



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.301

IA/511(AHM)2021 in CP(IB) 807 of 2019

Under Sections 43 r.w. 44 and 66 of IBC

IN THE MATTER OF:

Darshan Bharatbhai Patel, Liquidator of Padmavati
Intermediates Pvt. Ltd.

.....Applicant

V/s.

.....Respondent

Rushi Dattani, Suspended Director of Padmavati
Intermediates Pvt. Ltd.

Order delivered on: 06/10/2025

CORAM:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD BENCH**

IA/511(AHM)2021

In

C.P (I.B.) No. 807 of 2019

(Application under Section 43,44, 49 and 66 of the Insolvency and Bankruptcy Code, 2016)

In the Matter of: Padmavati Intermediates Private Limited

Mr. Darshan Bharatbhai Patel

Liquidator (As per order dated 16/12/2024 in
IA No. 1861/2024

Of M/s Padmavati Intermediates Private Limited
(under Corporate Insolvency)
Resolution Process)

Address: 31 Vrundavan, Nr. Akshar Flat, Inquilab
Society, Gulbai Tekra, Ahmedabad- 380015

...Applicant

VERSUS

1. Mr. Rushi Sureshbhai Dattani

2. Mr. Happy Rushi Dattani

Both ex-directors of M/s Padmavati
Intermediates Private Limited

Both residing at 104/Akshar Residency, Somnath Soc-1
Street No.5, Bh. Jai Ganesh Tata Showroom,
150 Rind Road, Rajkot- 36005.

...Respondents

Order Pronounced On: 06.10.2025

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)



A P P E A R A N C E:

For the Applicant/OC :Mr. Nipun Singhvi, Advocate a/w.
:Mr. Kamil Lokhandwala, Advocate
For the Respondent/CD :Mr. Ravish Bhatt, Advocate a/w.
:Mr. Dhrumil Singh, Advocate
For R-1 & R-2

O R D E R **(Per Bench)**

1. This **IA 511 of 2021** has been filed by the Applicant under sections 43, 44, 49, 66 of IBC Code, 2016, with the following

Prayers: -

- i. *The Hon'ble Tribunal would be pleased to declare the transactions in question as fraudulent, preferential one and impose necessary penalty as per law under section 43, 44, and 66 of the Insolvency and Bankruptcy Code, 2016 in the overall interest of justice.*
- ii. *An order or direction directing Respondents as per Section 66(1) to make such contributions to the assets of corporate debtor as this Hon'ble Tribunal deem fit with immediate effect.*
- iii. *An effect or direction directing Respondents Section 44(1)(d) to pay such sum, in respect of loan repaid in preference, to the assets of Corporate debtor as this Hon'ble Tribunal deem fit with Immediate effect.*
- iv. *Pending hearing and final disposal of the Application, the Hon'ble Tribunal would be pleased to direct for seizing and confiscating the accounts of the erring directors (ex-director-respondents).*



v. *Ex-parte Ad-interim relief in terms of Prayer D be allowed. Such other and further reliefs as this Hon'ble Tribunal deem fit and proper in the interest of justice*

2. The Operational Creditor has placed the facts through this Petition in the following manner: -

- (i) It is stated that the Operational Creditor-Dipal Chemicals Industries preferred the application u/s. 9 of the IB Code, 2016 against the Corporate Debtor and upon considering the application, the order was passed for initiating the CIRP of M/s. Padmavati Intermediates Private Limited. The order came to be passed on 3.2.2021 and received on 8.2.2021 by the IRP. The present applicant came to be appointed as IRP u/s. 13(1)(c) of the IB Code, 2016.
- (ii) It is submitted that the Resolution Professional upon passing of the order, made public announcement of initiation of Corporate Insolvency Resolution Process and call for submission of claims u/s. 15 as required by Section 13(1)(b) of the IB Code, 2016 and hence upon publication of the advertisement inviting the claims, the financial creditors lodged their claims and Committee of Creditors came to be constituted. The necessary reports are filed by the Applicant.
- (iii) It is submitted that as M/s. Padmavati Intermediates Private Limited is not a going concern, it does not have any plant or factory and no assets except trade receivable from a single party, hence the COC decided to



liquidate the Corporate Debtor under section 33(2) of the Code. Pursuant to the said decision, the Applicant being the RP filed application IA/354(AHM) 2021 seeking liquidation of the Corporate Debtor. The said application is pending adjudication before the Hon'ble Tribunal. The Applicant also filed one another application IA/295(AHM)2021 seeking directions against the COC to pay fees of IRP. Both the Applications are pending adjudication and kept for hearing on 9.8.2021.

- (iv) It is submitted that the Applicant Resolution Professional appointed S L Gupta & Associates Forensic cum Transaction Auditors for the Corporate Debtor to carry out and review financial transaction of the Corporate Debtor for finding out any other transactions which can be treated as avoidance transactions and gave a detailed scope of work. The scope of work includes specifically to inquire and investigate on the genuineness of trading loss made by Corporate Debtor in the year 2018-2019 and 2019-2020 especially Trading of Agricultural produce/items, check on related party transactions, analysis of relationship in two way deal, to verify whether there's diversion of funds, verification of trade receivables with a view to check purpose of journal entries passed in the books of accounts by crediting M/s Om Trading Company and debiting M/s Rakesh folding works, to identify the transactions falling under section 43 to 46, 50 to 66 of the Code.



As per the verification by applicant (RP), there are transactions adversely affecting interest of the creditors and are covered under section 43 & section 66 of the Code, being preferential and fraudulent trading or wrongful trading.

The applicant has found that the business of corporate debtor has been carried on with the intent to defraud creditors and where by assets of the corporate debtor has vanished and capital has been eroded by wrongly fully booking TRADING LOSS and sequence of sale and purchase transactions clearly show that "No prudent businessman will incur such loss making transactions".

- (v) It is submitted that with utmost respect the forensic audit got undertaken. The said audit as undertaken was just, legal and proper and in compliance with the IB Code, 2016. The forensic audit cum transaction audit also concluded the same and added few other findings which are covered under section 66 and section 43 of the code.

A copy of the forensic and transaction audit report is marked as **Annexure "B"** to the present application. The detail and exhaustive report of the forensic cum transaction auditor is self-explanatory and demonstrates in no uncertain terms that, the erring ex-directors and their ally concerns systematically swindled the funds of the Corporate Debtor with a view to make diversion of funds and earn illicit gains and thereby driving the Corporate



Debtor into insolvency and depriving the creditors of their just and legitimate dues.

There are numerous transactions as minutely analysed where in it can be sufficiently proved beyond doubt that, the transactions were entirely fraudulent in nature and various punitive provisions of the IB Code, 2016 are attracted against such conducts of the Respondent.

(vi) The summary of findings of applicant (RP) and forensic cum transaction audit are as under:

Sr No.	Section	Particular and Section	Amount
1.	Sec 43	Repayment of Loan to Happy Rushi Dattani (within 2 years of CIRP) by giving a preference over the other unsecured financial institutions	16,30,000
2	Sec 43	Repayment of Loan to Rushi Dattani (within 2 years of CIRP) by giving a preference over the other unsecured financial institutions	29,39,500
3	Sec 66	Transfer of amount receivable from M/s Om Trading Co (related party) to M/s Rakesh Folding Works (simply by passing Journal entry and not having business relationship)	55,67,289
4	Sec 66	Sale of Fixed Asset of CD at loss to Mr. Bikhabhai Shamjibhai by treating as "scrap"	2,07,416
5	Sec 66	Wrongful trading activity with Anjani Corporation Based on bogus invoices and without movement of goods	2,48,29,973
6	Sec 66	Wrongful trading loss booked by corporate debtor - which is not from an ordinary course of business and directors did not exercise due diligence and kept on buying at higher prices and selling at lower price.	2,29,09,834

(vii) It is submitted that, the brief on the findings on these avoidable transactions are as under:

a) In the year 2018-19 corporate debtor has raised funds from various financial institutions a sum of
Rs. 2,79,64,139/- disbursed to the Corporate



Debtor and details categorically provided as per forensic cum transaction audit report page 21, while unsecured loans provided by directors were Rs.45,69,500/- as at 31.3.2019.

It was observed that, in the year 2019-2020 unsecured loans taken from Directors Ms. Happy Rushi Dattani and Mr. Rushi Dattani have been repaid Rs. 16,30,000 and Rs. 29,39,500 respectively. While it is observed that, the unsecured loans from financial institutions are pending to the tune of Rs. 2,46,00,886/- at end of year 2019-2020. Copy of audited financials are attached herewith and marked as "**Annexure C**".

The applicant has observed that, respondent no.1 and respondent no. 2 has cleared their unsecured loans amounts and at the end of year 2019-2020 total Net worth of the company is eroded and nothing much left in the company for creditors.

SR No.	Name of Director	Directors Unsecured Loan Repaid Which Are Covered within the section 43(4)(a) Amount in Rs.
1	Happy Rushi Dattani	16,30,000
2	Rushi S. Dattani	29,39,500
	Total	45,69,500

It is a clear diversion of funds by respondent no. 1 and no. 2 while the unsecured loans of financial institutions are kept unpaid. A **preference has been given to related parties** who are promoters



and are suspended management and which is clearly covered under section 43(4)(a) of the Code.

- b) In the year 2018-2019 on 17.5.2018 it was observed that, there is transfer of Rs. 55,67,289 receivables from M/s Om Trading Co (related party of corporate debtor) to M/s Rakesh Folding Works only by passing Journal entry.

The ledger of Rakesh Folding Works shows that M/s Rakesh Folding Works never has any trading relation with the Corporate Debtor and amount of INR 55.67 Lacs is debited to M/s Rakesh Folding Works by way of transfer of balance receivable from M/s Om Trading Co. And as a result, M/s Om Trading co. which is a related party is made free from payment to the corporate debtor. This is clearly a false and wrongful act by the respondent no. 1 and respondent no.2. The narration of transaction which is "HAVALO FROM OM TRADING CO NA" also points out to a fact that the mischief has been done. The details mentioned in narration do not make it clear on what basis the amount is transferred to M/s Rakesh Folding Works. The written reply of suspended management received on 10.7.2021 provided "Memorandum of Understanding" between Proprietor of M/s Rakesh Trading Co and Proprietor of M/s OM Trading Co (relative of CD) which states that, Rakesh folding works wants to procure material directly from CD to



reduce the cost of purchase by eliminating the profit margin of M/s Om Trading Co. **There is no co-relation as to passing of "Hawala Entry" and procuring material directly from the CD but it is clearly a sham and wrongful act of defrauding creditors from the trade receivables.**

During the CIRP period, your applicant has sent a legal notice to M/s Rakesh Folding Works for making payment of pending sum as per the last available financials. Postal notice is not even accepted by M/s Rakesh Folding Works and returned back. From the said facts, circumstances and MoU, it is **apparent that no diligent businessman will transfer receivables due from a related party to the person who is not a related party and not even having any business relationship.** The directors did not exercise due diligence as given in the section 66(2)(b) of the Code. MoU has been prepared just to support making of a Hawala Entry in the books which is also not a valid transaction in corporate accounting. This clearly establishes the negative intent of the respondents no. 1 and no.2 and this act is to defraud creditors of the corporate debtor and is covered under Section 66(1) of the Code.

- 57 c) Fixed asset register of Corporate Debtor shows that book value of Instrument/Machinery/Weight Scale



aggregating to INR 225916.36 is sold to unidentified person on 31.03.2019 for cash consideration of INR 18,500/-. The sale transaction has caused loss of INR 207416.36 to Corporate Debtor. The Corporate Debtor has shared ledgers with the auditor wherein it is recorded that complete book value of Weight Scale and Instrument is transferred to machinery ledger and whole of the asset is transferred to Bhikhabhai Shamjibhai as sale of scrap. Old machinery sold as scrap in the reply of suspended management. Auditor has also observed that, machinery has been sold without weighing it on any registered weight centers. No pictures of the old machinery are available. Forensic cum transaction auditor has noted the same as red flags in the invoice issue by the Corporate Debtor and it is found that, contact details of the buyer not found and Corporate Debtor sold three items showing only one item in unit. The parameters of sale consideration also missing. The review of documents shows that Fixed Asset is removed from the books of Corporate Debtor and sales invoice of Corporate Debtor which is the Internal Document of the Corporate Debtor is prepared to substantiate the transaction and to defraud creditors of corporate debtor. It is found that, the sale transaction causing loss of INR 207416.36 to

HP



Corporate Debtor and is covered under section 66(1) of the Code.

- d) An analysis of unsecured borrowings from financial institutions in a **flow chart demonstrated on page 23 to 29 of the forensic cum transaction audit report** shows clearly that, how the loan availed from various financial institution have been smoothly and fraudulently transferred ultimately in the account of Anjani Corporation which is a related party a firm of father of suspended director Mr. Rushi Dattani.

Interestingly and shockingly the summarization of fund flow shows that majority of funds were used to pay Anjani Corporation, Satyam Chemicals, Patel Enterprises and Happy Rushi Dattani (Respondent No.2) wherein movement of goods was not observed.

Further it is revealed after examination thoroughly that, the corporate debtor has released funds of INR 2.48 Crores to Anjani Corporation which is the related party of the Corporate Debtor. As per the transaction it is understood that Anjani Corporation has sold goods to Corporate Debtor against which the Corporate Debtor has paid such amount. The financial statement disclosure shows that Anjani Corporation is a related party of Corporate Debtor. **Forensic cum transaction audit report page 31** it is reported that, auditor has verified the purchase invoice of Related Party and



Unrelated party and noted that there is no movement of goods and the transactions were paper transactions and eye washing one.

The detailed examination also revealed that in case of unrelated party movement of goods actually have taken place, and the expert noted truck no/mode of delivery of goods to Corporate Debtor, but in case of related party there was no address of buyer, no details of truck and no details of mode of transportation is mentioned. **The analysis shows that corporate debtor have merely raised invoice with the intent to divert funds from the Corporate Debtor to related party.**

Further, the forensic cum transaction auditor also verified the invoice of Satyam Chemicals and Patel Enterprises and noted following red flags in both the invoices:

- Both party is owned by single person
- Address of both the parties are same
- No mode of transportation mentioned
- No truck/vehicle no mentioned in the Invoice
- Movement of goods could not be established
- Invoices are mere copy of document
- Different phone no's mentioned on Invoice
Phone no. 9426974493 of Satyam Chemical
and Phone no. 9825031200 of Patel
Enterprises are owned by Paragbhai Kapadia.

The extracts of the Invoices clearly shows that



invoice do not reveal important details required where such a large quantity is moved within the state, name of party and concluded that, there is no movement of goods use to pay Satyam Chemicals, Patel Enterprises and Happy Rushi Dattani. The summarized table is also demonstrated in the report where it is found that, from such fake invoices, the dispatch details were missing in all the sample purchase invoice of Satyam Chemicals.

The corporate debtor has released sum of INR 2.83 Crores to M/s Anjani Corporation, M/s Satyam Chemical and M/s Patel Enterprises by way of Invoices. On detailed verification on top 8 creditors i.e. Raghuvir Enterprise, MY Agencies, it is found as above that details of dispatch were missing from the purchase invoices.

Even on demanding the evidence of movement of goods, the ASHAN respondents being suspended management produced proofs (e-way bills, transport confirmation etc) for few parties: Satyam chemicals, Patel Enterprise and Raghuvir Enterprise AND **could not produce a Single evidence on movement of goods for Anjani Corporation.**

In his reply, it was stated that the common premise of Anjani Corporation has been used by



the Corporate debtor and hence, there is no movement of goods while GST has been paid on the same.

After a cross checking at the GST department's portal, it is found that, the said premise of his father situated at Jetpur is not registered as additional place of business. As per the rules of GST, whenever a registered person is using any premise other than a registered office, the same needs to be registered as "Additional place of Business" and this is exactly for the purpose of finding out actual movement of goods. The answer from suspended management is not acceptable as it is far from truth. The cooked story of the respondent no.1 is incorrect. Also as per GST rules, on sale of goods, e-way bills need to be issued from the store location of goods but here, the corporate debtor has not issued any e-way bills from location of Anjani Corporation and hence, the reply of suspended management is incorrect and it is proved that there is no movement of goods and bills were bogus just to defraud creditors.

As the above diversion of funds to related party is on bogus invoices, it has defrauded creditors of corporate section hence, is covered under section 66(1) of the Code.



e) While carrying out Inventory Analysis with Sale and purchase analysis of Corporate Debtor on product wise basis, it was noted that from the year 2017-2018 the corporate debtor has traded in the Agricultural produce items. But the transaction pattern for the year 2019-2020 revealed that, the continuous losses have been booked by the corporate debtor intentionally.

In the FY 2019-20, corporate debtor has purchased goods at INR 609.72 Lacs and sold at INR 380.62 Lacs. The transaction has caused an overall loss of INR 229.09 Lacs to Corporate Debtor. The detailed summary is as follows:

Product traded	Sales in Rs	Purchase in Rs	Gross Loss In Rs
Lasan 0712	13753265	26483482	1,27,30,217
Lasan 0713	8992045	14341486	53,49,441
Chana	8214070	10634771	24,20,701
Pigeon Peas	5319250	6777200	14,57,950
Wheat	1783800	2735325	9,51,525

The applicant has discussed the above details and pattern of booking loses with the CoC members in the 1st and 2nd Meeting of CoC and all are convinced as to diversion of funds by suspended management of corporate debtor. It was also discussed that the buying at a particular price and selling at the loss at every occasion is not prudent, and no diligent businessmen will do the same.



The forensic and transaction auditor stated in his report that, he has undertaken benchmarking analysis to determine whether the goods are purchased / sold at appropriate market price or not. During the analysis it was noted that instances where the goods are purchase and sold at price which caused undue loss to the Corporate Debtor.

The detailed loss in transaction is categorically stated in chart page 50 of the report where it is found that, Purchase of Chana at a price higher than the normal Market Price and sale of same at lower price than the normal market price. Likewise for all the other commodities in the chart.

It is adequately concluded that, the above analysis shows that the Corporate Debtor has caused actual loss of 229.09 Lacs to the Corporate Debtor. The above transactions are falling in the ambit of Sec 66 of Insolvency and Bankruptcy Code, 2016.

There are serious instances of apparent fraudulent transactions whereby the Respondents herein erring ex-directors benefited illicitly and made the Corporate Debtor bankrupt and consequentially the finance of the financial creditors got vanished. The said transactions as analyzed within the four corners of law and the possibility of systematic fraud cannot be overlooked whereby the Original Operational Creditor in connivance with the Corporate Debtor's such erring ex-directors



initiated CIRP to systematically duped the Financial Creditors and exchequers.

(viii) It is further submitted that the on receipt of a draft forensic audit report, the suspended management Mr. Rishi Dattani has been requested to further supply necessary details including movement of goods and other necessary information to the applicant with a view to avoid any wrong reporting of any "avoidable transactions" before Hon'ble NCLT bench. The applicant sought further clarifications for each of the transactions and provided sufficient time as details required where in the form of LR/Transport vouchers/explanations and do not need more than 10 days of time. Reply of the suspended management has been considered while filing this petition.

a. **After considerable time, the erring directors on the letter head of the corporate debtor and using the Corporate Debtor's rubber stamp gave evasive reply** without any basis. A copy of such belated reply is marked as **Annexure "D"** to the present application. It is highly shocking that, how such reply could be given on the letter head of the Corporate Debtor and there is no name revealed and only signature made and it is assumed for the sake of convenience that, the said reply is tendered by erring ex-directors then also such bald reply is entirely baseless and there is no sufficient support to the evasive defense. The offenses are apparent



and from the sequence of transactions and events and nature of such transactions it can be conveniently proved that the offences as committed falling under the provisions of section 43-44 and 66 of the IB Code, 2016.

- b. The transactions in questions squarely falls within the four corners of provisions of sections 43, 44 and 66 of IB Code, 2016 and necessary punitive actions needs to be undertaken against the Respondent and their allies.
- c. The Applicants are having no other alternative and there are no other efficacious remedy except preferring present application before the Hon'ble Tribunal for safeguarding the rights and interest of the creditors more particularly the Financial Creditors and Exchequer. There are no other application for the same relief filed with any other Hon'ble Tribunal or Hon'ble Court.
- d. The transactions in question clearly reveals about the transactions being eye washing, fraud on the creditors and exchequers and considering the gravity of such conduct as conducted in last two years, it has become indispensable that, the necessary reliefs are required to be granted in the overall interest of justice.

The present application is filed seeking necessary directions under the IB Code, 2016 after intimating to CoC.



3. The Respondents has filed its reply on 01.11.2021, vide inward diary No.D-1588. The relevant portion of the same are reproduced as under:

- I. It is stated by the Respondent that the allegations made by the Applicant in paragraph no. 4 that the business of the corporate debtor has been carried on with the intent to defraud the creditors is completely baseless; it is pointed out hereinafter in this reply that the report is prejudiced, perverse, arbitrary and against basic tenets of principles of natural justice; it is a settled position of law that report can be construed at the most to be an expert opinion and in the facts at hand, the report suffers from multiple lacunas and does not have any evidentiary value. Report also misrepresents several facts and is clearly drafted with a pre-conceived mind without taking into consideration the replies and explanation tendered by the Respondents. It is thus a perverse finding and is against the principles of natural justice.

ALLEGED REPAYMENT OF LOAN TO DIRECTORS IN PREFERENCE OVER OTHER CREDITORS

- II. With respect to paragraph 6 and 7 (a) of the Application, it is submitted that the payments have been made in the ordinary course of business under Section 43(3)(a) of the Insolvency and Bankruptcy Code, 2016. The same is also evident from the table showing loans and



repayments along with dates and is annexed herewith as Annexure-R1. The table at Annexure A shall reflect that both the directors have over a period of multiple years, paid to company and have been paid back by company as well in different transactions, when balance Credit/ Debit amount gets reflected at the foot of the account and it's not a case of sudden repayment of some amount that had been outstanding for a long period it is also evident from the table that an amount of Rs. 10,00,000 had been brought in by Rushi Dattani in company from his personal funds/accounts on 13/12/2019 to make the payment to Bajaj Finance Ltd.

Looking at above, it is clear that auditor's report does not inspire any confidence. For sake of argument, if report is taken to be true, allegations of the Official Liquidator are nonetheless baseless and run contrary to the report itself upon which it's findings are sought to be based and that the Petitioner has made several misrepresentations and suppressed material facts while approaching this Hon'ble Court. It is stated that the prejudices in the report of S.L.Gupta are further compounded through pre-conceived notions of the applicant; it will be apposite to mention that the Transaction Audit Report by S.L. Gupta & Associates clearly lays down on Page No. 17 of the report that the Transaction reportable under Section 43 against the repayment of loan to directors is a total of Rs. 10,69,000 as against the amount of Rs. 45,69,500 sought to be set



aside by the Official Liquidator. It is submitted that such an allegation is thoroughly unfounded and is not even supported by a prejudiced report. A Copy of the said report has been annexed by applicant as **Annexure B.**

Also, the balance sheet of the company as on 31 March, 2021 reflects that an amount of Rs. 10,34,500 remains outstanding towards loan taken from directors which again points out to the malafides of the Petitioner in seeking to avoid all the valid transactions made by the Company in regular course of business with its directors.

It is also pertinent to note that while the applicant asked the company to give it's explanation or necessary information on the draft report vide email dated 18th June, 2021, neither did he inform the Respondent of its intention of setting aside the present transactions of repaid loan in the said report nor did he grant any opportunity to the Respondent to make it's submissions in this regard. The petitioner with a malafide intention of depriving the Respondent of the opportunity to prove bona fides, concealed the same in its letter dated 18th June, 2021 and hurriedly made a petition in front of the Hon'ble Court. The malafides of the Petitioner can also be deduced from the fact that the Petitioner even while bringing the present petition did not annex it's letter

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dated 18th June, 2021. A copy of the said letter dated 18th June, 2021 is annexed herewith as Annexure-R2.

That otherwise also, malafides of the Applicant are very evident from its act of seeking a reply from the Respondent for all the other transactions except for the present transaction of Rs. 45,69,500 which have been made in the ordinary course of business while also misrepresenting the amount by seeking to base its application on the Transaction Audit Report which suggests a different amount altogether.

ALLEGED FRAUDULENT TRANSFER OF AMOUNT RECEIVABLE FROM M/S OM TRADING CO. TO RAKESH FOLDING WORKS

- III. With respect to paragraph 6 and 7 (b) of the Application, it is submitted that the Applicant has on frivolous grounds approached the court without taking into consideration the representation as well as the evidence of the same submitted and made by the Respondent to the Applicant vide its mail dated 10th July, 2021 which was also duly couriered to the Petitioner. A copy of the said reply made by the Respondent on 10th July, 2021 has been annexed herewith as Annexure-R3. Even a tri partite MOU dated 17.05.2018 (Annexure-R4) was not taken into consideration. Said MOU reflects the business arrangement between the parties. The Applicant vide its letter submitted that in order to maintain the business secret of the procurement of goods from the buyers, the goods were being sold to



M/s Rakesh Folding through Om Trading Co. It was then agreed between Padmavati Intermediates, M/s Rakesh Folding and M/s Om Trading Co. that M/s Rakesh Folding would make the payments directly to Padmavati Intermediates instead of M/s Om Trading. The Respondents had also attached the Affidavit of Rakesh Folding Works as well as the Ledger Confirmation of account of Rakesh Folding Works from the books of Om Trading Co. duly signed by Rakesh Folding Works which is also attached herewith as Annexure-R5 and R6 respectively.

That the above stated transaction was made in 17/05/2018 which falls outside the purview of the Relevant Period for a related party of 2 years prior to the CIRP commencement date. The Applicant thus with an ulterior motive of maliciously setting aside the business transactions sought to do the same under Section 66 instead of preferring the Application for avoidance under Section 43 of the Act. That Section 66 of the Act clearly lays down that in order to bring an Application under this Section, it must be proved that the director either conducted the business to defraud the creditors, or did not exercise due diligence. In this regard it will be useful to reproduce Section 66 of the Act:

"66 (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 minimizing 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 104.

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."



It is humbly submitted that the Applicant without any specific allegations of fraud being made, very vaguely only states that "this act is to defraud creditors" without showing the malafides of the Respondent. In order to determine an offence of fraud, the state of mind of the person at the time of committing of the offence must be looked into and the intention must be proved clearly as to the carrying on of the business for fraudulent purpose. Section 66(1) clearly lays down that "the business of the creditor" must be carried on for fraudulent purpose or in order to defraud creditors. The Applicant thus, ought to prove that the entire business of the Respondent had been conducted only with a view to defraud creditors from its very inception, which is not true. The business of the Company was very genuine and the fact that the company incurred losses by itself doesn't make it a fraudulent company.

With respect to Section 66(2) it is submitted that it makes the directors of a company liable for want of due diligence during the twilight zone. In India, section 66 of the Code identifies the twilight zone as the starting point of the period from the time when the director "knew or ought to have known that there was no reasonable prospect of avoiding the commencement of corporate insolvency resolution."

It is submitted that the said transaction was carried out in 2018 when there was evidently no prospect of the company going under insolvency. The same is also evident from its balance sheet for the year 2018-19 as on 31/03/2019. Therefore Section 66(2) does not get attracted. The balance sheet as on 31/03/2019 for the company Padmavati Intermediates is attached herewith as **Annexure-R7.**



That the Applicant otherwise also fails to apprise the Hon'ble Court as to how there was a lack of due diligence and very baselessly only states it while on the face of it there is no such dearth and the transaction was made in the interest of business of the company.

ALLEGED SALE OF FIXED ASSET AT LOSS.

- IV. With respect to paragraph 6 and 7 (c) of the Application, it is submitted that the Applicant merely uses the provisions of law as per his convenience without any justification. The Applicant fails to attract the right provisions for the transactions sought to be set aside. The Applicant does not bring forth any grounds for setting aside and only indulges into clever drafting to create an illusion of a cause of action. There has been no instance of fraud in the sale of machinery as scrap. The respondent vide his letter dated 10th July, 2021 also apprised the Resolution Professional that machinery was lying unused for 6 years and was badly affected by rusting and was thus not in a workable condition. Owing to the fact that the machinery had been lying as scrap and has not been used for the past 6 years, the company did not charge any depreciation on the machinery. This again brings to light that the machinery was not in a workable condition and had been lying as scrap since the past 6 years. The respondent, exercising due diligence and as a prudent measure sold the same as scrap on 31.3.2019 for Rs 18500.



ALLEGED FRAUDULENT TRANSACTIONS WITH ANJANI CORPORATION, SATYAM CHEMICALS AND PATEL ENTERPRISE ETC.

- V. With respect to paragraph 6 and 7 (d) of the Application, it is submitted that forensic cum transaction audit report does not showcase the correct state of affairs of the company and involves into pick and choose to misrepresent that fund have been diverted to Anjani Corporation. The report asserts that it uses the 'FIFO' method of use of funds and creates various flow charts to create an illusion of diversion of funds. It is submitted that the said flow charts though seek to use the FIFO Method, in essence it only picks and chooses transactions as per convenience to bring out a report favourable for the Resolution Professional, i.e. the party engaging the Forensic and Transaction Auditor. Said aspect shall be elaborated and highlighted at the time of hearing of this application.

The Respondent also wants to apprise the court that the loans had been taken from the banks for business purposes and thus have been used for that very purpose. Anjani Corporation apart from being a related party, is a business concern and the company has been engaging in various business transactions with the said firm since its inception. Payments being made in such ordinary course of business cannot be misconceived as diversion of funds as diversion of funds essentially



means that the funds have been utilized for purposes other than those for which they were raised.

It will be relevant to note that loans in question are broad purpose business loans giving sanction to utilize the funds for business purposes in the line of Textile & Chemicals etc. The applicant does not allege violation of any given terms of sanction letters, nor have the concerned financial institutions have ever alleged so and there is no violation of terms of sanction; Consequently allegations as regards diversion of funds, much less than being duly supported by necessary evidence, are baseless on the face of it. Even if it is assumed for sake of argument that the funds of loan were utilized partly for transaction with Anjani Corporation, there is no violation of terms of disbursement/ loan much less than there being any sort of fraud. Furthermore, loans were disbursed at a higher rate of interest in the range of 9 to 10% to cover the premium for risk of granting loans for utilization without any stringent restrictions.

It is submitted that evidence of the movement of goods has been produced by the Respondent to the Applicant at the time of sending of the sample copies of invoices. E-way bills were attached with all the invoices where there was movement of goods in it's literal sense and where there could be no movement by truck or likewise, there was transfer of goods within the same premise as



both the entities have the same place of business. Since the company Padmavati Intermediates had been using the property of Mr. Suresh Dattani as storage facility, there is no question of transportation by truck. Also, when all the transactions have been at their market price, through proper invoice, GST has been paid and returns duly filed, no question of fraud arises simply because the entities share a common place of storage facility. Ledger of Anjani Corporation in the books of accounts of Padmavati Intermediates showing the details of purchase and sales between the 2 entities since the past 3 years have been attached herewith as **Annexure-R8**. Further details of transactions of previous years can also be produced if the same is required. It is further stated that though multiple flow charts and pictorial data have been put forward in the report annexed with the application, neither the report nor the application has any specific allegations about fraud much less than an explanation as to how and in what manner-fraud could be said to have been committed.

It is submitted that the Applicant in its zest and enthusiasm to file an application u/s43, 45, 49 & 66 of the IBC, 2016, the applicant has dragged even unrelated parties being Satyam Chemicals, Patel Enterprise and Raghuvir Enterprise into the present avoidance application. The invoices of the transactions with the above parties consists of the E-way bill as per



the GST Act and the various notifications thereunder from the date of the enforcement of the provisions relating to E-way Bill. The Applicant and the Forensic and Transaction Auditor with a predetermined intention of making the directors liable have fabricated false claims without even taking into account the reply and the various evidences submitted by the Respondent.

ALLEGED WRONGFUL TRADING LOSS

- VI. With respect to paragraph 6 and 7 (e) of the Application, it is submitted that the price of agricultural commodity along with demand and supply, depends also upon the quality of the produce and the shelf life of the specific goods. The reply vide mail and letter dated 10th July, 2021 clearly apprises the Resolution Professional of the same and brings to his knowledge the various circumstances due to which the company incurred losses. The allegations in para 7(e) are preposterous and reflect a preconceived agenda of applicant to bring as many transactions within ambit of different sections as possible, for the best reasons known only to him. Few transactions pointed out are simply the lossmaking transactions, showing nothing more or beyond. The intention to commit a fraud and book losses must specifically be proved and in want of any allegations proving fraud, it must not be admitted and be set aside.

It is also submitted that the major loss suffered was with regard to garlic which was severely affected due to



humidity and unprecedented rainfall. Owing to the weather conditions and spoilage, the directors, as a prudent measure, were forced to sell the remaining quantity at a lower price to avoid any further losses. Likewise, for other commodities also loss was incurred due to mismatch of demand and supply as the commodities are perishable in nature. It is pertinent to note that all the transactions have been carried out with unrelated parties at prevailing market rates, payments made through normal banking channels and the purchases and sales have been duly reported in GST returns of the parties.

It may also be noted that the Forensic and Transaction Audit Report drafts a report of convenience and picks and chooses only those transactions where the entity has suffered losses and leaves out the transactions where the company has made profits. The same is evident from the sale and purchase of Chana where as many as 7 transactions have been omitted from the report of the Auditor. Such pick-and-choose policy adopted while preparing the report points to the ulterior motive and the report being prepared with a predetermined set of mind to show losses only. It is humbly submitted that the same also amounts to misrepresentation and thus the report cannot be relied upon. Had the report taken into account all the transactions entered into between the unrelated parties, even a layman would be able to tell that the same have



been done in the ordinary course of business and no question of fraud arises in the sale and purchase transactions. The ledger of commodity Chana' showing all the transactions of sale and purchase along with quantity is annexed herewith as **Annexure-R9**.

- VII. It is submitted that in light of the above, the Forensic and Transaction Audit Report ought to be set aside and should not be taken evidence of in the present interlocutory proceedings. The maxim 'He who seeks equity must do equity' becomes applicable as the Applicant has approached the court with unclean hands which itself is a ground for rejection of such an application.
- VIII. Therefore, in light of the above, it is humbly prayed before the Hon'ble Court that the present application be dismissed with costs.
4. Vide an order dated 22.09.2025, it is recorded that the Ld. Counsel for the applicant as well as Ld. Counsel for the Respondent has filed a revised written submission and that were filed by the Applicant on 13.06.2025 vide inward diary No. D-3783 and by the Respondent on 16.06.2025 vide inward diary No.D-2414. However, it is also recorded that the earlier written submission filed by way back in 2023 in the



year 2024, be ignored. The relevant portion of the written submission filed by the Applicant is reproduced as under:

A. REPAYMENT OF LOAN TO DIRECTORS IN PREFERENCE OVER OTHER CREDITORS: Rs. 45,69,000/-.

- I. The Applicant state that as per the findings of Applicant and Forensic cum transaction audit report the Respondents have clearly repaid their own unsecured loan amounts totalling to amount Rs. 45,69,000/- by using different methods during period of two years preceding the Insolvency Commencement Date. The same is done by giving preference over the funds borrowed from unsecured financial creditors. Due to siphoning off the said amount, unsecured financial creditors have been left with the no mercy but to a situation where, they have to contribute for the CIRP /Liquidation process expenses.
- II. Annexure R1 of Respondent itself it can be observed from last 5 entries that total payable loans to Happy Dattani as on 29/3/2019 was Rs. 16,30,000/- and within 20 days from 03/10/2019 till 23/10/2019 this entire amount was repaid to Suspended management i.e. within 1 month from date of filing of Petition by keeping other Creditor of CD aloof from its dues.
- III. Further as per audited loan statement of Rushi Dattani from entries dated 20/09/2018 it is observed on this



date an amount of INR 29,39,500/- was payable. From 25/7/2019 till 5/10/2019 i.e. within 3 months the said amount is repaid over and over other creditors of the CD.

IV. The Respondent has taken stand that in Audit report (Ann B) only amount of INR 10,69,000/- is reflecting. It may be noted that on page no. 8 of application it is stated that the transactions reported are as per findings of Applicant and Forensic report. None the less the said amounts are reflecting from loan statements of the Respondents itself. As per law, forensic auditors are working as a support agencies to the Applicant and the Applicant is not restricted by law to inspect transactions of the Corporate Debtor and draw an opinion upon the same. Forensic report does not restrict the Applicant to draw its opinion. The transaction is squarely covered u/s 43

V. The averments of the respondents that such transactions were made as per "Ordinary course of business" is not acceptable as Repayment of loan to relative is not ordinary course of business when the respondent is repaying the same by giving preference over other financial creditors within prescribed time period as per IB Code.

VI. The legislature has specifically provided sub-section (4) of section 43, for the deemed transactions which are "compulsory" to be viewed as preference. In humble



submission the intent for coverage of deeming provision is to avoid any ambiguity and misinterpretation of the concept of avoidable transactions.

- VII. . Further the Applicant RP/Liquidator is not under any duty to compulsory seek explanation or consent from ex management while reporting transactions before Hon'ble AA. Not seeking clarification on particular point cannot be a ground of defense. The transactions are clearly covered under Deemed transactions prescribed in the code and supported by bank statements and audit report and respondents have never denied on the same.
- VIII. The respondents have accepted the fact that there is repayment of loans to related parties being directors of CD. In regards to Rs. 10,34,000/- it may be noted that the same is a journal entry in the credit of the same unsecured loan account. As there is no actual funds received by the company based on the JV (journal entry passed in the books) the applicant has not considered the same as actual receipt of funds and hence, total Rs. 29,39,000/- is the funds siphoned off by the ex-directors.
- IX. Such transaction has put the suspended management in a beneficial position over other financial creditors of the CD as per section 43.



- X. In our humble submission, the Code itself is providing the transaction under clause (a) of subsection (4) of section 43 when it is given to a related party during the period of two years preceding the insolvency commencement date. CIRP date is 3.2.2021 and the said amount of Rs. 45,69,500/- is repaid as preference between the period 3.2.2019 to 3.2.2021

B. FRAUDULENT TRANSFER OF AMOUNT RECEIVABLE FROM M/S OM TRADING CO. TO RAKESH FOLDING WORKS: Rs. 55,67,289/-

- I. The Suspended management in order to safeguard M/s Om trading Company (related party) has debited M/s Rakesh Folding works by way of transfer of Balance Receivable from M/s Om trading Co. and its related party is made free from any payment to CD. It is observed that M/s Rakesh Folding works never had any trading relations with CD. Om Trading Company admittedly belongs to mother of suspended directors of Corporate Debtor.
- II. The MOU is dated 17/05/2018 annexed as R4 though on stamp paper is not notarized so as to substantiate its authenticity. Further the said entry JV under the name "havalo from om trading company". The MOU has been duly considered by the Applicant but reply filed by respondents, is just to misguide and MOU is prepared only to support havala entry.



- III. The suspended management has reduced the Assets (trade receivables) wherein, the related party who is indebted for Rs. 55,67,289/- to the Corporate debtor is made free from trade liability and unknown party Rakesh Folding Works has taken the liability to pay to corporate debtor and thereafter never paid the amount.
- IV. it is humbly submitted that Tri-party MOU is a Sham transaction and is done to bundle the illicit motive of malafide intent. It shows that there is business arrangement, but NO single rupee of business has been done with Rakesh Folding works by CD.
- V. Transfer of its trade receivable to pass on to the third party with whom company has NO past business seems fraudulent and without any due diligence as per Section 66. As per accounting standards such journal entries are not allowed and is like passing on own assets to others, without any motive and without any liability towards that party to pay. The trade receivable being an asset is transferred from related party firm to the non-related party firm who is non responsive and non-traceable. The business arrangement is a name given to save the liability of payment to the creditors and to protect the payment obligation of related party firm Om Trading co.
- VI. Transactions identified under section 66 are not restricted by Two Year prior to CIRP date. There is no limiting period for transactions to be identified as



fraudulent u/s 66. Such transaction has negatively impacted the “Asset” of the corporate debtor and resulted into erosion of realizable assets and hence the act is “defrauding” creditors of the CD. The say of the Respondents that reply is not considered is not correct as even after receiving Forensic Report on 30/06/2021 the Respondents had replied on 10.7.21.

- VII. It is also submitted that the Applicant has annexed ledger accounts with its Additional Affidavit dated 01/03/2025. Further Applicant had sent legal notices to Rakesh folding works and Anjani Corporations however the same were returned back with endorsements being refused to accept. Copy of Legal Notices alongwith returned envelopes are annexed along with Additional Affidavit on page no. 56 – 69.

C. SALE OF FIXED ASSET OF CD AT LOSS OF INR 2,07,416 BY TREATING THE SAME AS SCRAP

- I. Sale of machinery having book value of INR 2,25,916.36/- sold at an amount of INR 18,500/- without weighing it on any registered weight centers, without GST and no pictures of old machinery are available and the same has caused loss of INR 2,07,416.36/- to CD. Further the same is sold on basis of invoice wherein there are no contact details of the purchaser of goods, no details of vehicle and no place of supply and other details to substantiate the authenticity of the transaction. Hence the same has all



the ingredients of being a undervalued and fraudulent transactions.

D. WRONGFUL TRADING ACTIVITY WITH ANJANI CORPORATION AND ORS. TRANSACTIONS CATEGORISED TO BE FRAUDULENT IN NATURE AMOUNTING TO INR 2,48,29,973/-.

- I. Majority of Funds borrowed from various financial institutions were fraudulently transferred into account of one M/s Anjani Corporation (related party), Satyam chemicals, Patel Enterprise. The Respondents agrees that Anjani Corp is a related party and further states that funds were paid towards purchases from M/s Anjani. It may be noted that there is no movement of goods observed in invoices, no HSN code, no dispatch details in invoice details with related party while the same is observed in invoices with non – related parties. It is seen that invoices were raised only to divert funds from CD to related party
- II. Even upon demand no e – way bills were produced neither any transport confirmations. Brief analysis itself reflects that Respondents have merely raised invoices with intent to divert borrowed funds from CD's Creditors.
- III. In support of the findings the Respondents state that GST is paid on the said invoices however it is found that the premise of M/s Anjani corporation (father of ex Director, related party) is situated at jetpur and is not



registered as additional place of business. Also in regards to transactions with Patel Enterprise, Satyam chemicals it is stated that invoices does not reflect any dispatch details and how and where such large quantity is moved within state is not mentioned. Page no. 54 to 65 of the application (Ann B) reflects observations pursuant to the said transactions.

- IV. The Respondent have taken stand that M/s Anjani Corporation and CD were using the same premises hence there was no movement of goods. Further the Respondent in its additional Affidavit has stated that as per Notification of GST Commissioner annexed at Annexure P3. However, the Respondents failed to add the said place as being additional place of business as per GST. Under GST each additional place of business must be declared and registered separately, impacting how input tax credits are claimed and compliance is maintained. The same is not shown by Respondents in neither their reply nor in their affidavit.

E. WRONGFUL TRADING LOSS BOOKED BY RESPONDENTS – TRANSACTION WHICH IS NOT AS PER ORDINARY COURSE OF BUSINESS AND NO DUE DILIGENCE IS EXERCISED BY RESPONDENTS AND CAUSED HUGE LOSSES TO THE CD. (U/S 45, 49, 66 OF IB CODE)

- I. As per sale, purchase analysis of CD on product wise basis in year 2019 – 2020 the CD has undertaken transactions in the agricultural produce items wherein huge continuous losses are incurred to the CD, which



transactions are not ordinary transactions of CD. Page no. 81 – 85 of Application is analysis of such transactions. It is further submitted that CD is not involved in the business of agricultural items and transactions are not as per business model of the CD.

- II. The agricultural items are continuously purchased at price higher than market price and sold at price which is lower than market price. Such transactions have caused loss of INR 2,29,09,834/- within a span of only 45 Days. By undertaking such transaction the Respondents have benefitted illicitly and made CD bankrupt and finance procured from creditors got vanished. Moreover, the business of CD was to deal in chemical products hence such transactions of agricultural items are not ordinary transactions of the CD
- III. No prudent business man would sell goods at lower price and again buy the same product at higher price and once again sell the same at lower price. Assuming and not accepting the same as ordinary losses, why CD would buy a same product at higher price within one week of selling the same at lower price. No godown has been displayed and no storage of location nor rental place is available with CD in order to stock up the said purchases of agricultural commodities. The transactions are only on paper to book losses and siphoned the funds of Creditors of CD.



- IV. The said transactions are done within a period of 45 Days i.e .from 21.08.2019 till 5/10/2019. Copy of stock register are annexed at ANNEXURE – D of Additional Affidavit of Applicant at page no. 50 – 55.
- V. The Respondents have taken stand that price of agricultural items would vary upon demand and supply of product, shelf life and weather conditions, due to which CD incurred losses, the Respondents are silent whether such transactions were ordinary transactions of the CD and whether funds were borrowed for such trading activities.
- VI. It is further submitted that the CD was involved in transaction amounting to crores of rupees yet the CIRP got initiated on the instance of CD accepting debt of only INR 5,11,589/- on 4/11/2019. Also, the OC on whose behest CIRP was initiated itself has not filed its claim with the RP or the Liquidator. Hence on one end Respondents were doing continuous transactions of crores of rupees and incurring major losses, making repayments to its own loans right before filing of the main CP (IB) which was filed 15/11/2019. It seems that the CD has purposely pushed the CD into Insolvency just and make illegal gains out of the funds of the Stake Holders.

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4 The Applicant submits that there are no lacunas in the observations and noting of the Applicant in reporting above mentioned transactions and no facts are



misrepresent. The Respondents have illicitly and systematically diverted the borrowed funds of the CD and has forced the CD into Insolvency and has left the CD in such position wherein the CD is unable to recover its insolvency/liquidation costs and the Stake holders are supposed to contribute to the same on account of alleged fraudulent actions of the Respondents.

Hence in lights of the submissions and averments made in Application, Reply, Rejoinder and respective Annexures this Hon'ble Court be pleased to pass appropriate orders in favour of the Applicant, declare the above transactions to be falling u/s 43,45,49,66 of the IB Code and restore the positions of the CD as if such transactions were never entered into by passing appropriate directions upon the Respondents.

5. The written submissions filed by the Respondent is reproduced as under:

1. No Preferential Transactions Under Section 43 of the IBC, 2016 [Para 6(1) and 6(2)]

- During 2017-2018, the Corporate Debtor had short-term borrowings of INR 1,82,58,115, which were reduced to INR 94,45,125 in 2018-2019 after an infusion of INR 53,36,000 by the directors as shown at Page 51-52 of the application in the Auditor Report. In 2018-2019, borrowings from financial institutions increased to INR



2,79,64,138, while the borrowings from the Respondents' stood at INR 45,69,500 as shown at Page 52 of the application in the Auditor Report.

- By 2019-2020, repayments were made to both financial institutions and the Respondents, reducing the Respondents' outstanding balance to INR 10,34,500, while borrowings from financial institutions stood at INR 2,46,00,885 Respondents'. By 2020-2021, these figures remained the same, proving that no creditor was given undue preference over others.
- Section 43(2)(b) of the IBC defines preferential transactions as those that place a creditor in a more advantageous position than they would be in a liquidation scenario under Section 53. Since both the Respondents and financial institutions were unsecured financial creditors, they were at par as and no creditor, including the Respondents, was given undue priority over others, as all creditors were repaid certain amounts towards the loans taken from them and fall under the liquidation waterfall under Section 53(1)(d). The repayments made to both disproves any allegation of preferential treatment. This indicates that there was no preferential transaction as defined under the Insolvency and Bankruptcy Code (IBC), 2016.
- Furthermore, the Respondents had been extending loans since 2016, and repayments were made



based on the company's financial standing. The transactions in 2019 were consistent with past practices, refuting any claim that these were preferential under Section 43 of the IBC.

- Even if the aforementioned argument is not accepted, it is pertinent to note that the transactions sought to be classified under Section 43 of the Insolvency and Bankruptcy Code, 2016, in paragraphs 6(1) and 6(2), must be assessed in light of the relevant period from 04.02.2019 to 03.02.2021, as determined by the initiation of insolvency proceedings pursuant to the Section 9 petition admitted on 03.02.2021. For a transaction to fall within the scope of Section 43(2)(a), it must involve the transfer of property or interest in respect of an antecedent financial debt, operational debt, or other antecedent liabilities of the Corporate Debtor. Annexure R1 at pages 133-144 of the reply clearly establishes that the undersigned lent INR 10,45,000 to the Corporate Debtor during the relevant period, meaning this sum does not constitute an antecedent financial debt or liability. Consequently, this amount must be excluded from the INR 29,39,500 sought to be classified under Section 43(2)(a), as its repayment does not pertain to any antecedent liability.
- The transactions do not meet the criteria for preferential payments under Section 43 of the IBC,



as repayments were part of regular business operations and in line with the company's historical repayment pattern. The allegations are baseless and fail to establish any undue preference toward the Respondents.

2. MOU with Rakesh Folding Works: No Fraudulent Intent

Established [Para 6(3)]

- It is respectfully submitted that the Memorandum of Understanding (MOU) dated 17.05.2018, on page no. 10 of the additional affidavit, executed between the parties, represents a legitimate business transaction designed to safeguard trade secrets. The MOU is a routine commercial agreement and does not bear any attributes of fraudulent intent under the Insolvency and Bankruptcy Code, 2016 ("IBC"). The MOU was executed in the ordinary course of business, fulfilling a valid commercial purpose, and cannot be misconstrued as an instrument of fraud.
- The Applicant has sought to rely on the Auditor's Report, particularly observations on page no. 79 of the application to allege that a sum of INR 55.67 Lakhs falls within the ambit of Section 66 of the IBC. However, a careful reading of the Auditor's Report on page no. 79 of the application reveals that it merely states that "there is the possibility of realisation of the sum of INR 55.67 Lakhs out of



books" and that "the sum of INR 55.67 Lakhs 'may' fall within the ambit of Section 66." The use of speculative terms such as "possibility" and "may" underscores that the Auditor's conclusions are tentative and lack the certainty required to substantiate an allegation of fraud. The Auditor does not assert conclusive findings of fraudulent conduct, and mere conjecture cannot be a valid ground for invoking Section 66 of the IBC.

- Furthermore, it is crucial to highlight that the Auditor's Report was submitted in June 2023, whereas the MOU in question was only provided by the Respondents to the Applicant in July 2023. Consequently, the MOU was not within the purview of the Auditor's review at the time the report was compiled. This fact is explicitly acknowledged in the disclaimer of the Auditor's Report at page 87 of the application, which states that "should additional information and documents be subsequently available, observations may change and it may be necessary to revise our findings accordingly." The Applicant has failed to consider this disclaimer, which clearly indicates that the Auditor's findings were based on incomplete documentation and are subject to revision in light of new evidence. The failure of the Applicant to reconsider its position in light of the



MOU further demonstrates its reliance on an incomplete and inconclusive report.

- In view of the above, it is evident that the Applicant's case is based on speculative findings that do not meet the standard of proof required under Section 66 of the IBC. The reliance on an inconclusive Auditor's Report, which did not account for the MOU, renders the Applicant's allegations untenable. The burden of proving fraudulent intent under Section 66 rests squarely on the Applicant, and such a burden has not been discharged through the submission of mere possibilities and conjecture.

3. No Fraudulent Conduct in Transactions with Anjani Corporation [Para 6(5)]

- It is respectfully submitted that regarding fraudulent transaction with Anjani Corporation with regard to the amount of INR 2,48,29,973, alleged to be covered under Section 66 of the IBC, as described in paragraph 6(5) of the application the Auditor's Report merely shows that loans taken from various banks were utilized to purchase goods from Anjani Corporation, a related party. However, this alone does not constitute sufficient proof to conclude that these transactions were fraudulent. All transactions with Anjani Corporation were duly recorded in the books of



accounts, proper invoices were issued, GST was paid, and returns were duly filed. Despite this, the Auditor and the Applicant have failed to consider these critical details. The mere existence of related-party transactions, in the absence of improper conduct, does not fall within the ambit of fraud under the Insolvency and Bankruptcy Code, 2016 ("IBC").

- The Applicant has failed to present any substantive or credible evidence beyond mere allegations. No independent proof, apart from the Auditor's assertions, has been provided to establish fraud as contemplated under Section 66 of the IBC. Thus, the claims fail to meet the required legal threshold to substantiate allegations of fraudulent transactions.
- The Applicant's arguments are flawed and based on an erroneous interpretation of GST laws and financial records. The Applicant's argument that the premises at Jetpur were not registered as an additional place of business is erroneous and incorrect. The requirement to register additional business premises under GST was introduced only through Notification No. 03/2019- Central Tax, which came into effect on 29.01.2019, as evidenced on Page 18 of the additional affidavit. Since the transactions in question occurred before



this requirement was implemented, the Applicant's contention is unfounded.

- Furthermore, regarding the Applicant's argument on the absence of e-way bills, it is submitted that, as per Notification No. GSL/GST/RULE-138(14)/B.19 dated 19.09.2018 (evident from Page 28 of the additional affidavit), the Commissioner of State Tax, Gujarat, expressly exempted the requirement for issuing e-way bills for intra-city movement of goods. Moreover, for transactions exceeding INR 50,000, e-way bills were duly issued, as evidenced by the ledger records and the e-way bill for a transaction amounting to INR 15,72,940 at ANNEXURE P4, (Pages 30-31 of the additional affidavit). Notably, the GST authorities have never raised any objections regarding these transactions, further demonstrating the Corporate Debtor's compliance with applicable laws.
- The Applicant's allegations rely solely on the Auditor's Report, particularly pages 54 to 60 of the application. However, at page 65 of the application, in the same report, the Auditor acknowledges that "complete copies of the invoices of M/S Anjani Corporation, M/S Satyam Chemicals, and M/S Patel Enterprises are annexed at Annexure-A." Notably, no such Annexure-A is found in the application, rendering the Auditor's findings unsubstantiated and unreliable.



- Even assuming that funds from financial institutions were used to pay Anjani Corporation, this would not automatically bring the transactions within the purview of Section 66 of the IBC. The loans availed were broad-purpose business loans, which permitted the use of funds for textile and chemical-related business activities. Neither the application nor the Auditor's Report alleges any violation of the loan agreements. The Applicant and the Auditor's Report fail to consider the fact that transactions with Anjani Corporation included both purchases and sales. The Applicant has only highlighted the purchases while ignoring sales transactions. As per the ledger records provided in ANNEXURE-P5 COLLY, located on pages 32 to 79 of the additional affidavit, during the financial year 2018-2019, the Corporate Debtor purchased commodities worth INR 5,40,01,864 from Anjani Corporation but also sold goods worth INR 5,53,87,064 to Anjani Corporation, resulting in a net excess of INR 13,85,200 in sales over purchases. There is no allegation, let alone proof, that the goods purchased from Anjani Corporation did not exist or vanished. No stock registers or other records have been produced to support such a claim, thereby exposing the speculative and overenthusiastic nature of the Auditor's



conclusions. The Auditor's Report fails to consider opening balances and previous transactions. Furthermore, similar business transactions with Anjani Corporation occurred in earlier financial years before the loans were availed, demonstrating an ongoing commercial relationship that predates the alleged fraudulent transactions.

- In light of the above, it is evident that the allegations regarding transactions with Anjani Corporation are speculative, unfounded, and based on an incomplete understanding of financial records. The Auditor and the Applicant have selectively considered facts to reach a predetermined conclusion without evaluating the entire business relationship.
- Regarding transactions with Satyam Chemicals, Patel Enterprise, and Raghuvir Enterprise, the Applicant, in paragraph 7(e) of their petition, has acknowledged that the Respondent has provided documentary proof, including e-way bills and transport confirmations, to substantiate the movement of goods. Despite this acknowledgment, the Applicant has proceeded with a baseless claim under Section 66 of the IBC, further demonstrating the lack of substance in their allegations.

4. No Basis for Allegations of Wrongful Trading Losses

[Para 6(6)]



- The Applicant has relied on the Auditor Report to allege that the Respondents wrongfully booked losses related to Chana, Wheat, Lehsun, and Pigeon Peas.
- It is submitted that the Auditor Report derives its data from the "investing.com" website, which explicitly disclaims the accuracy and real-time nature of its information. The website states:

"The data contained in this website is not necessarily real-time nor accurate. The data and prices on the website are not necessarily provided by any market or exchange but may be provided by market makers, and so prices may not be accurate and may differ from the actual price at any given market, meaning prices are indicative and not appropriate for trading purposes."

Given this disclaimer, reliance on benchmark prices from this website does not provide an accurate or conclusive representation of commodity prices at the relevant time.

- Furthermore, the difference between the benchmark prices and the actual sale or purchase prices of Chana and Wheat falls within a narrow range of INR 2 to INR 14 per kg (as per Pages 81-85 of the application in the Auditor Report). Such a minor variation is insufficient to suggest any irregularity, particularly in light of the inherent fluctuations in commodity prices. When assessed in conjunction with the disclaimer on "investing.com," it is evident that the benchmark



prices relied upon by the Applicant are neither definitive nor reliable for evaluating these transactions.

- The minor price variation further suggests that the Respondents transacted at prices that were either identical or at least comparable to prevailing market rates. Such variations are well within the scope of ordinary business transactions and cannot be deemed fraudulent under Section 66 of the Insolvency and Bankruptcy Code, 2016 (IBC).
- It is a well-accepted fact that commodity prices fluctuate daily, and it is common in the course of business for goods to be sold or purchased at slightly higher or lower prices. Such commercial variations do not, in themselves, constitute fraud.
- Additionally, the Auditor Report provides a detailed analysis only for Wheat and Chana, while failing to extend the same scrutiny to Lehsun and Pigeon Peas. This selective approach raises serious concerns about the methodology adopted by the Applicant and the Auditor in arriving at their conclusions for these commodities.
- The Applicant has not produced any evidence other than the Auditor Report to substantiate its claim of wrongful trading losses. The Auditor Report, by itself, does not constitute conclusive proof.

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6. We have heard the arguments advanced by the learned counsel for the Applicant/Liquidator, the learned counsel for the Respondents and perused the application, reply, rejoinder, additional affidavits and written submissions filed by both sides. The Bench has framed the following issues for determination based on the pleadings, documents and arguments advanced: -

- (a) Issue No. (i): Whether the forensic audit report in Annexure B is reliable and whether the Respondents have rebutted the prima facie case established by the Applicant?
- (b) Issue No. (ii): Whether the repayments of unsecured loans to the Respondents totalling Rs. 45,69,500 constitute preferential transactions under section 43 & 44 of the Insolvency and Bankruptcy Code, 2016?
- (c) Issue No. (iii): Whether the journal entry transfer of trade receivable of Rs. 55,67,289 from M/s. Om Trading Co. to M/s. Rakesh Folding Works constitutes a fraudulent transaction under section 66(1) of the Insolvency and Bankruptcy Code, 2016?
- (d) Issue No. (iv): Whether the sale of fixed assets with book value Rs. 2,25,916.36 for Rs. 18,500 constitutes a fraudulent under section 66(1) of the Insolvency and Bankruptcy Code, 2016?
- (e) Issue No. (v): Whether the payments totalling Rs. 2,48,29,973 to Anjani Corporation, Satyam Chemicals and Patel Enterprises on invoices without evidence of goods movement constitute fraudulent transactions under section 66(1) of the Insolvency and Bankruptcy Code, 2016?



- (f) Issue No. (vi): Whether the booking of trading losses of Rs. 2,29,09,834 in agricultural commodities constitutes wrongful trading under section 66(2) of the Insolvency and Bankruptcy Code, 2016?

7. Re. Issue No. (i):

- (i) The purpose of seeking the transaction audit report is to get the transactions analysed by an independent expert and identify if any of the transactions undertaken by the corporate debtor could be hit by the provisions of avoidance (preferential, undervalued, extortionate), or fraudulent transactions. The procedure adopted for preparing the report is stated on page 15 of the Report. The information was obtained from the suspended management. We have gone through the report and find that the same has been prepared based on the information available and provided by the suspended management.
- (ii) The forensic audit report in Annexure B (pages 32 to 117 of the Application) functions as an expert corroborative tool under section 25(2)(k) of the Code, aiding the Liquidator's investigative mandate. It has been weighed alongside the Respondents' replies, including Annexures R1 to R9, ensuring balanced adjudication. The report's disclaimer accommodates post-submission documents like the memorandum in Annexure R4, yet core transactional facts—ledgers,



bank flows, invoice gaps—remain unaltered, preserving its utility.

(iii) The Respondents urge dismissal of the report as prejudiced, perverse, and selective, citing FIFO methodology's cherry-picking in flow charts, omission of profitable deals (e.g., seven Chana transactions), tentative language ("possibility/may"), and non-consideration of replies/explanations, violating natural justice. They invoke the maxim that equity aids the clean-handed, alleging suppression of material facts like the 18.06.2021 email in Annexure R2. However, the Liquidator's independent validations via ledgers, statements, and Annexure C financials align with the report's highlights; procedural opportunities were extended, with 10.07.2021 responses integrated; under regulation 35A, the report supports but does not bind, establishing prima facie avoidance absent counter-evidence like comprehensive e-ways/stock proofs, which remain partial.

(iv) Thus, Issue No. (i) is answered in the affirmative. The report is reliable for establishing a prima facie case, unrebutted.

8. Re. Issue No. (ii):

(i) The loan ledgers reflect outstanding amounts of Rs. 16,30,000 to Respondent No. 1 as on 29.03.2019,



which was repaid between 03.10.2019 and 23.10.2019 (within a period of 20 days) through multiple transactions recorded in the books of the Corporate Debtor. Similarly, the ledger for Respondent No. 2 shows an outstanding amount of Rs. 29,39,500 as on 20.09.2018, which was repaid between 25.07.2019 and 05.10.2019 via a series of debits from the Corporate Debtor's bank accounts. These repayment dates fall squarely within the relevant period of two years preceding the Insolvency Commencement Date of 03.02.2021, as prescribed under section 43(4)(a) of the Code for transactions involving related parties, which the Respondents are as ex-directors.

- (ii) The audited financial statements in Annexure C further corroborate that unsecured loans from external financial institutions, amounting to Rs. 2,46,00,886, remained entirely unpaid as on 31.03.2020, the end of the financial year immediately preceding the Insolvency Commencement Date. In contrast, the Respondents' loans were fully settled during the relevant period, thereby placing the Respondents in a significantly more advantageous position compared to other unsecured creditors, who would rank *pari passu* with the Respondents under section 53(1)(d) of the Code in a liquidation scenario. This differential treatment directly prejudices the rights of the external creditors by reducing the available assets in the estate for distribution.



(iii) The Respondents contend that these repayments were executed in the ordinary course of business as contemplated under section 43(3)(a) of the Code and align with a long-standing pattern of mutual infusions and repayments, as evidenced by the detailed table in Annexure R1 spanning multiple years from 2016 onwards. The table indeed illustrates a history of reciprocal transactions, including a specific infusion of Rs. 10,00,000 by Respondent No. 2 on 13.12.2019, which was utilized to settle dues with Bajaj Finance Ltd., an external creditor. However, the critical timing of the complete clearance of the Respondents' outstanding balances—occurring mere weeks or months before the filing of the Section 9 petition on 15.11.2019, against the backdrop of escalating defaults to external lenders—undermines the claim of ordinary course. Such proximity to the insolvency trigger suggests a deliberate effort to prioritize related parties, thereby altering the creditors' relative positions in the hypothetical liquidation waterfall under section 53.

(iv) The forensic audit report in Annexure B preliminarily identifies only Rs. 10,69,000 as potentially reportable under section 43 based on its initial analysis of the repayment patterns. Nevertheless, the Liquidator's independent examination of the underlying ledgers and bank statements, as empowered under regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016, reveals the full extent of Rs. 45,69,500 as preferential. This regulatory provision explicitly authorizes the Resolution Professional or Liquidator to scrutinize and report avoidance transactions independently of external audit findings, ensuring a comprehensive safeguarding of the corporate estate.

- (v) To qualify as a preferential transaction under section 43(2), the transfer must be voluntary, occur within the relevant period, involve an antecedent debt, and result in the creditor receiving more than in a liquidation under section 53. Here, the repayments were voluntary outflows from the Corporate Debtor's funds in discharge of antecedent unsecured loans extended by the Respondents prior to the relevant period. The effect is a clear enhancement of the Respondents' recovery position at the expense of pari passu external unsecured creditors, whose claims remain outstanding. The Hon'ble NCLAT in ***GVR Consulting Services Pvt. Ltd. v. Pooja Bahry, (2023) ibclaw.in 261 NCLAT***, decided on 24.04.2023, has affirmed that repayments to related parties during periods of creditor defaults inherently constitute preferential transactions unless the related party demonstrates an absence of influence or control, which is not established here.

- (vi) The Supreme Court in ***Anuj Jain IRP, Jaypee Infratech Ltd. v. Axis Bank Ltd., (2019) ibclaw.in 62 SC***,



decided on 10.12.2019, has elaborated that section 43 is designed to prevent manipulations that skew the liquidation hierarchy, particularly where related parties benefit disproportionately. The unpaid external dues as per Annexure C exemplify this skew, as the Respondents emerged fully repaid while institutional lenders were left without recourse, directly diminishing the estate's value for equitable distribution.

(vii) The Respondents reference an outstanding balance of Rs. 10,34,500 as on 31.03.2021 in the balance sheet, positioning it as evidence of ongoing obligations. However, this entry represents a mere journal adjustment without corresponding actual fund inflow to the Corporate Debtor, as verified by the Liquidator through bank reconciliation. Such non-cash entries do not mitigate the preferential impact of the prior cash outflows. Moreover, the Liquidator's obligation under section 66 is investigative and reporting-oriented; the provision of an opportunity to respond via the email dated 18.06.2021 in Annexure R2 fulfils procedural fairness, and the omission of specific pre-filing clarification on this transaction does not invalidate the proceedings.

(viii) The Respondents additionally argue that short-term borrowings stood at Rs. 1,82,58,115 in 2017-2018, reduced to Rs. 94,45,125 in 2018-2019 following a directors' infusion of Rs. 53,36,000, with 2018-2019



borrowings from institutions rising to Rs. 2,79,64,138 against the Respondents' Rs. 45,69,500. By 2019-2020, repayments across both categories reduced Respondents' exposure to Rs. 10,34,500 while institutions remained at Rs. 2,46,00,885, asserting parity as all were unsecured under section 53(1)(d). They further claim Rs. 10,45,000 lent during 04.02.2019 to 03.02.2021 constitutes fresh debt, not antecedent. In evaluation, while historical infusions provide context, the net effect of the 2019 repayments—fully discharging antecedent portions pre-dating the period—confers undue benefit, as partial fresh lending does not offset the preferential clearance. The relevant period analysis under section 43(2)(a) confirms the bulk as antecedent, satisfying the criteria.

- (ix) We have very carefully considered the above facts and the position of the Applicant and the Respondents. We noticed one more interesting fact. The loans were paid in a very short period of 20 days (3.10.2019 to 23.10.2019) for Respondent No.1 and for Respondent No. 2 during the period 25.07.2019 and 5.10.2019. This shows that the CD had sufficient funds to pay these loans of related parties and then immediately afterwards, due to a new debt of Rs 5,11,589 from Dipal Chemical Industries on 4.11.2019 led to the filing of an application under section 9 of the IBC, 2016. Then the CD had no assets, and a decision was taken to liquidate the CD. At that time, the CD had an outstanding of Rs 2,46,00,886. These facts

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suggest that the CD paid loans of related parties immediately prior to the initiation of CIRP process. We are convinced that these were the preferential transactions covered by sections 43 and 44 of the IBC, 2016.

- (x) Accordingly, Issue No. (ii) is answered in the affirmative. The repayments totalling Rs. 45,69,500 are declared preferential under section 43 and avoided. The Respondents are liable to contribute this amount to the liquidation estate under section 43(5).

9. Re. Issue No. (iii):

- (i) The transaction involves a journal entry dated 17.05.2018, debiting the account of M/s. Rakesh Folding Works and crediting that of M/s. Om Trading Co., transferring a trade receivable of Rs. 55,67,289 owed by M/s. Om Trading Co., a related party owned by the mother of the Respondents, to M/s. Rakesh Folding Works. The ledger extracts confirm no prior or subsequent trading relationship between the Corporate Debtor and M/s. Rakesh Folding Works, rendering the transferee's obligation uncollectible. Legal notices issued by the Liquidator during the Corporate Insolvency Resolution Process were returned unserved, further evidencing the fictitious nature of the substituted receivable and its role in eroding the Corporate Debtor's verifiable asset base.



- (ii) This entry effectively discharged the related party's liability without any corresponding inflow or consideration to the Corporate Debtor, substituting a solvent related-party debt with a non-existent obligation from an unrelated entity lacking business ties. The narration "HAVALO FROM OM TRADING CO NA" in the journal voucher explicitly suggests an informal, non-commercial adjustment akin to a hawala transfer, which contravenes standard accounting principles under the Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016, by masking the true economic substance.
- (iii) The Respondents defend the transaction by relying on a tripartite memorandum of understanding dated 17.05.2018 in Annexure R4, an affidavit from M/s. Rakesh Folding Works in Annexure R5, and a ledger confirmation from M/s. Om Trading Co.'s books in Annexure R6. These documents purport to establish a legitimate arrangement whereby M/s. Rakesh Folding Works would procure materials directly from the Corporate Debtor to bypass M/s. Om Trading Co.'s margins, with direct payments rerouted. However, the memorandum is executed on stamp paper but remains unnotarized, lacking evidentiary weight under the Indian Evidence Act, 1872. Critically, no evidence of actual subsequent procurements, sales, or payments from M/s. Rakesh Folding Works materialises in the records,



confining the arrangement to a paper construct without commercial execution.

- (iv) Section 66(1) of the Code empowers the Adjudicating Authority, upon application by the Resolution Professional, to hold parties liable for contributions where the Corporate Debtor's business was conducted with intent to defraud creditors or for a fraudulent purpose. Proof of intent is circumstantial, derived from the transaction's design and impact on the estate. Although occurring outside the two-year look-back for section 43, section 66 imposes no temporal restriction, allowing scrutiny of pre-relevant period conduct that systematically depletes assets. The Hon'ble NCLAT in ***Amardeep Singh Bhatia v. Abhishek Nagori (Liquidator)***, (2022) ibclaw.in 953 NCLAT, decided on 28.11.2022, directed reversal of fraudulent asset transfers irrespective of timing, emphasizing restoration of creditor value.
- (v) The Supreme Court in ***Anuj Jain IRP, Jaypee Infratech Ltd. v. Axis Bank Ltd.***, (2019) ibclaw.in 62 SC, decided on 10.12.2019, clarified that fraudulent intent under avoidance provisions is inferred from objective factors such as unexplained substitutions that diminish recovery prospects, precisely as here where a collectible related-party receivable was replaced by an untraceable one, foreseeably harming creditors. The additional affidavit dated 01.03.2025, incorporating ledger



accounts, bolsters the Liquidator's tracing of this asset erosion.

- (vi) Under section 66(2), directors incur liability if, prior to the Insolvency Commencement Date, they knew or ought to have known of the inevitable insolvency yet failed to exercise due diligence in loss minimization. Given the Corporate Debtor's mounting losses from 2018-2019 as reflected in financials, the Respondents, as directors, possessed constructive knowledge of financial distress. Transferring a prime receivable to a non-business entity without safeguards exemplifies such failure, prioritizing related-party relief over estate preservation.
- (vii) The Respondents assert the transaction dated 17.05.2018 falls beyond the two-year relevant period for section 43, necessitating invocation of section 66 only upon proving the entire business was fraudulently orchestrated from inception—a threshold unmet as operations were ostensibly genuine, with losses incidental rather than engineered. They emphasize no specific malafides in state of mind, requiring direct proof of fraudulent purpose for the "business of the corporate debtor" under section 66(1), and that the 2018 timing predates any twilight zone per the balance sheet as on 31.03.2019 in Annexure R7, negating due diligence lapses. The auditor's tentative phrasing of "possibility" and "may" in Annexure B, coupled with the post-report submission of the memorandum on 10.07.2021, invokes



the disclaimer's provision for revision based on new evidence. However, section 66(1) targets discrete conducts with defraudatory elements, not wholesale business taint; the hawala narration, absent dealings, and related-party discharge collectively infer intent without needing inception-wide proof. The balance sheet's positive net worth on 31.03.2019 does not preclude emerging risks from 2018 actions contributing to 2019-2020 erosion. The disclaimer is acknowledged, yet unaltered facts—no payments received, notices refused—sustain the findings post-review.

- (viii) We note that the tri-partite MOU is dated 17.05.2018 and on the same day journal entries are passed. The effect of the MOU was to transfer receivables from a related party to an unrelated party and the respondents could not provide a business justification. It appears that this entry was passed so as to avoid collection from a related party later on and appears to be a transaction undertaken as the directors were apprehensive of there being no reasonable prospect of avoiding the CIRP in the case of the Corporate Debtor. There was no justification of the transaction. Later, the CD issued legal notice to Rakesh Folding Works for collection, but the question is for what consideration the receivable was shifted to this person.

- (ix) We are in full agreement with the Applicant that this was a fraudulent transaction. Thus, Issue No. (iii) is



answered in the affirmative. The transfer is declared fraudulent under section 66(1) and avoided. The Respondents are jointly and severally liable to restore Rs. 55,67,289 to the estate.

10. Re. Issue No. (iv):

- (i) The fixed asset registers of the Corporate Debtor records instruments, machinery, and a weight scale with an aggregate book value of Rs. 2,25,916.36 as on 31.03.2019, when these were purportedly sold to Bhikhabhai Shamjibhai for a cash consideration of Rs. 18,500, classified as scrap. This disposal crystallized an immediate loss of Rs. 2,07,416.36 to the Corporate Debtor's balance sheet. The accompanying sales invoice, an internal document, omits essential particulars: no evidence of weighing at a registered centre, absence of GST invoicing, no photographs of the assets' condition, incomplete buyer contact details, no vehicle or transportation records, and unspecified place of supply, all in contravention of GST and accounting norms.
- (ii) The ledger adjustments post-sale transferred the full book values from individual asset heads to a consolidated machinery account before the scrap disposal entry, streamlining the removal but highlighting the non-arm's length nature. No depreciation was charged on these assets in prior years, suggesting prolonged obsolescence, yet the sale's documentation deficiencies—treating three distinct items as a single unit



without quantity parameters or valuation basis—raise red flags for undervaluation, as noted in the forensic audit in Annexure B.

- (iii) Sections 45 and 49 of the Code define undervalued transactions as voluntary transfers for significantly less than fair value, either without intent to defraud or with such purpose, reversible within one or two years preceding the Insolvency Commencement Date, depending on relatedness. Here, the sale on 31.03.2019 falls within the two-year window for related-party scrutiny under section 49, and the gross undervalue—over 90% below book—without independent appraisal or market benchmarking, qualifies as significantly inadequate consideration.
- (iv) Complementarily, section 66(1) captures fraudulent asset disposals diminishing creditor recovery. The Supreme Court in **Anuj Jain IRP, Jaypee Infratech Ltd. v. Axis Bank Ltd., (2019) ibclaw.in 62 SC**, decided on 10.12.2019, reiterated that transactions lacking fair value and transparency, especially pre-insolvency, evince fraudulent purpose through circumstantial harm to the estate. The potential association of the buyer with the Respondents' network, inferred from the transaction's opacity, amplifies this.
- (v) The Respondents maintain no fraud occurred, as the machinery lay unused and rusted for six years, justifying



scrap classification and prudent divestment per their reply dated 10.07.2021. The non-charging of depreciation underscores non-usability, and the sale realised Rs. 18,500 in cash, averting further holding costs. However, even accepting obsolescence, standard scrap protocols—registered weighing, GST compliance, detailed invoicing—were flouted, enabling potential undervaluation to favour the buyer. The forensic red flags in Annexure B, including mismatched item descriptions, persist unaddressed, tilting towards non-commercial disposal within the relevant period.

- (vi) Thus, Issue No. (iv) is answered in the affirmative. The sale is declared fraudulent under section 66(1), avoided. The Respondents are liable to contribute Rs. 2,07,416 to the estate.

11. Re. Issue No. (v):

- (i) The payments aggregate Rs. 2,48,29,973 disbursed to Anjani Corporation—a related party firm owned by the father of Respondent No. 2—alongside Satyam Chemicals and Patel Enterprises, purportedly against purchase invoices for goods. Flow charts in Annexure B trace these outflows directly from unsecured loans of Rs. 2,79,64,139 availed from financial institutions in 2018-2019, indicating systematic fund routing. Invoices for related-party transactions lack HSN codes, buyer addresses, truck numbers, and mode of delivery—details



present in unrelated-party invoices—suggesting paper-only dealings without physical goods transfer.

- (ii) For Anjani Corporation specifically, the Jetpur premises used for alleged intra-state movements were not registered as an additional place of business post Notification No. 03/2019-Central Tax dated 29.01.2019, breaching GST compliance for input credit and movement verification. Demands for e-way bills and transport confirmations yielded none for Anjani, with notices returned refused. Satyam Chemicals and Patel Enterprises share ownership, addresses, and phone linkages to Paragbhai Kapadia, with invoices mirroring formats sans dispatch details for large intra-state volumes, per Annexure B's tabulated red flags.
- (iii) Section 66(1) targets business conduct intended to defraud creditors through asset diversion. The round-tripping—loans raised for chemical/textile operations funnelled to related entities via sham invoices—fits this. The Hon'ble NCLAT in ***Royal India Corporation Ltd. v. Mr. Nandkishor Vishnupant Deshpande (RP) and Ors., (2024) ibclaw.in 304 NCLAT***, decided on 11.05.2024, recoveries were mandated under section 66 against the involved parties for such diversions.
- (iv) The Respondents counter with intra-premise transfers at Anjani's shared storage, negating transport needs, broad-purpose loan sanctions permitting chemical/textile uses



without violation, and historical two-way ledgers in Annexure R8 evidencing bona fide relations predating loans. Gujarat's Notification dated 19.09.2018 exempts intra-city e-ways, with bills issued for Rs. 50,000 per Annexure P4 (e.g., Rs. 15,72,940 transaction), and no GST objections raised. A 2018-2019 net sales excess of Rs. 13,85,200 to Anjani per Annexure P5, alongside missing Annexure-A invoices in Annexure B, undermines the audit's reliability. Jetpur registration post-29.01.2019 is irrelevant for earlier deals, and unrelated parties like Raghuvir received proofs acknowledged in the application. However, partial e-ways cover select transactions but omit Anjani's core flows; intra-premise claims falter without additional registration for GST-tracked movements; net excess ignores purchase-side siphoning traced via FIFO in flow charts; evidentiary gaps in Annexure-A reinforce rather than refute the paper nature, with historical ties not excusing contemporaneous diversions amid distress.

- (v) The Respondents are unable to justify the transactions undertaken with Anajani Corporation. The goods of the CD and Anjani Corporation were stored at the same place. The Respondents could not justify the business necessity of these transactions. Further, they could not demonstrate about what happened to the goods purchased from Anajani Corporation. In absence of this information, we tend to agree with the Applicant that the



transaction was undertaken to take out money from the CD to defraud the creditors.

- (vi) Thus, Issue No. (v) is answered in the affirmative. The transactions are declared fraudulent under section 66(1) and avoided. The Respondents are jointly and severally liable for Rs. 2,48,29,973.

12. Re. Issue No. (vi):

- (i) The FY 2019-2020 product-wise analysis in Annexure B discloses purchases of agricultural items—Lasan (0712/0713), Chana, Pigeon Peas, Wheat—totalling Rs. 6,09,72,000 against sales of Rs. 3,80,62,166 over 45 days from 21.08.2019 to 05.10.2019, yielding a gross loss of Rs. 2,29,09,834. Benchmarking against contemporaneous market rates shows systematic over-purchases (e.g., Chana above prevailing prices) and under-sales (below rates), with cycles of high-buy-low-sell repeats absent storage facilities. This non-core trading—deviating from the Corporate Debtor's established chemical intermediates model—lacks godown records or rental proofs in stock registers per the additional affidavit's Annexure D.

- (ii) Section 66(2) fastens personal liability on directors for contributions where, pre-Insolvency Commencement Date, they knew or ought to have known insolvency was unavoidable yet omitted due diligence to curb creditor losses. The "twilight zone" here initiates with 2018-2019



losses escalating into 2019 defaults, rendering further erosion foreseeable.

(iii) The Respondents ascribe losses to perishable commodities' volatilities—humidity/rainfall spoiling garlic, demand-supply mismatches, quality/shelf-life variances—per reply dated 10.07.2021, with dealings via unrelated parties, banking channels, and GST filings. Ledger in Annexure R9 reveals seven omitted profitable Chana transactions, suggesting a selective audit focus. Benchmarking from investing.com carries disclaimers on non-real-time accuracy, with variances (Rs. 2-14/kg for Chana/Wheat) within normal fluctuations for commodities. Detailed scrutiny limited to Wheat/Chana, ignoring Lasan/Pigeon Peas, questions the methodology. No evidence beyond Annexure B supports claims. However, the repetitive cycles without inventory backing, in a non-aligned sector amid Rs. 2,79,64,139 borrowings, indicate contrived erosion; omissions adjusted still yield net undue losses; disclaimers noted, yet patterned deviations exceed routine, with silence on trading's ordinariness or funding source underscoring diligence lapse.

(iv) We also note that the Corporate Debtor was normally dealing in chemical products. Dealing in agricultural commodities was not a normal business of the CD. The Respondents have failed to demonstrate that the transaction was a genuine transaction. Due to these



facts and circumstances, we consider that these transactions of dealing in agricultural products was a fraudulent transaction.

- (v) Thus, Issue No. (vi) is answered in the affirmative. The losses are declared wrongful under section 66(2). The Respondents are personally liable to contribute Rs. 2,29,09,834.

13. In view of the findings on all issues, the application is allowed. The transactions totalling Rs. 45,69,500/- are declared and avoided as preferential under section 43 and fraudulent trading /wrongful trading of Rs.5,35,14,512/- under section 66. The Respondents are jointly and severally directed to contribute Rs. 5,80,84,012/- to the liquidation estate within 30 days from the date of this order, with interest at 12% per annum thereafter. The Liquidator is at liberty to take appropriate steps for the recovery of the said amount in accordance with law.

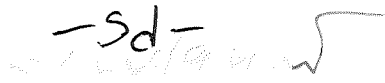
14. Any failure to comply with the present directions shall render the Respondents liable for penal consequences under the Code. In particular, such non-compliance may attract the provisions of Section 70 of the Code, which prescribes punishment for misconduct during the course of the



Corporate Insolvency Resolution Process, including reference to the Insolvency and Bankruptcy Board of India (IBBI) for further action against the Respondents in addition to such other consequences as may be permissible under law.

15. In terms of the above, Interlocutory Application i.e. **IA/511(AHM)2021** in C.P.(IB)/807(AHM)2019, is allowed and disposed of with no order as to costs.

16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.


SANJEEV SHARMA
MEMBER (TECHNICAL)

VP


SHAMMI KHAN
MEMBER (JUDICIAL)