



SL. No.4

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 04.04.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC) No.1819/2023, Cont.A.(IBC)/22/2023 in IA(IBC) No.1316/2023 in Company Petition (IB) No. 64/9/HDB/2023
NAME OF THE COMPANY	Tirumala Hills Asphalat Pvt Ltd
NAME OF THE PETITIONER(S)	GP Petroleums Ltd
NAME OF THE RESPONDENT(S)	Tirumala Hills Asphalat Pvt Ltd
UNDER SECTION	9 OF IBC

ORDER

IA (IBC)/1819/2023

Orders pronounced, recorded vide separate sheets. In the result, this Application is partly allowed.

Cont.A (IBC)/22/2023 in IA (IBC) No.1316/2023

Orders pronounced, recorded vide separate sheets. In the result, this Application is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, COURT-II

I.A (IBC) No. 1819 of 2023

IN

C.P (IB) No.64/09/HDB/2023

[Under Section 60(2) of Insolvency and Bankruptcy Code, 2016 and Regulation 35A of the CIRP Regulations, 2016 /w Rule 11 and 32 of the NCLT Rules, 2016]

IN THE MATTER OF M/s. TIRUMALA HILLS ASPHALT PVT. LTD.

Between:

Adinarayana Babji Kota

RP, M/s Tirumala Hills Asphalt Pvt Ltd
Regd office of the CD: Flat No.4,
H No. 5-8-29, 4th Floor,
Laxmi Sai Nilayam, Fathe Sultan Lane,
Hyderabad 500 001.
Address of the RP: 3-1-211 Upstairs,
Somasundaram Street, Secunderabad-500 003
Process-specific email: tirumalahillscirp@yahoo.com
Registered email of RP: kotababji@gmail.com

.... Applicant/Resolution Professional

Versus

1. **Mr. Kuragayala Lakshmipathi,**
1st Floor, Lakshmipathi Nilayam,
Officers Colony, Housing Board Colony,
Anantapur- 515001.
Email: tirumala20pvtltd@gmail.com

.....Respondent No. 1/R1

2. **Ms. Baineni Dhanasree,**
1/172, Ellutla, Anantapur-515425,
Andhra Pradesh.
Email: bainanidhanasree 1940@gmail.com

.....Respondent No. 2/R2

3. **Mr. Kayagurala Jagadeesh Babu,**



I.A (IBC) No. 1819 of 2023

IN

C.P (IB) No. 64/09/HDB/2023

Date of Order: 04.04.2025

5-146, Officers Colony, Anantapur-515 001.

Email: jagadeesh.babu582@gmail.com

.....Respondent No. 3/R3

4. **M/s Seven Hills Tar Petro Products LLP,**

Flat No.304, 1-4/8, Mahalakshmi Nivas,
RTC Workshop Road, Bhavanipuram,
Vijayawada-520012.

Email: tarpetroproducts6@gmail.com

.....Respondent No. 4/R4

5. **Mr. Kayagurala Purnesh Babu,**

Flat No.304, Relence Krishna, Hill Fort,
near Kalanjali, MLA Quarters,
Hyderabad-500029.

Email: purneshbabu@gmail.com

.....Respondent No. 5/R5

Date of Order: 04.04.2025

Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsels Present

For Applicant : Mr. Adinarayana Babjikota, Party in person

[PER: RAJEEV BHARDWAJ]

ORDER

1. The Application has been filed by the Resolution Professional of M/s. Tirumala Hills Asphalt Pvt. Ltd (**Corporate Debtor/CD**), under Section 66 of the Insolvency and Bankruptcy Code 2016 (**IBC**), seeking following reliefs:

- a. Direct the Respondent No's 1, 2, and 3 to make good Rs.89,20,000/- which was diverted to film making business, and direct them to deposit the same along with interest at reasonable rate into the bank account of the CD.



- b. Direct Respondent No.2, 3 and 4 to make good Rs.40,77,381.92 which was paid out to Respondent No.4 and direct them to deposit the same along with interest at reasonable rate into the bank account of the CD.
- c. Direct Respondent No. 1, 2, 3 and 5 to make good Rs. 54,45,500/- which was paid out to Respondent No.5 and direct them to deposit the same along with interest at reasonable rate into the bank account of the CD, after deducting Rs.4,00,000/- transferred to the bank account of the CD by Respondent No.5 on 22.09.2023. (The net amount recoverable under this transaction would be Rs.50,45,500/- plus interest.)
- d. Condone the delay in filing this IA beyond 130th day from the ICD for the reasons explained in the earlier part of this IA.

2. **Application:**

- (i) The CD was admitted to CIRP by an order dated 14.06.2023 and appointed the Applicant/Resolution Professional (**RP**) as Interim Resolution Professional (**IRP**). Subsequently, in the first Committee of Creditors (**COC**) meeting held on 10.07.2023, the Applicant was confirmed/appointed as RP.
- (ii) The Applicant has filed an I.A No. 1316 of 2023 under Section 19(2) of IBC due to non-cooperation from suspended management. This Tribunal vide order dated 12.09.2023 issued directions to suspended management.
- (iii) The suspended management provided only Tally data which led to delay in filing of Information Memorandum. Additionally, the suspended management failed to hand over the assets of the CD. Particularly:
 - a. Two tankers, location undisclosed.
 - b. Cheque books
 - c. Invoices of purchase of goods
 - d. Invoices of sale of goods
 - e. Invoices for purchase of plant & machinery (sold on 26.07.2022)



- f. Invoices for factory building construction (superstructure only, sold on 26.07.2022)
 - g. Invoices for tanker purchase
 - h. Agreement for film production
 - i. Minutes book
 - j. Correct postal address and contact details of the purchaser of the Plant & Machinery and Factory superstructure.
- (iv) The Applicant filed First Progress Report (I.A No. 1193 of 2023) on 12.07.2023 containing the prima facie opinion and it was taken on record vide order dated 14.06.2023.
- (v) Upon verification of Tally data, Bank Statement, Sale Agreement Plant & Machinery and factory, audited financial statements for the FY 2021-22 and Memorandum of Association (**MOA**), the Applicant identified avoidance of transactions which was discussed in second CoC meeting held on 09.08.2023.
- (vi) Due to the delay in providing the suspended management with an opportunity to respond, coupled with their alleged ill health, the present petition was filed beyond the 130th day stipulated under Regulation 35A of the NCLT Rules, commencing from the date of initiation of the insolvency proceedings.
- (vii) A sum of Rs. 1.84 crore was diverted, resulting in the Corporate Debtor's (**CD**) inability to settle dues owed to the Operational Creditor as per the Company Petition.
- (viii) The suspended management failed to file the Income Tax Returns for the fiscal year 2021-22, which were due by October 31, 2022.
- (ix) As of the date of filing this petition, the CD's bank account holds a balance of only Rs. 4.54 lakh, which was recovered from the impugned transactions.
- (x) The suspended management failed to provide details of the trade debtors, thereby obstructing the recovery of outstanding amounts for the CD. Additionally, they failed to submit invoices and bills for transactions conducted in the 2022-23 period, preventing the statutory audit, filings with the Ministry of Corporate Affairs (**MCA**), and compliance with the Income Tax filing requirements.



- (xi) The Applicant/RP has identified three impugned transactions totalling Rs. 1,84,42,881.92/-.

(xii) **Investments in KLP Movies**

- a. The Applicant contends that Rs. 89,20,000/- was paid from the CD's bank account to K. Lakshmipathi (R1/Respondent 1), a director of the CD since 31.12.2022, under the transaction titled "Investment in KLP Movies," with the description "Investment in KLP Movies with an expected life of at least 10 years." This transaction is recorded in the Tally data between 04.04.2022, and 02.03.2023 which is annexed to the application as Annexure 3.
- b. The MOA of the CD does not authorize such an investment, as the CD is solely engaged in the business of purchasing and selling bitumen/asphalt. Therefore, this amount should be recovered from R1.
- c. The CD was required to settle trade payables using trade receipts, retaining only the margin on the transactions. However, instead of fulfilling these obligations, the entire amount was diverted with the intent to defraud under Section 66(1) of IBC.

(xiii) **Diversion of Funds to R4**

- a. The Applicant refers to the ledger of Seven Hills Tar Petro Products LLP (R4) for the 2022-23 period, which shows a debit balance/receivable of Rs. 21,57,124.13/- as of March 31, 2023, from R4.
- b. The ledger of R4 for the 2021-22 period in the CD's books reflects a debit balance of Rs. 40,62,777.71/-. An amount of Rs. 19,20,257.79/- was nullified via a journal entry, which was never received. The opening balance as of April 1, 2021, was Rs. 10,66,090.25/-, which was adjusted on April 3, 2021.



- c. If it is presumed that some liability of the CD was assumed by R4, this cannot be accepted, as creditors are required to file their claims in the Corporate Insolvency Resolution Process (CIRP), and amounts are to be paid in accordance with Section 53 of the IBC.
- d. The CD holds only tangible assets, specifically two tankers, which are under hypothecation to HDFC Bank, with no other assets. The total receivables of the CD, as per the Tally data, are as follows:
- Mandli Narasimha Reddy under two ledgers- Rs. 59.15 Lakh.
 - R4 as per tally Rs. 21.57 Lakh.
 - R5 as per Tally Rs. 2.55 Lakh.
- e. The total receivables of the CD, as per Tally, amount to Rs. 110.56 lakh. Of this, Rs. 83.57 lakh is due from the aforementioned parties, while Rs. 26.69 lakh remains unaccounted for due to the suspended management's failure to provide data.
- f. R4 and R5 have been impleaded in the present Interim Application (**IA**), while Mandli Narasimha Reddy is impleaded in a petition under Section 45 of the IBC.
- g. Due to the absence of invoices, the Applicant is unable to verify the accuracy of the debtors recorded in the books.
- h. Adjustments in the ledger accounts and transfers from an unknown ledger labelled "Sundry Debtor" appear to constitute adjustments of actual transactions, with the exact amounts remaining undetermined.
- i. These adjustments were made to reduce the receivables from R4, and the true receivable from R4 is Rs. 40,77,381/-, not Rs. 21,57,124.13/-.
- j. It is noteworthy that R4 is a Limited Liability Partnership (LLP) in which R5, the son of R1, is the designated partner, and the wife of R1 is another designated partner.



- k. Intention behind these actions by the suspended management was to defraud and minimize the amount of payment/diversion, with R2 and R3 also being involved in the fraudulent activities.

(xiii) **Diversion of Funds to Respondent No. 5**

- a. The Applicant/RP asserts that no legitimate purchase or sales transactions occurred between the Corporate Debtor (CD) and Respondent No. 5 (R5). However, a review of the ledger account reveals multiple adjustments through journal entries, both debiting and crediting the account.
- b. The credit entries in the account should be disregarded as they pertain to obligations owed to other creditors, whereas the debit entries should also be nullified as they represent unwarranted payments. The total amount paid by the CD to R5 aggregates to Rs. 54,45,500/-.
- c. The funds disbursed by the CD to R5 comprise trade receipts that ought to have been utilized for settling liabilities towards operational creditors, with any resulting margin rightfully belonging to the CD.
- d. The Applicant/RP has identified through the tally records that the CD is entitled to receive Rs. 21,57,124.13 from Respondent No. 4 (R4) and Rs. 2,54,577.66 from R5. Despite multiple requests from the Applicant, R5 has remitted only Rs. 4,00,000/- to the CD's account. This partial remittance constitutes an implicit admission by R4 and R5 regarding the unauthorized diversion of funds.

3. Heard the Applicant/Resolution Professional and perused the entire records.

4. **Findings**

- (i) Before addressing the main issue, it is essential to first consider the point of limitation. The Applicant could not adhere to the timeline set forth in Regulation 35A of the Insolvency and Bankruptcy Board



of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which deals with the question of limitation. Regulation 35A specifies the timelines within which the resolution professional must form an opinion, make a determination, and apply to the Adjudicating Authority for appropriate relief. Specifically, these steps must be completed on or before the 75th, 115th, and 135th days from the Insolvency Commencement Date (ICD), respectively.

- (ii) However, this timeline is not mandatory. The Hon'ble NCLAT in ***Prasant Chandra Rath and Ors. v. Surya Kanta Satapathy (RP) and Ors. (2022) ibclaw.in 789 NCLAT***, observed that the requirement to approach the Adjudicating Authority within the 135-day period is directory and not mandatory.
- (iii) There were sufficient and legitimate reasons for not adhering to the timelines specified in Regulation 35A, particularly due to difficulties faced by the Applicant in obtaining the necessary documents from the suspended management. Despite specific directions, the documents were not provided, and the suspended directors are now facing contempt for their non-compliance.
- (iv) Regarding the alleged fraudulent transactions, Section 66 of the IBC addresses fraudulent or wrongful trading. It empowers the Adjudicating Authority to pass an order directing individuals who were knowingly involved in carrying on the business with the intent to defraud creditors, to contribute to the assets of the corporate debtor.
- (v) To establish a case under Section 66, the Applicant must demonstrate that certain transactions were carried out with the intent to defraud creditors. The onus is on the Applicant to present sufficient evidence to satisfy the Adjudicating Authority that the transactions were fraudulent.
- (vi) The following elements must be established under Section 66 of IBC:
 - (a) That the business of the company undergoing insolvency has been carried on with the intent to defraud the creditors of the company or for any other fraudulent purpose;



- (b) It is also relevant to note that the presence of director's deliberate attempt to deceive the creditors is also a necessary component under Section 66 of IBC.
- (vii) The Hon'ble NCLAT in the case of ***Regen Powertech Pvt. Ltd., represented by erstwhile RP Ebenezar Inbaraj v. M/s. Wind Construction Pvt. Ltd. (2022) ibclaw.in 793 NCLAT*** clarified that fraudulent trading requires a high degree of proof, and relevant facts and evidence must be presented unambiguously. The Applicant must provide tangible evidence to substantiate the claim of fraudulent intent. The Hon'ble Supreme Court, in ***Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020) ibclaw.in 06 SC***, emphasized the distinction between the elements of preferential, undervalued, and fraudulent transactions, noting that the inquiry for fraudulent trading is distinct from that of preferential and undervalued transactions. Specific material facts must be pleaded if a transaction is sought to be brought under the provisions of Sections 45/46/47 or Section 66 of the Code.
- (viii) In the present case, the Applicant/RP has alleged fraudulent transactions involving related parties. These allegations have not been countered by the Respondents, and the suspended directors have failed to provide the necessary documents, thereby hindering a full assessment of the corporate debtor's financial position. As a result, adverse inferences should be drawn against the Respondents for their failure to provide the requisite documentation.
- (ix) **Transactions with R1/KLP Movies:**
- (a) The Applicant refers to financial transactions involving Respondent No. 1, Mr. Kuragayala Lakshmipathi, the suspended director of the CD, amounting to Rs. 89,20,000/-. These transactions are reflected in the ledger extracts and bank statements under the description "Investment in KLP Movies with an expected life of at least 10 years."
- (b) A review of the Memorandum of Association (**MOA**) establishes that its primary business activities pertain to products such as Tar, Bitumen, Naphthalene etc. with no connection to film production. Therefore, the transaction in question—i.e. purported investment in films—falls outside the scope of the



Corporate Debtor's primary business activities as outlined in its MOA.

- (c) Moreover, the funds were transferred to Respondent No. 1, who has neither offered a justification nor furnished any supporting documentation regarding the utilization of the said amount.
- (d) In the absence of any explanation, and considering that the ultimate beneficiary of the transactions—amounting to Rs. 89,20,000/—is Respondent No. 1, Mr. Kuragayala Lakshmipathi, and that the investment bears no nexus to the Corporate Debtor's legitimate business activities, the transaction squarely falls within the ambit of Section 66 of the Insolvency and Bankruptcy Code, 2016.

(x) **Transactions with R4 & R5:**

- (a) The Respondent No. 5, Mr. K. Purnesh Babu, is the son of Respondent No. 1. Respondent No. 4, M/s. Seven Hills Tar Petro Products LLP, is a Limited Liability Partnership (**LLP**) in which Respondent No. 5 is a Designated Partner, along with the wife of Respondent No. 1, who also holds the position of Designated Partner.
- (b) The Applicant/RP has raised concerns regarding financial transactions amounting to **Rs. 95,22,881.92** (Rs. 40,77,381.92 + Rs. 54,45,500).
- (c) Upon reviewing the ledger extracts of Respondent No. 4, M/s. Seven Hills Tar Petro Products LLP, it has been found that the Corporate Debtor (CD) made certain payments to Respondent No. 4 via the CD's bank account. These ledger entries also include journal entries.
- (d) The ledger extract for the period from 01.03.2022 to 31.03.2022 reveals that the debit balance of Respondent No. 4 as of 01.03.2022 was Rs. 24,41,777.71/-. Subsequently, several payments were made by the CD to Respondent No. 4. Notably, a journal entry of Rs. 19,20,257.79 was recorded on 31.03.2022, reducing the liability of Respondent No. 4 by the same amount..



- (e) The ledger extract for the period from 01.04.2022 to 31.03.2023 reveals that two journal entries on 25.04.2022 and by the end of the financial year, i.e., 31.03.2023, the liability of Respondent No. 4 were reduced to Rs. 21,57,124.13/- from actual amount of Rs. 40,77,381.92/-.
- (f) Similarly, the CD made payments to Respondent No. 5 between 01.04.2021 and 31.03.2023, despite the absence of any corresponding purchases or sales. Additionally, multiple journal entries were made to reduce the liability of Respondent No. 5 to Rs. 2,54,577.66/- while the Respondent No. 5 benefitted an amount of Rs. 54,45,500/- from unwarranted transactions.
- (g) The Applicant has requested that Respondent Nos. 4 and 5 to repay amounts of Rs. 21,57,124.13/- and Rs. 2,54,577.66/- respectively, as projected in the ledgers. In response, Respondent No. 5 has made a partial payment of Rs. 4,00,000/-. As a result, the liability of Respondent No. 5 reduced from Rs. 54,45,500/- to Rs. 50,45,500/-.
- (h) All the transactions involved Respondent Nos. 4 and 5, who are both related parties to Respondent No. 1. It is well-established in law that the initial burden of proving fraudulent transactions rests with the Applicant. However, once a prima facie case has been established, the burden shifts to the Respondents to provide a rebuttal supported by credible evidence and Respondent Nos. 1, 4, and 5 failed to do so.
- (i) The suspended management has failed to furnish essential documents such as invoices, agreements, or any other relevant records that would enable a comprehensive evaluation of the Corporate Debtor's financial standing. In light of this, the Applicant / RP has relied on the available ledger accounts and bank statements to substantiate those transactions involving R1, R4, and R5 were fraudulent in nature.
- (j) Once the Applicant/RP demonstrates, through ledger accounts and related financial records, that funds have been withdrawn from the Corporate Debtor's accounts without a legitimate business purpose, the onus shifts to the Respondents to



provide evidence justifying these withdrawals and disproving the allegations. This principle is reinforced by judicial precedents, including **Hon'ble Supreme Court in Addagada Raghavamma & Anr. vs. Addagadda Chenchamma & Anr., AIR 1964 SC 136**, and **Anil Rishi vs. Gurubaksh Singh, 2006 (5) SCC 558**, which state that once a prima facie case is made, the Respondents must provide evidence to disprove the allegations.

- (k) Based on the material evidence submitted in the application, including the ledger accounts and bank statements (Annexures 6, 7, 8, and 9 of the application), and in the absence of counter-evidence from the Respondents, transactions involving Respondent Nos 1, 4, and 5 have remained unexplained. The lack of a legitimate business relationship between the Corporate Debtor and Respondents No. 4 or 5, coupled with lack of explanation of these transactions, clearly establishes that the transfers in question were fraudulent in nature and have caused prejudice to the creditors of the Corporate Debtor.

Final order

Thus, the transactions involving **R1, R4, and R5** are deemed fraudulent under Section 66 of the Insolvency and Bankruptcy Code. Since R2 and R3 were also directors during the relevant period, they too are liable for the fraudulent transactions. As directors, they had a fiduciary duty to act in the best interest of the corporate debtor and are therefore liable to refund the amounts misappropriated. Accordingly, it is directed that:

- a. R1, R2, and R3 are jointly and severally liable to contribute to the assets of CD an amount of **Rs. 89,20,000/-**, along with interest @ 7% within 30 days.
- b. All the Respondents (R1, R2, R3, R4, R5) are jointly and severally directed to contribute to the assets of CD, a total amount of **Rs. 91,22,881.92** (Rs. 40,77,381.92 + Rs. 50,45,500) with interest @ 7% within in 30 days to the Corporate Debtor.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)