39,751	4%
As at 31st March, 2015	15,17,99,528	82,80,617	5%
As at 31st March, 2014	19,95,11,614	3,09,63,138	15%
As at 31st March, 2013	13,91,67,854	1,92,78,173	14%
As at 31st March, 2012	14,61,09,758	76,85,271	5%

Table 1.17 statement showing Financial Cost Trend over Revenue

A	B	C	D	E	F
Financial Year ended	Revenue from operations (net)	Interest Unsecured Loans	Ratio (C/D)	Loan from Directors and Related Parties	Ratio of Interest (C/E)
As at 31st March, 2019	94,04,279	Nil	0%	4,15,15,162	0%
As at 31st March, 2018	1,87,13,371	Nil	0%	3,00,16,162	0%
As at 31st March, 2017	7,09,50,914	Nil	0%	3,82,52,004	0%
As at 31st March, 2016	12,95,74,113	12,29,178.07	1%	4,01,04,524	2%
As at 31st March, 2015	15,17,99,528	30,34,818.62	2%	3,67,20,158	7%
As at 31st March, 2014	19,95,11,614	46,07,623.67	2%	3,67,02,567	12%
As at 31st March, 2013	13,91,67,854	31,79,256.15	2%	30,86,147	11%
As at 31st March, 2012	14,61,09,758	34,63,766.57	2%	14,92,627	21%
Total		1,55,64,973.48			

Table 1.18 Statement showing the Loan Provided by Directors and Interest Charged Ratio

Finding No.7 No Change in Shareholding Pattern

There is no change in Shareholding from 2012-13 to 31st date of CRP.

	%	Numbers
Savit Kumar Tangri	60%	2,95,800
Ramul Tangri	40%	2,00,100

**Finding No.8 Eroded Net Worth is a Red Flag**

The Net Worth is Completely Eroded by the Corporate Debtor Directors specifically during the period 01.04.2014 to 31.03.2019 transactions covered under IBC Period B, the period under which Financials were not prepared and audited of corporate debtor, the timeline is covered under IBC Code, 2016. The loss shown under books of accounts and deleted the suite of books and frequent change of consultants is a red flag towards affairs of corporate debtor.

Financial Year Ended	Share Capital	Reserve and Surplus	Net Worth
As at 31st March, 2019	50,00,000	1,55,64,973.48	1,05,64,973.48
As at 31st March, 2018	50,00,000	1,56,15,221	1,06,15,221
As at 31st March, 2017	50,00,000	1,54,11,070	1,04,11,070
As at 31st March, 2016	50,00,000	1,72,69,496	1,22,69,496
As at 31st March, 2015	50,00,000	1,59,74,278	1,09,74,278
As at 31st March, 2014	50,00,000	2,11,05,483	1,61,05,483
As at 31st March, 2013	50,00,000	1,64,99,914	1,14,99,914
As at 31st March, 2012	50,00,000	1,67,99,737	1,17,99,737

Table 1.19 Extract of Net Worth from Audited Financials

Finding No.9 Unsecured Loan from Directors and their Relatives on Progressive Trend is a Red Flag

It appears that the Directors of corporate debtor using family network withdraw the money from companies and bogus entries booked under financials of corporate debtor to make adjustment on account of loans. The trail of such suspected entries could not be established due to complete set of books of accounts of corporate debtor in physical form not available.

A	B	C
Financial Year ended	Revenue from operations (net)	Loan from Directors and Related Parties
As at 31st March, 2019	94,04,279	4,15,15,162
As at 31st March, 2018	1,87,13,371	3,00,16,162
As at 31st March, 2017	7,09,50,914	3,82,52,004
As at 31st March, 2016	12,95,74,113	4,01,04,524
As at 31st March, 2015	15,17,99,528	3,67,20,158
As at 31st March, 2014	19,95,11,614	3,67,02,567
As at 31st March, 2013	13,91,67,854	30,86,147
As at 31st March, 2012	14,61,09,758	14,92,627

Table 1.20 Extract of Unsecured Loans from Audited Financials

Finding No.10 Trade Payable Outstanding Since Long is also a Red Flag

It appears that corporate debtor Directors willfully holds the creditors long in length and do not interested to make payment and settle the dues which resulted into the Court Cases and a recovery process laid down against the directors and corporate debtor, the Corporate Debtor Directors held liable for such misdeeds done towards private and public authorities. Refer Annexure C)

Finding No.11 Continuous Sale Purchase of Tangible Assets for Last Seven Years is a Red Flag

It appears from the Audited Financial Statement that Statutory Audit Report specially for the period ended 31.03.2019, 31.03.2016, 31.03.2017 where the sale purchase of assets is a continuous exercise by the directors of corporate debtor since 01.04.2012. The said transactions revealed a red flag towards effect of corporate debtor whether the said transactions, deal in appropriate manner or not. There is negligible Profit/Loss booked under current financials during the period 01.04.2012 to 31.03.2019.

Further the audited financials shown a figure of Rs. 92.74,076/- in the name of profit on sale of assets at period ended 31.03.2019 which is a red flag and appears clear remark of misappropriation of Corporate Debtor Assets through their directors. The Sale of Assets played to withdraw the fund from company to sale of underlying assets and erode the assets of corporate debtor. The evidence of Misdeeds in Audited financials of corporate debtor entry which is prima facie enough for wrongful doing and non-availability of physical documents by directors of corporate debtor reveals further investigation of said transactions which could not be done at present circumstances. The Both Documents supports (Auditor Report and financials) our view towards the sale purchase of assets.

Refer Annexure C and Fixed Assets Chart Enclosed as per Annexure D

Extract of Annexure - "A" to Independent Auditors' Report

Annexure referred to in our report of even date to the members of **WEB TECH PACKAGING (INDIA) PRIVATE LIMITED** on the accounts for the year ended 31st March 2019, 2016, 2017, we report that:

(a)	We have not been provided any fixed assets register (except Tally Book), containing full particulars, including quantitative details and situation of fixed assets.
(b)	We have not been provided any report / confirmation which assure that the fixed assets were physically verified during the year by the Management. Therefore we are unable to comment on discrepancies, if any in fixed assets.
(c)	According to records available for audit, there was no immovable property held by the company at the end of the year.
(d)	We have not been provided with any report / document which may confirm / assure that the physical verification of inventory was conducted at reasonable intervals by the management. Therefore we are unable to comment on the existence and discrepancy in inventory.

Extract of notes to financial statements for the year ended 31st March, 2019, 2016, 2017**1.3 Fixed assets**

Fixed Assets are stated at historical cost including freight, duties (Net of IGO/VAT), taxes and other incidental expenses relating to acquisition and installation less accumulated depreciation.

1.4 Depreciation

Depreciation on fixed Assets is provided to the extent of depreciable amount on written down value (WDV) method. Depreciation is provided based on useful life of the assets as prescribed in schedule II to the Companies Act, 2013. Asset up to Rs. 5,000/- is depreciated fully in the year of acquisition itself without

True Copy

Extract of Statutory Auditor Comments

The balance of Cash in hand was negative throughout the year. The balance was Rs. 2,90,880/- as at 31st March 2019. No clarification was available from the Management as to why this negative balance and how this was funded. These discrepancies again cast a question on reliability of Company's books of account.

Considerable discrepancies were observed in Cash and Bank balances, being negative cash balance of Rs. 5,82,916/- as at 31st MARCH 2018 with no clarification was available from the management, these discrepancies again cast a question on reliability of Company's books of account.

FINDING NO.13 Suspense Accounts: Debit Side of Account credited to Banks, not identifiable and appended to Banks at suspense during FY 16-17 Worth Rs 14,82,876/- is Recoverable

The Audited Financials reveals a Debt Balance under Suspense Account Head from the period ended 31.03.2016 to 31.03.2019 where no Clarification is given by the Corporate debtor.

Refer Annexure @ for Audited Financials Extract

FINDING NO.14 Miscellaneous Balances Written Off Worth Rs 1,85,31,876/- (Period 01.04.2017 to 02.09.2019)

It appears from the Audited Financials and Tally Books for the period 01.04.2017 to CRP Date 02.09.2019 that the corporate debtor is in routine procedure without all the expenses and balances outstanding towards Debtors and Creditors under their heads Worth Rs 1,85,31,876/- which appears that the date of audit is prior to expiry of suspension period. It reveals that either they passed the entries in their books of accounts failed to give any of their objective due to cheat the public at large. The financials were not audited after 31.03.2016 before CRP.

After extensive communication with Regulatory Professional and Statutory Auditors, they have submitted us the copy of audited financials via email where the corporate debtor has misappropriation is recorded which also reveals bad intention to misappropriate of date and physical books is also red flag. The Committed themselves made by the corporate debtor through their directors misappropriation which is apparently proven record of some payment of Statutory auditor fee which is Rs 1,75,000 and written off the same under the name head balance it is verify a bogus and fabricated record made and booked to hide the diversion effect of corporate debtor.

To quantify the impact of such above transactions we have taken above entry as 1,80,88,827/- which is also reported by the statutory auditor too. Refer Annexure E - Extract of Tally Books

Extract of Statutory Audit Report dt on 31.03.2019: Unclaimed Credit Written Back

During the year under consideration, the company has written off Rs. 1,02,30,827/- by crediting to unclaimed credit balance written off against Trade payables and outstanding loan accounts balances, for which no clarification is supporting evidence not available from the management. Further supplier's outstanding balance of Rs. 49,82,402/- has been written off by crediting to Waiver and Discount for which no clarification or supporting evidence was available from the management.

Extract of Statutory Audit Report as on 31.03.2017

Considerable discrepancies were observed in reconciliation of Bank accounts, even though the necessary verification entries have been incorporated in financial statements as per the information available as no clarification was available from the management, these discrepancies again cast a question on reliability of Company's books of account.

FINDING NO.15 Indirect Income Booked Under Financials is also a Red Flag (Period 01.04.2012 to 31.03.2016)

The following heads were shown under books of Tally where such incomes were booked, and figure mentioned under audited financials as under:-

1. Deferred Tax
2. Freight
3. Government Subsidy
4. Interest Accrued on Fixed Deposits
5. Interest on Fixed Deposits
6. Loan Waiver
7. Miscellaneous balances Written off
8. Profit on Sale of Assets
9. Salary and discount

The figures mentioned on account of rebate and Discount and Misc. Balances Written off is doubtful figure which is never used but booked and appears a fictitious balance nothing else.

Finding No.16 Concealment of Statutory Dues Worth Rs 1,29,11,964/-

On being verification of records via online portal of Income tax and other statutory dues in view of books of accounts worth RS 1,29,11,964/- which is outstanding at present. The assessment in connection with pending with Income Tax and Service Tax Department and other allied departments. The Corporate Debtor is non-compliant of Income Tax Provisions Under Income Tax Act, 1961 and other allied provisions too from financial year 2006-17 onwards.

S. No.	Dues Towards	Amount
1	Tax payable (As Per Tally Books CTRP Data)	55,411
2	Income Tax (Demand) Withheld at IT (Assessors F)	63,64,895
3	GST Payable (As Per Tally Books CTRP Data)	30,14,354
4	TDS Payable (As Per Tally Books CTRP Data)	8,84,887
5	Income Style Payable (As Per Tally Books CTRP Data)	8,33,875
6	GST Payable (As Per Tally Books CTRP Data)	16,53,887
7	Provident Fund Payable (As Per Tally Books CTRP Data)	36,802
	Total	1,29,11,964

Name of Statute	Nature of Dues	Amount (in Rs.)	Period to which relates	Due Date	Remarks, if any
Employees Provident Fund & Miscellaneous Provisions Act, 1952	PF Payable	52,653/-	Earlier years		Rs. 7,50,000/- against opening outstanding has been written off during the year
Employees State Insurance Act, 1948	ESI	45,415/-	Earlier years		
Income Tax Act 1961	TDS	6,84,887/-	Earlier years		Rs. 6,91,171/- against opening outstanding has been written off during the year
The Central Excise Act and COT Act	Central Sales Tax and Excise Duty	36,00,656/-	Earlier years		
GST Act	GST Payable	1,46,809/-	Earlier years		Earlier Year Rs. 5,86,736/- Current Year Rs. 1,46,809/-

FINDING NO.17 Summarized Email Exchange between Resolution Professional and Director of Corporate Debtor.

It appears from overall conversation that the Corporate Debtor deferring facts on one ground to another and delayed process of IRC and recorded as non-cooperation and an application of non-cooperation is also filed under 19 (2) of IRC Code.

Extract Summary as under:-

Date	Correspondence	Particulars	Remarks
25.12.2019	Ms Ashu Gupta to Mr. Sunil Tangri	Info Asked for Arthan Trading Co	
06.01.2020	Ms Ashu Gupta to Mr. Sunil Tangri & Mr. Suresh Singh Tangri	Balance Confirmation	
02.07.2020	Ms Ashu Gupta to Mr. Sunil Tangri	Ask Suspense Account and Employee Entries and Registers (Clarification Request)	
02.07.2020	Mr. Sunil Tangri to Ms. Ashu Gupta	No Info Regd	
09.07.2020	Mr. Sunil Tangri to Ms. Ashu Gupta	Forward Key of Stamp	

14.12.2019	Ms Ashu Gupta to Mr. Saurabh Tangri	Reply awaited of 15.12.2019 Email	
14.12.2019	Mr. Mohit Gupta to Ms Ashu Gupta	Towards Suspense account data is not available with him FY 16/17	
14.12.2019	Mr. Mohit Gupta to Ms Ashu Gupta	Data FY 16-17 Refer to RL Bahub and Associates	
02.09.2019	Ms Ashu Gupta to Webtech	Info towards appointment	
05.09.2019	Ms Ashu Gupta to Webtech	Info towards appointment	
06.09.2019	Webtech to Ms Ashu Gupta	Meet decide on 09.09.2019	
07.09.2019	Ms Ashu Gupta to Webtech	Info Asked Primary and Regd office is demolished	
11.09.2019	Ms Ashu Gupta to Webtech	Info Asked Primary	
11.09.2019	Ms Ashu Gupta to Webtech	Info Asked Primary and Regd office is demolished Non Cooperation	
04.10.2019	Ms Ashu Gupta to Webtech	Info Asked for Sale Deeds and Website of Company	
10.10.2019	Ms Ashu Gupta to Webtech	Info Asked for Sale Deeds and Website of Company	
11.10.2019	Ms Ashu Gupta to Webtech	Possession of Machine taken and site asked for	
21.10.2019	Ms Ashu Gupta to Webtech	Information asked	
22.10.2019	Ms Ashu Gupta to Webtech	Information asked	
11.11.2019	Ms Ashu Gupta to Webtech	Non Cooperation	
12.11.2019	Ms Ashu Gupta to Webtech	Non Cooperation	

FINDING NO.18 Saurabh Tangri - Director Son of Corporate Debtor - Account Adjustment Worth Rs 87,22,478/- (01.04.2017 to 02.05.2019)

It appears that the material amount adjustments deliberately made in the accounts of corporate debtor to misappropriate the funds of corporate debtor made between director of corporate debtor and their son. Hence the said entries is a red flag towards the reliability of books of corporate debtor and as a auditor have reasons to believe due to this red alert that wrongdoings exist but could not be traced due to complete set of documents in physical form and fair clarification hence RED FLAG the below tables are pasted as screen shot of books of corporate debtor.

11

FINDING NO.19 Saurabh Tangri Current Account Adjustment Worth Rs 813,178/- in Red Flag

It appears that director of corporate debtor use the company fund for their personal expenses and booked the same into company which results diversion of fund and said amount adjusted through current account and Expense Account and related entry shown hence a red flag. The complete documents is unavailable with us to establish the audit trail and recovery. Below Table are given for reference.

Finding No.20 Saurabh Tangri Loan Account - Adjustment Account - Red Flag for Rs 1,26,46,000/-

It appears that director withdraw the fund from corporate debtor using his authority in the month of Feb 2020 and few months back of that date. They have interest in their amount only.

11

WEB TECH PACKAGINGES (INDIA) PRIVATE LIMITED

Cash Flow Statement for the period ended March 31, 2019

	(Amount in Rupees)	
	Year ended March 31, 2019	Year ended March 31, 2018
A. CASH FLOW FROM OPERATING ACTIVITIES		
Net Profit / (Loss) before tax	(83,40,478)	(95,90,680)
Adjusted for:		
Interest Income	-	-
Depreciation	(10,078)	(45,720)
Loss / (Profit) on sale of Fixed Assets	70,81,889	80,24,888
Interest & Other Borrowing Cost	(92,74,076)	-
Operating Profit before Working Capital Changes	1,54,508	32,870
Decrease / (Increase) in Trade and Other Receivables	(1,95,09,662)	(10,78,040)
Decrease / (Increase) in Inventories	1,13,62,357	79,56,482
(Decrease) / Increase in Trade, Other Payables and Provisions	2,74,90,961	1,00,23,191
Cash Generated from Operations	(1,91,19,865)	(60,87,842)
Grant, Taxes Paid	(48,88,394)	1,40,73,991
Cash Inflow/(outflow) from Operating Activities	(2,40,08,259)	79,86,149
B. CASH FLOW FROM INVESTMENT ACTIVITIES		
Proceeds from Sale of Fixed Assets	1,04,00,000	1,50,880
Interest Income	10,673	48,738
Cash Outflow from Investing Activities	1,04,10,673	1,99,618
C. CASH FLOW FROM FINANCING ACTIVITIES		
Proceeds from Issuance of Secured Loans	(2,01,61,308)	(64,05,400)
Proceeds from Issuance of Unsecured Loans	1,14,45,824	(84,02,842)
Interest & Other Borrowing Cost Paid	(1,24,666)	(32,417)
Cash Outflow from Financing Activities	(1,08,79,100)	(1,80,48,659)
Net Increase/(Decrease) in Cash and Cash Equivalents	5,10,178	(3,37,882)
Cash and Cash Equivalents at the beginning of the Year	2,38,743	5,77,580
Cash and Cash Equivalents at the end of the Year	7,48,921	2,39,698

Comments:

Profit on Sale of Assets Plus Sale Proceeds of Fixed Assets - 7,74,74,076

The statutory Auditor has verified and confirmed the sale FORENSIC of Land and Building Worth Rs 1.55 Crores dated 31.01.2019 and profit on sale of Assets booked is Rs 93,67,612/- over and above book value of Rs 81,32,188/-

Further a Plant and Machinery also sold worth Rs 22,00,000/- on book Value where no profit/loss is booked on that.

A loss on sale of Furniture and Fixtures book Worth Rs 91,736/-

Valuation Report dated 08.01.2018 issued by Sr. Birendra Prasad Singh -Office at 147-Anand Chandra B.A. Bhilagi/ Conna Place, New Delhi- 110008

Highlights

S.No.	Particulars	Amount
1.	Net Market Value of Property	2,15,00,000
2.	Debtors Value of Property	1,84,00,000
3.	Residual Value of Property	1,73,00,000
4.	Circle Rate Value	2,24,20,000
5.	Insurance Value	1,12,00,000
6.	Land Area	5000 Sq Meters

Further the same value noted their report on request of Just Bank Limited SME (SGL) Centre Delhi-Head Fort Capital, Parkside Tower, 2nd Floor, Conna Market New Delhi-110001 for market value of property is Rs 2.16 Crores.

Agreement to Sell for Building Structure held at Plot No. F-21, Site C, Sangajpur Industrial Area, Greater Noida, Uttar Pradesh having Total Area is 412.515 Square Meters vide Certificate Number SN-UP05441100261861 dated 06.04.2018

The Highlights for Building Structure is as under:-

S.No.	Particulars	Amount
1.	Stamp Duty Paid on	1,87,44,000
2.	Sub-Contract on	1,00,00,000
3.	Advance Payment	21,00,000
4.	Balance Payment	80,00,000 - through bank loan before 30.07.2018
5.	Security Wall & Gate	1,00,000
6.	1 Stamp Paper	3,00,000
7.	Stamp Paper	25,000
8.	Total Stamp Duty Paid	3,75,000

A Specific Mortgage Agreement to sell is being signed for the transfer of land in which first party will surrender the land to UPSC Limited for its allotment and transfer the said land in favour of second party.

Board Resolution Highlights which is passed on by corporate debtor on 31.01.2018

Attending Reference to transfer the Building Structure dated 06.04.2018 Worth Rs. 1.73 Crores

Transfer of Electrical Accessories to Buyer

Corporate Debtor issued a GST Invoice for transfer of Electrical Accessories Panels, Cables, Fixtures worth Rs 25,00,000/- (including GST) to Buyer Mr. Anuj Gupta Proprietor of Modern Trading & Imp Co. situated at 18-73 West Main Road Sector 14/14A Conna Delhi (GST Number 07MGAAC0264126)

Sale Deed for Plot No. F-21, Site C, Sangajpur Industrial Area, Greater Noida, Uttar Pradesh having Total Area is 412.515 Square Meters vide Certificate Number SN-UP05441100261861 dated 07.02.2018

WILFUL AND MATERIAL OMISSIONS**FINDING NO.1 APPLICATION OF DEEMED DIVIDEND UNDER SECTION 2(22B) OF INCOME TAX ACT, 1962 & RULES THERE OF**

Share holding pattern in the holding company is of utmost importance. Similarly, ascertaining the profit ratio in a concern where shareholder is a member or partner to have substantial interest is also equally important. In the present case Mr. Sunil Tangri and Ramani Tangri is beneficial owner of shares in holding not less than 10% of the voting power or to any concern in which such shareholder is a member or partner. He is holding more than 10% shares in the Web Tech Packaging India Private Limited which is covered under the ambit of provision of deemed dividend which could not be identified by the auditors too. The Non-Compliance of relevant provision is noticed.

FINDING NO. 2 NON-COMPLIANCE OF APPLICABLE LAWS ON CORPORATE DEBTOR

It is observed that the corporate debtor is non-compliant towards applicable provisions from the financial year 2016-17 onwards with an intention to defraud the private and public authorities. Following are list of non-compliances -

1. Non-Filing of Income Tax Return to Income Tax Department from Financial Year 2016-17 to till date filed but shown INVALID
2. Non-Submission of Income Tax Audit Report from Financial Year 2016-17 to CRRP date. (Submitted by Other Consultant but withdraw their report)
3. Non-Submission of Annual Return of Company from Financial Year 2016-17 onwards.
4. Non-Audit of Accounts of Company from Financial Year 2016-17 to CRRP date. It is Completed by the Auditor upto 2018-19 but sign off is pending till date of reporting.
5. Non-Filing of EE Return from Financial Year 2016-17 to CRRP date.
6. Non-Filing of TDS Return from Financial Year 2016-17 to CRRP date.
7. Non-Filing of EFT Return from Financial Year 2016-17 to CRRP date.
8. Non-Deposit of Income Tax/Advance Tax from Financial Year 2016-17 to CRRP date.
9. Non-Deposit of TDS from Financial Year 2016-17 to CRRP date.
10. Non-Filing of GST Return.

Finding No.3 Income Tax Proceedings Pending before Income Tax Department is a Red flag

It is observed that the Income Tax Proceedings are pending for the financial Year 2015-16 & 2012-13 and non-filing of Accounts from 2016-17 onwards reveals a red flag. (Refer Annexure F)

FINDING NO.4 RED FLAGS IN BOOKS OF ACCOUNTS

Exception Reports includes Negative Stock, Negative capitals, Overdue Receivables, Overdue Payables, Negative Ratios, Negative Fund Flow Statement Under Tally Books of Corporate Debtor also reveals a red flag.

FINDING NO. 5 FINANCIAL STATEMENTS ARE MISLEADING

It Appears that the Financial Statement do not provide the correct information in terms of non-availability of bank accounts, Suspicious entries Posted without Clarification, Going Concern

For: Nagesh Nagesh & Associates
(Chartered Accountants)

BLAFPRN 01221302
Hardrop Kumar Nagesh (Partner) M No. 984014

Qualification, Suspense Accounts, Material Accounts Written off and Moreover negative cash balances and negative stock statement under Books of Tally and non-availability of Quarterly and Material and Significant Disclaimer of Opinion by the Statutory Auditor, reveals a Misleading View of Financial Statement of Corporate Debtor.

FINDING NO.4 Reproduced Audit Report for the Period 31.03.2019 & 31.03.2018 & 31.03.2017**Statutory Auditor Details**

It Appears that Corporate Debtor Financial Statements do not provide fair picture in terms of audit requirements to accounts financial statement and books of Tally. The Disclaimer and Qualification raised by the auditors as under :-

Independent Auditors' Report As at 31.03.2019

TO THE MEMBERS OF

WEB TECH PACKAGING (INDIA) PRIVATE LIMITED**REPORT ON THE FINANCIAL STATEMENTS**

We are engaged to audit the accompanying financial statements of WEB TECH PACKAGING (INDIA) PRIVATE LIMITED ("the Company"), which comprise the Balance Sheet as at 31 March, 2019, the Statement of Profit and Loss and the cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

MANAGEMENT'S RESPONSIBILITY FOR THE FINANCIAL STATEMENT

The Company's Board of Directors is responsible for the matters stated in section 134(5) of the Companies Act 2013 ("the Act") with respect to the preparation of these standalone financial statements that give a true and fair view of the financial position, financial performance and cash flows of the Company in accordance with the accounting principles generally accepted in India, including the Accounting Standards specified under section 133 of the Act read with Rule 7 of the Companies (Accounts) Rules, 2014. This responsibility also includes maintenance of adequate accounting records in accordance with the provisions of the Act for safeguarding the assets of the Company and for preventing and detecting frauds and other irregularities; selection and application of appropriate accounting policies; making judgments and

40. In the light of the submissions raised by the parties, when we consider the Forensic Auditor's Report as referred to supra, we notice that certain transactions are shown as fraudulent and wrongful transaction with intent to defraud the creditors of the Corporate Debtor. We further observe that neither any reasons have been explained nor in the course of arguments, Ld. Counsel for the respondents explained why and under what circumstances, such transactions were made.

41. So far the adjustment of loan accounts of Mr. Sunil Tangri and Saurabh Tangri, son of Director, from the account of Corporate Debtor was made no reason has been assigned. Similarly, excessive Remuneration charge was paid to the Director's wife and his two sons namely Saurabh Tangri and Aditiya Tangari, that has also not explained. We further notice that there is a diversion of stock worth Rs. 54850824 and the same was sold in cash and no specific reason has been given by the respondents.

42. It is also seen that the Respondent no.1 & 2 have Sundry Debtors of Rs.22,03,46,314/- as on 31/03/2018, of which 95% are outstanding for a period exceeding 6 months, to the parties shown below:

S.No	Name of Debtor
1	A S Equipment Private Limited
2	Basantar Breweries Private Limited
3	Creative Graphics
4	Crown Art Printers
5	Esko Graphics PTE limited
6	Flexo image graphic private limited
7	Lartec JSL

8	Laxmi Dying and printing works
9	Modern trading and manufacturing
10	Pine Pharma Private Limited



11	R.L. Cargo & Courier
----	----------------------

43. It is further seen that there are other amounts shown in paragraph 8 of the schedule, for which; no reasons are shown by the respondents either in reply or during the course of arguments. It is further seen that statutory dues of Rs 1,29,11,964/- shown below have not been paid:

<u>S.No</u>	<u>Dues Towards</u>	<u>Amount</u>
1	ESI payable (as per tally books of CIRP Date)	65,413
2	Income tax demand website of IT	63,64,895
3	Sales tax (as per tally books of CIRP date)	32,14,354
4	TDS payable (as per tally books of CIRP date)	6,84,887
5	Excise duty payable (as per tally books of CIRP date)	8,33,875



6	GST payable (as per tally books of CIRP date)	16,55,887
7	Provident fund payable (as per tally books of CIRP date)	92,653
	Total	1,29,11,964

44. It is further seen that in the month of April 2018, the Corporate Debtor offered to sell its property situated at Plot No. F-2 1, Site-C, Surajpur Industrial Area Greater Noida, U.P. to the Respondent No. 3. As the said Property was a lease hold property vesting with the U.P. State Industrial Development Corporation Ltd. (UPSIDCL), the transaction for sale of the said Property was done vide the following two Agreements executed between the Corporate Debtor and the Respondent No. 3:

- a. An Agreement to Sell dated 06.04.2018 for sale of only the "Building Structure" (comprising of Basement, Ground Floor, First Floor and Mumty) existing on Plot No. F-21 Site-C, Surajpur Industrial Area Greater Noida, U.P.;
- b. A Memorandum of Understanding cum Agreement to Sell Land and Building situated at Plot No. F-2 1 Site-C, Surajpur Industrial Area Greater Noida, U.P. requiring the Corporate Debtor to first, surrender Plot No. F-21 to UPSIDCL and get the said Plot re-allotted to the Respondent No.3 by UPSIDCL;

45. It is further seen this issue was also considered by this Bench while considering the application filed u/s 45 IBC,2016 and it was held that the property was sold at the consideration amount of Rs. 2,25,00,000/- but the total transaction admitted by the respondents and reflected in the books of account of the Corporate Debtor as per the Auditor's report is Rs. 1,75,00,000/-. The cash transaction of Rs. 5000000 is not reflected in the

books of accounts. Therefore, there is a difference of Rs. 50,00,000/, which is concealed by the Respondents. Under what circumstances and why the cash transactions was accepted by the respondents or what is the reason for reflecting the lower value in the books of account, has not been explained by the respondents instead they denied the acceptance of Rs. 5000000/-from the purchaser. Hence, it is also a concealment of the amount belonging to the Corporate Debtor with intent to defraud its creditors.

46. We further notice that as per the schedule of the amounts identified by the Forensic Audit and submitted by the RP/Applicant in para 7 discussed supra, a total amount of Rs.29,75,73,550/ has been misappropriated or written off or diverted by the respondents with intend to defraud the creditors of the corporate debtor or for any fraudulent purpose.

47. Hence, we are of the considered view that the respondents/Suspended Board of Directors of the Corporate Debtor have carried on the business with intent to defraud the creditors of the Corporate Debtor or with fraudulent purpose. Accordingly, we direct the Respondents to make total contributions of Rs.29,75,73,550/- to the assets of the Corporate Debtor within two months from the date of the order.

48. Apart from that, the RP/Applicant is directed to institute a Criminal prosecution against the respondents under Chapter VII (Part II) of IBC under Section 69 and other relevant provisions, in accordance with the provisions of law.

49. **Accordingly, the present application is hereby Allowed.**

50. The Learned Registrar is directed to send a copy of this order to the IBBI with a request to make necessary amendment in Regulation 35A and 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, in terms of Section 12 of the IBC, as referred in Para 26 of the Order.

-sd-

(L.N. GUPTA)
Member (T)

-sd-

(ABNI RANJAN KUMAR SINHA)
Member (J)