

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH -I**

**MA 1291/2018**

**in**

**CP (IB) No. 1817/MB/2017**

Under Section 66 read with Section 60(5) of  
Insolvency and Bankruptcy Code, 2016

*Interlocutory Application of:*

**Krishna Chamadia**

... Applicant (Resolution Professional)

*In the matter of*

ICICI Bank Limited

... Financial Creditor

Versus

Usher Agro Limited

CIN: L01100MH1996PLC100380

... Corporate Debtor

*Respondents*

*1. Usher Agro Limited*

CIN: L01100MH1996PLC100380

... Respondent no.1

*2. Vinod Kumar Chaturved*

Residing at: F-1402, La Serena Chs. Ltd. 14<sup>th</sup>  
Floor, J. P. Road, Andheri (West), Mumbai  
400053, Maharashtra.

... Respondent no.2

3. *Mr Manoj Pathak*

Residing at: 346, Nagla Paisa, Kotwali Road,  
Mathura 281001, Uttar Pradesh

... Respondent no.3

***Order pronounced on : 19.12.2023***

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)  
Hon'ble Member (Judicial)

*Appearances:*

For the Corporate Applicant : Mr. Saurabh Bachhawat, Advocate

**ORDER**

***Per: Coram***

1. This Miscellaneous Application is filed for “**Reliefs against fraudulent and wrongful trading by the Corporate debtor**” under Section 66 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) by the Applicant/Liquidator, viz. Mr. Krishna Chamadia bearing IP registration no. IBBI/IPA-001/IP-P00694/2017 having his address at B-1804, Raheja Hieghts Off, Gen. A.K. Vaidya Marg, Dindoshi, Malad East, Mumbai, Maharashtra-400097 of the Corporate Debtor in the original application CP (IB) 1817/2017, wherein the

Corporate Applicant had sought to initiate its own Corporate Insolvency Resolution Process (“**CIRP**”) under Section 10 of the Code.

2. Vide order dated 21.03.2018, the Applicant was appointed as the Interim Resolution Professional of the Corporate Debtor and subsequent to the decision of the Committee of creditors, he was appointed as the Resolution professional of the Corporate Debtor.
3. Respondent no.2 is the Managing Director of the company and Respondent no.3 was a whole time Executive Director of the Corporate Debtor till December 2016.
4. The Corporate Debtor has been engaged mainly in the business of production of Basmati and non-basmati rice, wheat (its related products) and pulses.
5. The Corporate debtor has taken working capital loans and term loans from a consortium of fifteen banks and seven non-consortium banks, a vehicle loan from BMW Financial Services Private Limited and has given Corporate guarantees to five banks, and, has given guarantees on loans to farmers.
6. The Corporate Debtor had been facing financial crunch since 2015-16, which led to huge debts on the Corporate Debtor. The Joint Lender Forum (JLF) of the Corporate Debtor consisting of Dena Bank, Export import bank of India limited, Kotak Mahindra Bank and Rabo bank has classified the Corporate Debtor as sub-standard. Subsequently, a Strategic Debt Restructuring (SDR) scheme of the Reserve Bank of India was

invoked. However, the said SDR scheme failed. The JLF then appointed agencies to conduct audit report and Forensic audit report, wherein various fraudulent transactions were observed. Some of the banks have declared the Corporate debtor ad some of its directors as willful defaulters and non-co-operative borrowers.

7. The Corporate Debtor has received show cause notices from various banks to which the Corporate Debtor and the concerned authorities have failed to reply. Various banks have classified Corporate Debtor's bank account as fraud account, based on the observations provided in the Forensic Audit Report.
8. Upon perusal of various records of the Corporate Debtor, the Applicant submits that various transactions of the Corporate Debtor fall within the scope of fraudulent trading and wrongful trading transactions under Section 66 of the Code. Upon enquiry made by the Applicant regarding the transactions, the Applicant did not receive any reply from Respondent no.3 and the reply submitted by Respondent no.2 was not satisfactory.
9. The Applicant also submits that there are various bogus trade receivables, inventory write-off, suspicious advances and bogus sale and purchases. That the note to accounts (Point no. 48) of Annual Report of the Corporate Debtor for the financial year 2015-2016 revealed below mentioned disclosure given by the Corporate Debtor:

**BOGUS TRADE RECEIVABLES:**

10. The Corporate Debtor has outstanding trade receivables worth INR 654.15 Crores in its balance sheet as at 31.03.2018 and the same are also considered as doubtful to recover. Upon perusal of the records submitted, this bench is of the view that most of the said trade receivables are bogus and/or fraudulent.
11. It is observed that the trade debtors which have been provided for in books as on 31.03.2018 had high outstanding of receivables even in the year 2016. Despite this, no focused action for recovery of the same was taken by the Corporate Debtor and on the contrary, the Corporate Debtor continued to enter into further transactions with the said debtors.
12. A table reflecting high value trade receivables that are provided for in books as on March 31, 2018, and their respective outstanding on March 31, 2016 and the ageing schedule is listed below:

<b>Sr. no.</b>	<b>Name of Party</b>	<b>Amount (INR in crores) on March 2018</b>	<b>Amount (INR in crores) on March 2016</b>
1.	Granery Trading Pvt. Ltd.	48.72	34.82
2.	Atahar Trading Pvt. Ltd.	48.62	14.27
3.	Prakhar Trading Pvt. Ltd.	41.57	21.23
4.	Panda Traders	36.57	22.25

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	Pvt. Ltd.		
5.	Kotrishyam Traders Pvt. Ltd.	34.39	25.90
6.	Prajwal Trading Pvt. Ltd.	32.49	12.18
7.	Bhalanetra Trading Pvt. Ltd.	31.98	28.86
8.	Excellence Trading Pvt. Ltd.	31.55	16.84
9.	GJ & RP Trading Pvt. Ltd.	27.49	19.28
10.	Priyank Trading Pvt. Ltd.	27.34	18.93
11.	Avins Traders Pvt. Ltd.	26.01	17.75
12.	Danavendra Trading Pvt. Ltd.	24.87	16.66
13.	Neeljyot Trading Pvt. Ltd.	22.85	12.88
14.	Singolishyam Trading Pvt. Ltd.	22.58	14.57
15.	Rajeshbhai Trading Pvt. Ltd.	22.02	13.99
16.	Mindjoat Trading Pvt. Ltd.	18.65	2.57
17.	Patil Trading Pvt. Ltd.	13.70	13.63

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18.	Sharma Patil Trading Pvt. Ltd.	11.69	13.56
19.	Alampata Trading Pvt. Ltd.	11.13	10.17
20.	PBK Trading Pvt. Ltd.	10.77	0.05
21.	Others	109.18	---
	Total	654.15	330.39

Ageing schedule of the aforesaid debtors as on March 31, 2016 that have been provided for as on March 31, 2018:

Debtor Name	0-90	91-180	181-365	>365	Total
Granery Trading Pvt. Ltd.	19.89	14.92			34.82
Prakhar Trading Pvt. Ltd.	18.66	2.57			21.23
Panda Traders Pvt. Ltd.	13.65	8.60			
Kotrishyam Traders Pvt. Ltd.	7.21	4.87	5.72	8.10	25.90

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Prajwal Trading Pvt. Ltd.	12.18				12.18
Bhalanetra Trading Pvt. Ltd.	14.49	14.27			28.86
Excellence Trading Pvt. Ltd.	7.91	8.93			16.84
GJ & RP Trading Pvt. Ltd.	19.08	0.21			19.28
Priyank Trading Pvt. Ltd.	17.49	1.44			18.93
Avins Traders Pvt. Ltd.	0.06	4.82	6.18	6.69	17.75
Danavendra Trading Pvt. Ltd.	16.66				16.66
Singolishyam Trading Pvt. Ltd.	10.52		4.05		14.57
Rajeshbhai	12.80	1.18			13.99

Trading Pvt. Ltd.					
Patil Trading Pvt. Ltd.				13.63	13.63
PBK Trading Pvt. Ltd.	2.12		5.84		7.96
Total	35.71	63.07	53.85	17.70	170.32

13. The financial health of the trade debtors is not good for supplying the goods to these debtors on credit basis, i.e. most of debtors such as Atahar Trading Pvt. Ltd, Prakhar Trading Pvt. Ltd., Kotrishyam Traders Pvt. Ltd., Prajwal Trading Pvt. Ltd., Bhalanetra Trading Pvt. Ltd., Avins Traders Pvt. Ltd., Danavendra Trading Pvt. Ltd, Neeljyot Trading Pvt. Ltd., Mindjoat Trading Pvt. Ltd., Patil Trading Pvt. Ltd., Sharma Patil Trading Pvt. Ltd., Alampata Trading Pvt. Ltd. and PBK Trading Pvt. Ltd, have reserves and surplus in negative as per the financials of FY 2015-16 available on MCA. No prudent business entity would make substantial supplies to entities on a credit basis, when the financial health of such companies was already negative, especially at the time when there is already substantial recoverable from them.

**INVENTORY WRITE-OFF**

14. The financial statement for the year ended 31.03.2016 has

made following disclosure –

*"Inventories as at the end of year comprising stock of paddy and rice is inclusive of certain quantities of paddy wherein there had been substantial deterioration in quality due to fungal development and other bacterial infection and high moisture content. Part of such inventory has been sold at substantial lower value during the subsequent quarter, as compared to the valuation (at cost) considered as on the Balance Sheet date. However, the financial impact of the same has been considered during the ensuing quarter when the same was actually sold. Had the financial impact of the same inventory loss of INR 11,719.32 Lakh would have been considered as on 31.03.2016, the accumulated losses of the company would have been higher by INR 11,719.32 Lakh and as a result the net worth of the company would have been eroded fully."*

15. That while the Corporate Debtor has reported damaged paddy valuing INR 438 Crores, the same was sold at a price of INR 83.75 Crores, directly resulting into losses of INR 354.24 Crores. Out of the above:
- a) During February and March 2016, 'damaged paddy' valuing INR 293.33 Crores was sold at INR 53.70 Crores during the month of February and March 2016, of which only INR 30.37 Crores was collected and the balance of INR 23.32 Crores was converted into trade receivables/ debtors.
  - b) That during the period from April 2016 to December 2016 the Corporate Debtor has sold paddy valuing a

total of INR 89.38 Crores which includes damaged paddy valuing INR 30.07 Crores.

16. As per the Certificates of Quality & Quantity by International Quality Management Services (P) Ltd. dated 3 February 2016, 4th February 2016, 6 February 2016 and 10th February 2016 damaged Paddy comprised of Paddy raw pussa, Sugandha, HR 47, 6444 Mansurivariants and 80% of the same was found weevil eaten and contaminated with microscopic bacteria which does not fulfil FSSAI requirement and is unfit for human consumption. The below given are the quantity of stocks that have been found to be damaged as per the aforesaid certificates:
- a) 32016 MT (i.e. 640320 bags) of Paddy Basmati and 55750 MT (i.e. 1114999 bags) of Paddy Non-Basmati as per report dated 03.02.2016
  - b) 10648 MT (i.e. 212960 bags) of Paddy Basmati and 55597 MT (i.e. 1111952 bags) of Paddy Non-Basmati as per report dated 06.02.2016
  - c) 9468 MT (ie. 189360 bags) of Paddy Basmati and 61465 MT (i.e. 1229303 bags) of Paddy Non-Basmati as per report dated 04.02.2016.
  - d) 31533 MT (ie. 630671 bags) of Paddy Basmati and 231139 MT (i.e. 394088 bags) of Paddy Non-Basmati as per report dated 10.02.2016
17. Another report on damaged paddy was obtained from State Agriculture Department on March 21, 2016 which reported that bacterial infection was developed in paddy and it was not

fit for human consumption.

18. However, despite there being damaged paddy (as mentioned in the aforesaid reports of February and March 2016) and despite knowing about presence of substantial amount of damaged paddy, the Corporate Debtor continued to include the damaged available stock of 'Damaged paddy' (amounting to INR 373.23 Cr approx, as on February 28, 2016) for availing drawing power.

### **SUSPICIOUS ADVANCES**

19. That the Corporate Debtor has given advances to multiple parties from whom a significant amount of balance was already outstanding and there were no chances of recovery of the said amount. That the Corporate Debtor has thus written off these balances on 31 March 2018. As on 31 March 2018, advances of INR 31.14 Crores were outstanding.
20. A detailed table showing the details of these advances from suppliers is as follows:

<b>Name of Party</b>	<b>Amount (in INR crores)</b>
Bhalanetra Trading Pvt. Ltd.	8.50

Atahar Trading Pvt. Ltd.	7.16
Danavendra Trading Pvt. Ltd.	5.50
Excellence Trading Pvt. Ltd.	4.50
Alampata Trading Pvt. Ltd.	2.80
Shri Pati Ram Traders	1.26
Others	1.42
TOTAL	31.14

21. The analysis done by the Forensic Auditor for these advances show the following common thread:

- (a) There is no basis for giving such huge advances to these parties.
- (b) No supporting documentation for the advances was provided to us (copy of contracts, agreements, purchase orders, KYC documents etc). Further as per discussion with management, most of these advances were extended only based on verbal communication.
- (c) No interest has been charged by the Corporate Debtor on the said advances and the ledgers also don't account for any interest on delayed payments of these advances.
- (d) Recovery letters sent by the Applicant to these parties were returned back.
- (e) No legal action has been taken by the Corporate Debtor to recover the said amounts, till date.
- (f) No documents have been provided to the Applicant to show that any follow up was being undertaken for recovery of these amounts.

**BOGUS SALE/PURCHASE**

22. That the Corporate Debtor has entered into transactions with various parties where the goods were sold or purchased from them. On verification of certain invoices of the abovementioned transactions, it was observed by the Forensic Auditor that goods were purportedly transported in vehicles which were motor-cycles, school busses and light commercial vehicles. Further the Corporate Debtor has entered into a two-way transaction with the few party i.e. selling and purchasing the same product during the financial year 2016-2017. In these transactions the Corporate Debtor has sold and purchased rice from the same party. It is to be noted that the purchase price of the said rice is higher than the sale price of the same rice.
23. The applicant has placed on record additional affidavit stating that, transaction forming the subject matter of the application also appear to be the subject matter of complaint filed by the lenders of the Corporate debtor before the Central Bureau of Investigation (“CBI”) and proceedings before the enforcement directorate (“ED”) under the PMLA against the respondent.
24. The Applicant has given the details of these proceedings and has stated that the CBI Complaint was filed basis the report of NV and & Associates on the forensic audit of the Corporate Debtor ("**Forensic Audit Report**") commissioned by the lenders. We notice that the present application is also filed on the basis of **Forensic Audit Report. This further became basis for registration of an** Enforcement Case bearing no. ECIR/MBZO- 1/05/2019 dated 29 August 2019.
25. On 10 November 2021, the Deputy Director, ED, Mumbai Zonal Office-1 passed an order bearing no. 16/ 2021, under

- Section 5(1) of the PMLA, provisionally attaching the properties of the Respondent Nos. 2 and 3, their family members and companies/entities owned and controlled by them, as mentioned in the 'Schedule of Properties (Movable and Immovable)' (amounting to approx. INR 68.77 Crores in total) appended to the order ("Provisional Attachment Order").
26. The Provisional Attachment Order was passed pursuant to an investigation conducted under the provisions of PMLA, following which the Deputy Director, ED arrived at the finding that the Respondent Nos. 2 and 3 (along with their family members and companies/ entities owned and controlled by them) had conspired in acquiring, diverting and siphoning off proceeds of crime amounting to approx. INR 915 Crores through a maze of transactions involving the Corporate Debtor and various shell companies/ entities and by cheating the lenders of the Corporate Debtor.
27. On 12 November 2021, the Assistant Director, ED, Mumbai Zonal Office-I filed a complaint ("ED Prosecution Complaint") before the Court of Special Judge, City Civil and Sessions Court for Greater Bombay at Mumbai (being the Special Court designated under the PMLA), against the Respondents and other named accused persons, for committing offences of money laundering as defined under Section 3 and punishable under Section 4 of the PMLA. The ED Prosecution Complaint was filed basis the finding that the Respondents along with other accused were involved in with a fake/ bogus transactions large number of shell companies, with an intention to inflate the books of account and thereby maintain credit limits with

the banks and further borrow more funds from the banks and financial institutions, causing wrongful loss to the lenders to the tune of approx. INR 915 Crores. The ED Prosecution Complaint refers to, inter alia, the Provisional Attachment Order and the findings in the Forensic Audit Report. A copy of the ED Prosecution Complaint is annexed as Exhibit-5.

28. Further, pursuant to the Provisional Attachment Order, on 3 December 2021, the Deputy Director, ED, Mumbai Zonal Office-I filed a complaint bearing O.C. No. 1572 of 2021 before the Adjudicating Authority under Section 5(5) of the PMLA, praying that the said complaint be taken on record for the purpose of adjudication under Section 8 of the PMLA and the Provisional Attachment Order may be PMLA/A confirmed under Section 8(3) of the PMLA.
29. Hence, ED/ CBI proceedings are pending before the relevant judicial forums against the Respondents, their associates and family members, dealing with siphoning of funds given by Banks and fraud committed by them on the Banks. Further, the assets of Respondent Nos. 2 and 3, their family members and companies/ entities owned and controlled by them have also been attached by way of the Provisional Attachment Order.
30. Heard learned counsel and found that the Provisional Attachment Order has been passed after relying on Forensic Audit Report. The investigation and charges are also based on the said audit report. In terms of the provisional order issued by ED, the assets of the Respondent no.2 & 3 are subject matter of provisional attachment order.
31. Section 66 the Code h read as under:

***“66. Fraudulent trading or wrongful trading. -***

*(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.*

*(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.*

*1[(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is*

*suspended as per section 10A.]*

*Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.”*

32. From the elaborate facts presented before us in relation to Debtors, Inventory and advances, it is quite evident that the affairs of the Corporate Debtor have been carried with the intent to defraud Creditors, Respondent No. 2 & 3 being responsible for the business of the Corporate Debtor in the capacity of its managing director/CFO and whole time director, they are to be held responsible for such conduct of the business.
33. The applicant has sought directions to respondent no.2 & 3 to contribute to the Corporate debtor in terms of Section 66(2) of the code, which in turn is to be distributed to the Creditors of the Corporate Debtor in terms of Section 53 of the Code. On the other hand, the properties confiscated under the PMLA vest in central government. We find that the money laundered by the Respondents via Corporate Debtor actually belongs to its creditors and not to the Central Government. Accordingly, we consider appropriate to pass an order under Section 66 directing Respondent no. 2 & 3 to contribute Rs. 654.15 crores being amount of suspicious debtors; Rs. 307.28 Crores on account of damaged and missing inventory; and Rs. 31.74 Crores on account of dubious outstanding advances.

34. In view of facts stated above, this is a fit case of Fraudulent and wrongful trading by the Corporate Debtor under sections 60(5), 66 & 67 of The Insolvency and Bankruptcy Code, 2016. Ordered accordingly that:
- i. The present Application is hence allowed
  - ii. Respondent nos. 2 & 3 are directed to jointly and severally contribute an amount of INR 654.15 Crore to the Corporate debtor under section 66 of the Code; on account of suspicious debtors;
  - iii. Respondent nos. 2 & 3 are directed to jointly and severally contribute an amount of INR 307.28 Crore to the Corporate debtor under section 66 of the Code; on account of damaged inventory;
  - iv. Respondent nos. 2 & 3 are directed to jointly and severally contribute an amount of INR 31.74 Crores to the Corporate debtor under section 66 of the Code; on account of dubious advances.
35. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law.
36. Accordingly, MA 1291/2018 is hereby **allowed** and **disposed** of.

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH – 1

MA 1291/2018 in CP (IB) 1817/MB/2017

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Sd/-

Prabhat Kumar

Member (Technical)

/MK/

Sd/-

Justice V.G. Bisht

Member (Judicial)