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

**ITEM No.303**
**IA/1007(AHM)2023**
**In**
**CP(IB) 407 of 2020**

**Under Section 66 of IBC 2016**
**IN THE MATTER OF:**

Bank of India
Asset Recovery Management Branch

**........Applicant**

V/s

Mayur Baluhai Shah & Ors

**........Respondents**

**Order delivered on: 20/04/2026**

**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.

-SD-

**SANJEEV SHARMA**
**MEMBER (TECHNICAL)**

— SD —

**SHAMMI KHAN**
**MEMBER (JUDICIAL)**

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

**IA/1OO7 (AHM)/2023**
**In**
**C.P.(IB) No. 407 of 2020**

*[Application under Section 66 of Insolvency and Bankruptcy Code, 2016]*

**<u>In the matter of</u> :**

**Bank of India**
Asset Recovery Management Branch
1ST Floor Bol Building
28 SV Road Andheri West
Mumbai, 400058

**... Applicant/**
**Financial Creditor**

**VERSUS**

1. **Mayur Balubhai Shah**
E Road, Pali Hill-3, Tithal road Valsad,
Gujraat-396001
Email Id: shahmayur54@gmail.com

2. **Manoj Balubhai Shah**
1602, Samarpan Royale,
Off Western Express Highway,
Metro Mega Store, Magathane
Telephone Exchange, Borivali East,
Mumbai-400066
Email Id: manoj@maximaasystems.com

3. **Mahesh Balu Shah**
N-Road Pali Hill-3, Tithal road Valsad,
Gujraat-396001
Email Id: mahesh@maximaasystems.com

**... Respondents**
**Order Pronounced On: 20.04.2026**

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**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 | : Mr. Kuldeep Adesara, Adv. |
| For the Respondent | : Mr. Kunjal Dalal, Adv. for R-1 & R-2 |
| | : Mr. Harmish Shah, Adv. for R-3 |

**O R D E R**

***Per:* Bench**

**1.** The IA No.1007 of 2023 was filed on 07.09.2023 by the Applicant (earlier was filed by the Resolution Professional of the Corporate Debtor), vide Inward Dairy No. 1550 by Bank of India under Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as, "the **Code**") against the Erstwhile Management of the Corporate Debtor seeking following reliefs:-

*a. To declare the above said Transactions for Amount of INR 16.65 Crores as Fraudulent Transaction in terms of Section 66 of the Code, and direct Respondents to pay an amount of INR 16.65 Crores to the Corporate Debtor;*

*b. Any other order which this Hon'ble Tribunal may find fit in the facts and circumstances of the present case.*

**2.** The Applicant has placed the facts through the I.A. in the following manner: -

2.1 It is submitted that the Corporate Debtor, **Maximaa Systems Limited**, is a listed public company incorporated on 3rd August 1990 under the provisions of the Companies Act, 1956, bearing CIN No. L27100GJ1990PLC014129. The Corporate Debtor is engaged in the business of manufacturing of basic iron and steel. The registered office of the Corporate Debtor is situated at B-1, Yashkamal, Tithal Road, Valsad – 396001, India.

2.2 It is submitted that this National Company Law Tribunal, Ahmedabad Bench ("NCLT") was pleased to admit the application filed by the Corporate Applicant under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("Code") for initiation of the Corporate Insolvency Resolution Process ("CIRP") vide order dated 28th November 2022 ("CIRP Order"). Further, this Hon'ble Tribunal appointed Mr. Ajit Gyanchand Jain, bearing Registration No. IBBI/IPA-001/IP-P00368/2017-18/10625, as the Interim Resolution Professional ("IRP") for the Corporate Applicant. A copy of the admission order dated 28th November 2022 is annexed hereto and marked as "**Exhibit – 1**".

2.3 It is submitted that upon receipt of the CIRP Order dated 28th November 2022, the Interim Resolution Professional, in compliance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), made a Public

Announcement in Form A on 3rd December 2022, inviting claims from the creditors. The claims were received, CoC was constituted and the Interim Resolution Professional filed a report certifying the constitution of the Committee of Creditors along with proof of claims before this Tribunal on 21st December 2022. Later, Mr. Kamal Kishore Gurnani was appointed as the Resolution Professional.

2.4 It is submitted that the 2nd meeting of the Committee of Creditors ("CoC") was held on 1st February 2023, wherein the Interim Resolution Professional apprised the CoC of the CIRP developments, including publication of Form G for invitation of Expression of Interest and appointment of professionals; the CoC, with 100% voting share, approved the contents of Form G and EOI, ratified the CIRP costs incurred till date, and approved the fees of registered valuers as CIRP costs, while the issue of appointment of Transaction Auditor was deferred for consideration in the subsequent CoC meeting; a copy of the minutes of the said meeting is annexed hereto and marked as "**Exhibit – 4**".

2.5 It is submitted that the 3rd meeting of the Committee of Creditors ("CoC") was held on 17th February 2023, wherein the Resolution Professional ("RP") apprised the members of his appointment pursuant to order dated 1st February 2023, received on 4th February 2023, and proposed the appointment of a Transaction Auditor, placing quotations received from various auditors for

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consideration; thereafter, the CoC, with 100% voting share, approved the appointment of M/s. Raju & Prasad as the Transaction Auditor to examine and report transactions in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 for a period of 4.8 years prior to the Insolvency Commencement Date, i.e., from 1st April 2018 to 27th November 2022.

2.6 It is submitted that pursuant to its appointment, the Transaction Auditor conducted a transaction audit for the period commencing from 1st April 2018 to 27th November 2022 ("Transaction Audit Period") with a view to identify Preferential, Undervalued, Extortionate, Fraudulent and other avoidable transactions in terms of the provisions of the Insolvency and Bankruptcy Code, 2016, and thereafter submitted its Transaction Audit Report dated 3rd July 2023 to the Applicant; a copy of the said report is annexed hereto and marked as "**Exhibit – 6**".

2.7 It is submitted that based on the findings and expert opinion of the Transaction Auditor in the Transaction Audit Report, the Resolution Professional formed an opinion that certain transactions were preferential and fraudulent in nature; accordingly, the present Application is being filed by the Resolution Professional before this Tribunal under Section 66 of the Insolvency and Bankruptcy Code, 2016, seeking appropriate reliefs in respect of such fraudulent transactions, which are detailed hereinafter.

## FRAUDULENT TRADING / WRONGFUL TRADING AS SPECIFIED SECTION 66 OF THE IBC, 2016:

### A. RELATED PARTY TRANSACTIONS

i. It is submitted that upon verification of the financial statements and other available records of the Corporate Debtor for the Transaction Audit Period, it has been observed that the erstwhile management of the Corporate Debtor has siphoned off an amount of INR 12.1 Crore through its subsidiary/related entities; the details of such related parties/subsidiary companies of the Corporate Debtor are set out herein below:

| |
|---|
| **A. Subsidiary Company (direct)** |
| 1. Proyurveda Life Science Limited |
| **B. Enterprises in which key management personnel are interested (directly or indirectly)** |
| 1. Essenza Life Science Limited |
| 2. Maximaa Storage System LLP |
| 3. Maximus Storage Solution Private Limited |
| 4. Mapra Furniture Private Limited |
| 5. Essenza Nutrition Private Limited |

ii. It is submitted that the Corporate Debtor had made certain investments in its subsidiary/related entities; however, as per the Audited Financial Statements for FY 2019–20, the value of such investments was reflected as Nil. The details of the investments made in the subsidiary companies and related entities, as appearing in the Audited

Financial Statements of the Corporate Debtor for FY 2018–19 and FY 2019–20, are set out herein below:

**Non current Financial Asset- Investment for FY 2018-19:**

| Particulars | As at 31st March 2019 | As at 31st March 2018 |
|---|---|---|
| **Trade Investment (Unquoted)** | | |
| 1. **Investment in Equity Instruments** | | |
| **Investment in Subsidiary (Fully Paid up):** | | |
| a. Equity Share with Essenza Life Science Ltd | 2,090,000 | 2,090,000 |
| b. Equity Share with Proyurveda Lifescience Pvt. Ltd. | 18,000,000 | 18,000,000 |
| Total | **20,090,000** | **20,090,000** |

**Non current Financial Asset- Investment for FY 2019-20:**

| Particulars | As at 31st March 2020 | As at 31st March 2019 |
|---|---|---|
| **Trade Investment (Unquoted)** | | |
| 1. **Investment in Equity Instruments** | | |
| **Investment in Subsidiary (Fully Paid up) :** | | |
| a. Equity Share with Essenza Life Science Ltd | - | - |
| Less: Ind AS Adjustment | - | - |
| | - | - |
| **Fair Value** | | |
| b. Equity Share with Proyurveda Lifescience Pvt. Ltd. | - | - |
| Less: Ind AS Adjustment | - | - |
| **Fair Value** | - | - |
| Total | - | - |

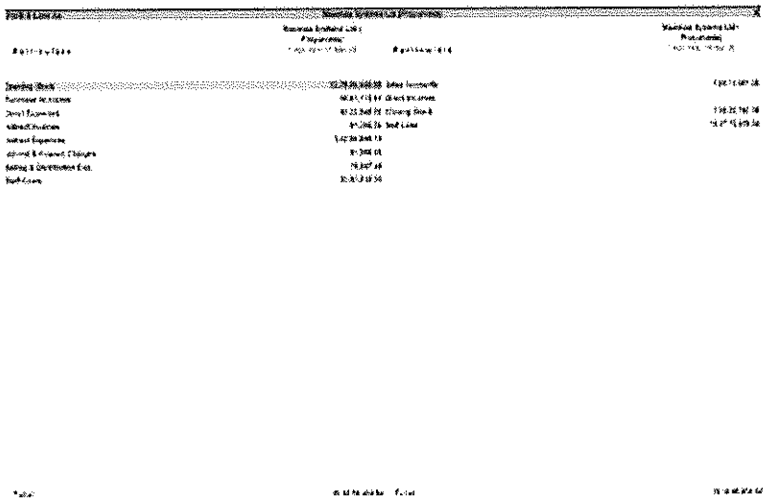
iii. It is further submitted that as per the books of accounts of the Proyurveda Division, the Corporate Debtor had effected sales to M/s Essenzaa Nutrition Private Limited amounting to Rs. 51.51 lakhs during the period from March 2020 to January 2021, and sales to M/s Proyurveda Lifescience Private Limited amounting to Rs. 13.72 lakhs during the period from July 2018 to March 2020; copies of the ledger statements of the said entities, as appearing in the books of accounts of the Corporate Debtor, are annexed hereto and marked as "**Exhibit – 7 (Colly)**".

**iv. Detail transactions of Proyurveda Division of Corporate Debtor**

It is submitted that the Corporate Debtor had sold stocks/materials to its related parties, namely M/s Essenzaa Nutrition Private Limited and M/s Proyurveda Lifescience Private Limited, at significantly lower values ranging between 50% to 75% as compared to the prices charged to other wholesale parties; the details of such transactions are set out herein below:

| Sr. No. | Particulars | Amount (In Crores) |
|---|---|---|
| 1. | Opening Stock of Proyurveda Division as on 01.04.2019 | 13.79 |
| 2. | Add: Purchases During the year (April 2019 to March 20) | 0.66 |
| 3. | Less: Closing Stock of Proyurveda as on 31.03.2019 | (1.98) |
| | Total | 12.47 |

It is further submitted that the aforesaid materials/stocks having an aggregate value of INR 12.47 Crores were sold for a gross consideration of only INR 1.80 Crores, resulting in substantial losses to the Corporate Debtor, as the discounts were extended on the cost price rather than the prevailing market price; the detailed working of the same is annexed as Annexure 1 to the Transaction Audit Report, and a screenshot of the relevant tally entries evidencing such transactions is set out herein below.



v. **Detail Transactions of Storage Division:**

It is submitted that as per the books of accounts of the Storage Division of the Corporate Debtor, sales amounting to INR 14.99 Crores, constituting approximately 99% of the total sales, were made to Maximus Storage Solutions Private Limited during the period from April 2018 to October 2019; the details of such transactions are set out herein below:

| Sr. No | Particulars | Amount (In Crore) |
|---|---|---|
| 1. | Opening Stock of Storage Division as on 01.04.2018 | 6.92 |
| 2. | Add: Purchases During the year (April 2018 to October 2019) | 9.50 |
| | **Total** | **16.42** |

The above materials having values of INR 16.42 Crores has been sold as lesser value mainly to Maximus Storage Solutions Private Limited (related entity) for INR 14.99 Crores.

vi. It is submitted that from the aforesaid transactions pertaining to the Proyurveda Division and the Storage Division of the Corporate Debtor, it is evident that closing stocks were transferred to related parties at significantly undervalued prices, and the erstwhile management of the Corporate Debtor, through such transactions with its related entities/subsidiary companies, has siphoned off an amount of approximately INR 12.1 Crores, thereby causing substantial losses to the Corporate Debtor.

**B. SHARE CAPITAL AND UNSECURED LOAN FROM DIRECTORS**

i. It is submitted by the Applicant that upon verification of the Audited Financial Statements of the Corporate Debtor for the relevant period, the funds introduced as share capital have been written off as bad debts and were not utilized for their intended purpose. The transactions carried out by the management appear to be in the nature of round-tripping of funds. A screenshot of the relevant Tally entry evidencing such write-off has been annexed in support.

ii. It is submitted by the Applicant that during FY 2018–19, the Corporate Debtor allotted 74,15,000 equity shares of face value Rs.2 each at an issue price of Rs. 8.25 per share, including a securities premium of Rs. 6.25 per share. It is further submitted that the said additional equity shares were allotted to the following persons as detailed below:

| Name of the Party | No of Equity Shares | Issued at Rs 2 Per Share | Total Amount |
|---|---|---|---|
| Fourth Axis Advisors LLP | 1,50,000 | 2 | 3,00,000 |
| Smita Impex LLP | 6,00,000 | 2 | 12,00,000 |
| Sandesh Shetty | 3,00,000 | 2 | 6,00,000 |

| Name of the Party | No of Equity Shares | Issued at Rs 2 Per Share | Total Amount |
|---|---|---|---|
| Yuti Kunal Jhaveri | 12,00,000 | 2 | 24,00,000 |
| Sanjeev Kumar Chadha | 2,40,000 | 2 | 4,80,000 |
| Manoj Shah | 15,00,000 | 2 | 30,00,000 |
| Jayshri Janak Jesrani | 4,25,000 | 2 | 8,50,000 |
| Manoj Shah | 15,00,000 | 2 | 30,00,000 |
| Amey Vasant Belorkar | 3,00,000 | 2 | 6,00,000 |
| Bindu Jain | 3,00,000 | 2 | 6,00,000 |
| Sonal Mehra | 6,00,000 | 2 | 12,00,000 |
| Rajindar Kaur Dhingra | 3,00,000 | 2 | 6,00,000 |
| **Total** | **74,15,000** | **2** | **1,48,30,000** |

iii. It is further observed that share application money amounting to Rs. 97 lakhs, pertaining to share warrants, was forfeited in March 2019 on account of non-receipt of the balance amount. In support thereof, the Applicant has annexed a screenshot of the relevant extract from the Annual Report for FY 2019–20.

MAXIMAA ANNUAL REPORT 2019-20

12 Equity Share Capital

| Particulars | As at March 31, 2020 Number | As at March 31, 2020 Amount | As at March 31, 2019 Number | As at March 31, 2019 Amount |
|---|---|---|---|---|
| **Authorised Share Capital**<br>Equity Shares of ` 2/- each fully paid up<br>(P/Y ` 2/- per share fully paid up) | 1010,00,000 | 2020,00,000 | 1010,00,000 | 2020,00,000 |
| **Issued, Subscribed and Paid up**<br>Equity Shares of ` 2/- each fully paid up | 580,01,255.00 | 1160,02,510.00 | 580,01,255.00 | 1160,02,510.00 |
| Share application money received against Share Warrants | | 0 | | 97,24,690 |
| | 580,01,255 | 1160,02,510 | | 1257,27,200 |

iv. The Applicant submits that the payment made to following parties from introduction of Share Capital during FY 2018.19 has been written off as bad debts on 01.04.2019:

| Sr. No | Particulars | Amount (In Lakhs) |
|---|---|---|
| 1. | Aakash Corporation | 24 |
| 2. | Hindustan Impex | 22 |
| 3. | Indu Vaibhav Jaywant | 15 |
| 4. | J K Textiles | 10 |
| 5. | Lemon Management Co | 10 |
| 6. | Mayur Traders | 10 |
| 7. | Shree Balaji Ent | 15 |
| | Total | 106 |

v. Thus, on the basis of the aforesaid transactions, it is observed that funds introduced as share capital have been written off as bad debts amounting to Rs. 1.06 Crores, indicating a malafide intent on the part of the erstwhile management of the Corporate Debtor.

**UNSECURED LOAN FROM THE DIRECTORS:**

i. Based upon the perusal of the Financial Statements of the Corporate Debtor starting for the Transaction Audit Period, it is observed that the details of unsecured loans from audited Financial Statement is provided as under:

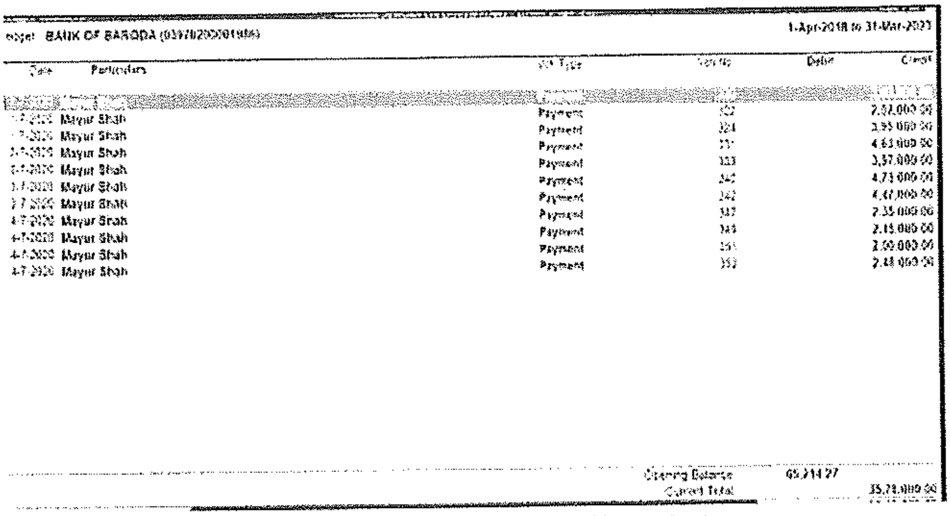
(Rs in Crores)

| Particulars | FY 2021-22 | FY 2020-21 | FY 2019-20 | FY 2018-19 | FY 2017-18 |
|---|---|---|---|---|---|
| Unsecured Loans | 1.49 | 1.49 | 2.05 | 0.64 | 1.92 |
| Total | 1.49 | 1.49 | 2.05 | 0.64 | 1.92 |

ii. It is pertinent to mention that from the above table, it is observed that unsecured loans availed from directors and other entities have been withdrawn from the business. The details of unsecured loans withdrawn by the promoters, along with the amounts paid to Mr. Mayur Shah (Erstwhile Director), are set out as under:

| Date | Particulars | Amount |
|---|---|---|
| 01-Jul-2020 | Bank Of Baroda (03970200001986) | 3,03,000 |
| 01-Jul-2020 | Bank Of Baroda (03970200001986) | 2,02,000 |
| 01-Jul-2020 | Bank Of Baroda (03970200001986) | 3,95,000 |
| 02-Jul-2020 | Bank Of Baroda (03970200001986) | 4,63,000 |
| 02-Jul-2020 | Bank Of Baroda (03970200001986) | 3,97,000 |
| 03-Jul-2020 | Bank Of Baroda (03970200001986) | 4,73,000 |
| 03-Jul-2020 | Bank Of Baroda (03970200001986) | 4,47,000 |
| 04-Jul-2020 | Bank Of Baroda (03970200001986) | 2,35,000 |
| 04-Jul-2020 | Bank Of Baroda (03970200001986) | 2,15,000 |
| 04-Jul-2020 | Bank Of Baroda (03970200001986) | 2,00,000 |
| 04-Jul-2020 | Bank Of Baroda (03970200001986) | 2,48,000 |
| | **Total** | **35,78,000** |

Screenshot of the tally entries for above mentioned transactions are attached as below:


Ledger: BANK OF BARODA (03970200001986) 1-Apr-2018 to 31-Mar-2021

| Date | Particulars | Vch Type | Vch No. | Debit | Credit |
|---|---|---|---|---|---|
| [illegible] | Mayur Shah | Payment | [illegible] | | [illegible] |
| [illegible] | Mayur Shah | Payment | [illegible] | | 3,95,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | 4,63,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | [illegible] |
| [illegible] | Mayur Shah | Payment | [illegible] | | 4,73,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | 4,47,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | 2,35,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | 2,15,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | 2,00,000.00 |
| [illegible] | Mayur Shah | Payment | [illegible] | | 2,48,000.00 |

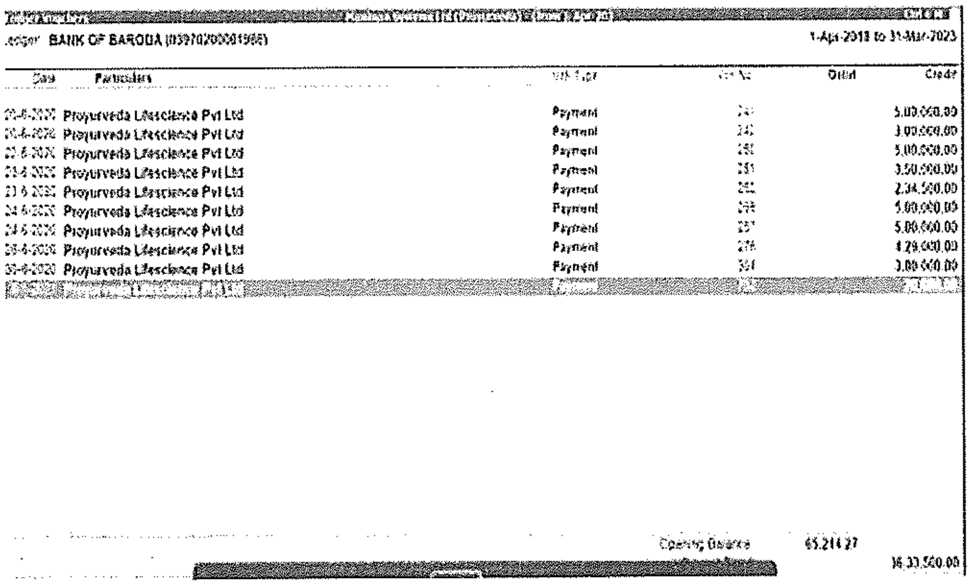
Opening Balance 65,214.27
Current Total 35,78,000.00

iii. It is further mention that the details of the amount paid to Proyurveda Lifescience Private Limited during FY 2020-21 is provided as under:

| Name of the Bank | Amount |
|---|---|
| Nkgsb Co-Op Bank Ltd | 10,000 |
| Nkgsb Co-Op Bank Ltd | 7,000 |
| Nkgsb Co-Op Bank Ltd | 5,000 |

| Name of the Bank | Amount |
|---|---|
| Bank Of Baroda (03970200001986) | 5,00,000 |
| Bank Of Baroda (03970200001986) | 3,00,000 |
| Bank Of Baroda (03970200001986) | 5,00,000 |
| Bank Of Baroda (03970200001986) | 3,50,000 |
| Bank Of Baroda (03970200001986) | 2,34,500 |
| Bank Of Baroda (03970200001986) | 5,00,000 |
| Bank Of Baroda (03970200001986) | 5,00,000 |
| Bank Of Baroda (03970200001986) | 4,29,000 |
| Bank Of Baroda (03970200001986) | 3,00,000 |
| Nkgsb Co-Op Bank Ltd | 15,000 |
| Nkgsb Co-Op Bank Ltd | 4,000 |
| Nkgsb Co-Op Bank Ltd | 8,000 |
| Bank Of Baroda (03970200001986) | 20,000 |
| **Total** | **36,82,500** |

Screenshot of the tally entries for above mentioned transactions are attached as below:



Ledger: BANK OF BARODA (03970200001986) 1-Apr-2018 to 31-Mar-2023

| Date | Particulars | Vch Type | Vch No. | Debit | Credit |
|---|---|---|---|---|---|
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 5,00,000.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 3,00,000.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 5,00,000.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 3,50,000.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 2,34,500.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 5,00,000.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 5,00,000.00 |
| [illegible] | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 4,29,000.00 |
| 30-6-2020 | Proyurveda Lifescience Pvt Ltd | Payment | [illegible] | | 3,00,000.00 |

Opening Balance 65,214.27

36,33,500.00

[illegible]

Ledger: NKGSB Co-Op Bank Ltd

1-Apr-2011 to 31-Mar-2021

| Date | Particulars | Vch Type | Vch No. | Debit | Credit |
| --- | --- | --- | --- | --- | --- |
| 27-4-2020 | Proyurveda Lifescience Pvt Ltd | Payment | 49 | | 15,000.00 |
| 2?-5-2020 | Proyurveda Lifescience Pvt Ltd | Payment | 109 | | 7,000.00 |
| 1?-6-2020 | Proyurveda Lifescience Pvt Ltd | Payment | 237 | | 5,000.00 |
| [illegible] | [illegible] | [illegible] | [illegible] | | [illegible] |
| 17-6-2020 | Proyurveda Lifescience Pvt Ltd | Payment | 413 | | 4,000.00 |
| 21-6-2020 | Proyurveda Lifescience Pvt Ltd | Payment | 452 | | 3,000.00 |
| | Opening Balance | | | 40,070.57 | |
| | Current Total | | | | 49,000.00 |

Thus, in view of the aforesaid transactions, it is submitted that funds have been siphoned off from the Corporate Debtor under false pretext, without any prior approvals or board resolutions.

Accordingly, the said transactions demonstrate the malafide intent of the erstwhile management to defraud the creditors of the Corporate Debtor and squarely fall within the ambit of Section 66 of the Code.

**C. VALUE OF PATTERN AND TRADE MARK OF THE CORPORATE DEBTOR HAS BEEN WRITTEN OF:**

i. It is submitted by the Applicant that, as per information provided by the directors, the Corporate Debtor had entered into an agreement with Dr. Reddy in FY 2011, under which the patent was valid only up to 2014. However, the Audited

Financial Statements reflect the patent at Rs. 1.12 Crores in FY 2019–20, which was subsequently written off to nil in FY 2020–21, indicating that the same was not written off in the year of its expiry.

ii. It is further submitted that, as per information provided by the directors, the Corporate Debtor had entered into an agreement with Adfac Laboratories Private Limited, wherein the value of the trademark and formulation was Rs. 16,000. However, the Audited Financial Statements for FY 2019–20 reflect the value of such assets at Rs. 1.01 Crores as on 01.04.2020, which were subsequently transferred to Essenzaa Nutrition Private Limited for Rs. 10 Lakhs, resulting in a loss of Rs. 90.84 Lakhs.

iii. Thus, in view of the aforesaid transactions, it is evident that the erstwhile management of the Corporate Debtor caused losses of Rs. 1.12 Crores and Rs. 0.9084 Crores to the Corporate Debtor. Accordingly, the said transactions appear to have been carried out with an intent to defraud the creditors and squarely fall within the ambit of Section 66 of the Code.

## D. TRADE RECEIVABLES WRITTEN OFF AS BAD DEBTS

i. The Applicant submits that based upon the bare perusal of the Audited Financials of the Corporate Debtor during the Transaction Audit Period, the Majority of the receivables outstanding as on 31st

March 21 has been written off as bad debts in FY 21-22. Details of the same has been provided as under:

| Sr. No. | Particulars | FY 2022-23 | FY 2021-22 | FY 2020-21 | FY 2019-20 |
|---|---|---|---|---|---|
| 1 | Trade Receivables | 0.629 | 0.6314 | 4.95 | 5.02 |

The details of the major parties involve in the Trade Receivables as available are as below:

| Name of the Party | Amount |
|---|---|
| Dav Enterprises (Jabalpur M.P) | 1,930 |
| Faithway Healthcare Pvt.Ltd | 940 |
| Panas Group of Companies (M.P) | 18,345 |
| Paplis Techq | 5,051 |
| Raval Trading Company | 13,220 |
| Saatvik Marketing & Sales (M.P) | 23,695 |
| Sara G Healthcare Pvt.Ltd | 6,709 |
| Sri Jadesiddeshwar Distributors (Karnataka) | 1,200 |
| Sri Kamakshi Associates | 14,541 |

| Name of the Party | Amount |
|---|---|
| Radha Madhav Corporation Limited | 38,67,635 |
| Highbury Safika Media Pty Ltd | 1,00,46,254 |
| Atharva Distributors (Ahmednagar) | 1,17,079 |
| Arihant Distributors (General) | 27,766 |
| 1Mg Technologies Pvt Ltd | 69,750 |
| Security Deposit (Gs1 India) | 3,000 |
| Staff- Advance | 61,606 |
| Confluence Solution - Advance A/C | 26,37,567 |
| Raj Enterprises | 2,94,69,788 |
| Apothecon Pharmaceuticals Pvt. Ltd. | 3,08,664 |
| Deposit - 9322764415+ | 20,661 |
| Deposit – Dgvcl | 4,99,172 |
| Pannaben Acharya - Rent Deposit – It | 1,50,000 |
| Rent Receivable | 2,43,360 |
| Scrap - Dies & Tools | 3,83,031 |
| **Total** | **4,79,90,963** |

ii. It is submitted that, out of the total transactions amounting to Rs. 4,79,90,963/-, except for transactions with Raj Enterprises (Rs. 2,94,69,788/-) and Radha Madhav (Rs. 38,67,635/-), the remaining amount of Rs. 1,46,53,540/- was carried out and written off fraudulently. Accordingly, the said transactions squarely fall within the ambit of Section 66 of the Code.

iii. Therefore, in view of the aforesaid transactions, it can be inferred that the same were carried out with an intent to defraud the creditors of the Corporate Debtor or for fraudulent purposes. A summary of each such transaction is set out as under:

| Sr. No | Particulars | Amount involved under fraudulent transactions (In Crores) |
|---|---|---|
| A | Related Party Transactions | 12.1 |
| B | Share Capital and Unsecured Loan from Directors | 1.06 |
| C | Value of Pattern and Trade Mark of the Corporate Debtor has been written of | 2.02 |
| D | Trade Receivables written off as Bad Debts | 1.47 |
| | **Total Amount** | 16.65 |

2.8 Thus, the aforesaid transactions are deeply prejudicial to the interest of the creditors of the Company and have indeed already caused severe harm and injury to the creditors at large.

2.9 It is submitted by the Applicant that the aforesaid transactions are highly suspicious and, based on the limited records available with the Transaction Auditor, squarely fall within the ambit of Section 66 of the Code.

2.10 It is further submitted that the said transactions appear to have been carried out with an intent to defraud the creditors of the Corporate Debtor, and the Respondents have failed in discharging their fiduciary duties towards the Company.

2.11 In view of the above, and in order to safeguard the interests of the creditors (including financial creditors), it is humbly prayed that this Tribunal be pleased to grant the reliefs as sought. The present application is bonafide and in the interest of justice.

3. The Respondent No. 1 and 2 filed **Affidavit in Reply** on 23.10.2023 vide Inward Diary No. D4159 denying various averments made in the Interlocutory Application. The contentions of the Respondent No. 1 & 2 are mentioned hereunder:-

3.1 The present Interlocutory Application has been filed by the Resolution Professional under Section 66 of the Insolvency and Bankruptcy Code, 2016, seeking to report fraudulent/wrongful transactions and to obtain appropriate reliefs against the Respondents herein.

3.2 The present IA was filed on 23.08.2023 and registered on 14.09.2023, as per the records available on the e-filing portal of the NCLT. The matter was first listed before the Bench on 22.09.2023, vide which directions were issued for issuance of notice to the Respondents to file their reply.

3.3 It is humbly submitted that the Respondents have filed two separate applications under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 for personal insolvency before the Hon'ble NCLT, Mumbai Bench.

3.4 Respondent No. 1 has filed C.P. (IB) No. 564(MB)/2023 before Court–II, filed on 05.05.2023 and registered on 04.07.2023. Respondent No. 2 has filed C.P. (IB) No. 562(MB)/2023 before Court–V, filed on 05.05.2023 and registered on 04.07.2023. Copies of the first orders dated 07.07.2023 in both matters are annexed as Annexure 'A' and Annexure 'B' respectively.

3.5 It is further submitted that pursuant to Section 96(1) of the Code, an interim moratorium has commenced from the date of filing of the said applications, whereby all legal actions or proceedings in respect of any debt are deemed to have been stayed. The relevant provision is reproduced herein below for ready reference.

Sec. 96 Interim Moratorium:-

*(1) When an application is filed under section 94 or section 95—*
*(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and*

*(b) during the interim-moratorium period—*

*(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*

*(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.*

3.6 In view of the aforesaid legal position, upon filing of applications by the Respondents under Section 94(1) of the Insolvency and Bankruptcy Code, 2016, the present proceedings, including the directions for filing of reply by the Respondents in the present IA, stand stayed.

3.7 In the aforesaid circumstances, it is humbly prayed that the proceedings in the present IA be stayed and no further orders be passed therein till the disposal of the applications filed by the Respondents under Section 94(1) of the Insolvency and Bankruptcy Code, 2016. It is further prayed that the Respondents be permitted to file their reply, if required, upon disposal of the said applications.

**4.** The Respondent No. 3 also filed an **affidavit-in-reply** on 01.02.2024 vide Inward Diary No. D892, denying all the contentions, facts and averments made in the memo of the application and further making following contentions: -

4.1 The answering Respondents submit that Regulation 35A of the Insolvency Resolution Process for Corporate Persons Regulations, 2016 mandates that an application under Section 66 be filed within 135 days from the commencement of CIRP. It is an admitted position that the present application has been filed beyond the prescribed period of 135 days, and therefore, the same is liable to be dismissed.

4.2 It is submitted that vide order dated 28.11.2022, the Adjudicating Authority admitted the Corporate Debtor into CIRP. The Applicant has thereafter filed the present application under Section 66 of the Code.

4.3 The answering Respondent submits that he has no personal knowledge of the transactions under scrutiny. It is stated that the affairs of the Company were managed by Mr. Manoj Shah, and the present Respondent was neither involved in the financial transactions nor in the day-to-day management of the Company. It is further submitted that due to internal issues, the Respondent had consciously remained disengaged from financial matters and was not part of the decision-making process of the Corporate Debtor.

4.4 It is submitted that the Respondent had duly responded to the observations raised in the Transaction Audit of Maximaa Systems Limited vide letter dated 05.07.2023 addressed to the Applicant. A copy of the said letter dated 05.07.2023 is annexed hereto and marked as Annexure R-1 to the present reply.

4.5 The Respondent No. 3 submits that the day-to-day affairs of the Corporate Debtor, Maximaa Systems Limited, were managed by Mr. Manoj Shah and Mr. Mayur Shah from the Mumbai office; further, it is stated that the factory at Dharampur was sealed by the Bank of India, which has taken physical possession of the property and dispossessed the workers, and therefore the exact stock position can be ascertained only by the Bank officials; a copy of the panchnama evidencing such possession by the Mamlatdar is annexed hereto as Annexure R-2.

4.6 It is submitted that the Transaction Auditor has overlooked a crucial aspect having material bearing on the assessment, resulting in an incomplete and inaccurate analysis of the transactions under review. It is therefore necessary that the auditor re-examines the records considering the said aspect; accordingly, the Respondent cannot be held responsible on the basis of such incomplete findings.

4.7 The contents of Para 9A(i) are denied. It is specifically denied that the present Respondent has siphoned off any amount of ₹12.1 Crores through its subsidiary/related entities. It is further submitted that Respondent No. 3 has never been appointed as a director or employee in the following entities, and therefore cannot be held liable for their transactions:

(a) Proyurveda Lifescience Limited,
(b) Essenza Lifescience Limited,
(c) Maximus Storage Solution Private Limited, and
(d) Essenza Nutrition Private Limited.

4.8 It is further submitted that no documentary proof has been produced by the Applicant in respect of any transactions pertaining to Maximaa Storage System LLP. It is also submitted that Mapra Furniture Private Limited is no longer in existence, and therefore, the Respondent cannot be held liable for any amounts received or transactions carried out with the said company.

4.9 With reference to Para 9A(ii), it is submitted that the allegations regarding investments in subsidiaries/related entities are denied, as the Applicant has no personal knowledge thereof. It is further submitted that the balance sheets as on March 2019 and March 2020 were not signed by the Respondent, and no cheque has been signed by the Respondent after 31.12.2019. Accordingly, it is evident that the

Respondent had no involvement in or knowledge of the affairs and operations of Maximaa Systems Limited.

4.10 It is further submitted that, in respect of the transactions of the Proyurveda Division, a detailed reply has already been provided by Respondent No. 1 at pages 153 and 154 of the application. The answering Respondent was not handling financial matters and due to internal issues, was never part of the active management of the Company.

4.11 It is submitted that the Applicant's case is primarily based on the alleged transfer of closing stock to related parties at undervalued prices. However, it is stated that the Bank had taken possession of the running factory, dispossessed the workmen, and the stocks remained within the premises, for which a panchnama was duly prepared. Accordingly, the Transaction Audit Report is based on mere assumptions, and the present application deserves to be dismissed.

4.12 With reference to Para (iii) under the head of unsecured loans, it is submitted that the Applicant has not attended any board meetings after 2017 and, therefore, has no personal knowledge of the amounts paid to Proyurveda Lifescience Private Limited or any other entity. It is further submitted that the Respondent has not signed any cheques in respect of payments made through NKGSB Co-operative Bank Limited and Bank of Baroda, and hence cannot be held liable for the said transactions.

4.13 It is further submitted that the answering Respondent has no knowledge of the agreement executed between the Corporate Debtor and Adfac Laboratories Private Limited, or of the subsequent transfer to Essenzaa Nutrition Private Limited.

4.14 It is also submitted that, as per the Transaction Audit Report, the patent granted by Dr. Reddy to Maximaa Systems Limited in 2011 had no value after 2014; in any event, the answering Respondent cannot be held liable in respect thereof.

4.15 It is further submitted that the answering Respondent has no knowledge of the transactions in question; however, with respect to trade receivables, a reply has already been furnished by Mr. Manoj Shah. It is pertinent to note that, as per the Transaction Audit Report itself, Raj Enterprise and Kirti Steel are related parties, and the amount transferred from M/s Kirti Steel to Raj Enterprise was not payable; even otherwise, an amount of Rs. 2,80,69,787/- remains payable to M/s Kirti Steel. Further submitted that in respect of Radha Madhav Corporation Limited, the NCLT has already passed an order of admission.

4.16 With reference to Para 9(iv), it is submitted that the answering Respondent has not availed any unsecured loan from the Company. It is categorically denied that any such transaction or financial arrangement exists, and it is reiterated that no unsecured loan has ever been taken by the Respondent from the Company.

4.17 It is further submitted that the forensic report is not done as per the accounting standard and only on the basis of the assumption of transaction audit entire report was prepared and therefore in absence of evidence the report cannot be taken in to account and therefore the application deserves to be dismissed. The transaction auditor had never given any enough opportunity for the explanation and just in hurry prepared the report Therefore the application deserves to be dismissed on this grounds alone.

**5.** The Affidavit of service was received dated 21.11.2023 vide Inward Dairy No. D 4575 in compliance of order dated 18.10.2023.

**6.** Further, Additional Affidavit in compliance to the order dated 22.11.2023 was taken into record dated 05.01.2024 vide inward dairy no. D 149.

**7.** That vide order dated 12.06.2024 amendment of the parties was carried out wherein, The RP was substituted by Bank of India/Financial Creditor as the Applicant.

**8.** That vide order dated 24.03.2026 it is observed that Respondent Nos. 1 & 2, in their reply dated 23.10.2023, raised a plea that proceedings stood stayed in view of the interim moratorium under Sections 94/95 of the Code.

Pursuant to the query of this Tribunal vide order dated 17.12.2024, an additional reply was filed on 15.04.2025. The said additional reply, though taken on record, travels beyond and is contrary to the original stand. Accordingly, the same is ignored.

**9.** No precedent has been placed by the Respondents in support of their plea concerning applicability of Section 96 of the Code. On the contrary, the Hon'ble NCLAT in ***Praful Satra and Ors. v. Vaishali Patrikar*** (2025) has held that interim moratorium under Sections 96/124 does not bar proceedings under Section 66, as such proceedings are not in respect of any debt but relate to fraudulent and wrongful trading. In view thereof, the plea of interim moratorium is rejected as devoid of merit.

**10.** We have heard Ld. Counsel for the Applicant, Ld. Counsel for the Respondent No.1 to 3, and have carefully examined the pleadings, affidavits, reply, annexures, and the oral arguments advanced by both sides. The following Issues are framed for determination: -

1. Whether the present application is maintainable in view of the objections relating to limitation (Regulation 35A) and interim moratorium under Section 96 of the Code?
2. Whether the transactions carried out by the erstwhile management of the Corporate Debtor constitute fraudulent or wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016?
3. Whether the sale of assets/stock and dealings with related parties at undervalued prices amount to siphoning of funds and are liable to be declared fraudulent?
4. Whether the Respondents (erstwhile directors/promoters) can be held liable for the alleged fraudulent transactions and directed to contribute to the assets of the Corporate Debtor?

**OBSERVATION OF THE TRIBUNAL ARE AS UNDER:-**

**11.** **Findings on Issue No.1:** Whether the present application is maintainable in view of the objections relating to limitation (Regulation 35A) and interim moratorium under Section 96 of the Code?

11.1 Regulation 35 A is been reproduce herein below as:-

***Regulation 35A: Preferential and other transactions.***
*[**35A.** (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.*

*(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date [2][**]*
*[(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirtieth day of the insolvency commencement date.]*
*[(3A) The resolution professional shall forward a copy of the application to the prospective resolution applicant to enable him to consider the same while submitting the resolution plan within the time initially stipulated.]*
*[(4) The creditors shall provide to the resolution professional, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc.]*

11.2 The Respondents have contended that the present application under Section 66 of the Code has been filed beyond the period of **135 days from the insolvency commencement date**, as prescribed under Regulation 35A, and is therefore liable to be dismissed as time-barred.

11.3 At the outset, it is pertinent to note that Regulation 35A prescribes timelines for the Resolution Professional to:

i. Form an opinion (within 75 days),
ii. Make a determination (within 115 days), and
iii. File an application (within 135 days)

with respect to avoidable transactions.

11.4 The timelines prescribed are intended to ensure expeditious completion of the CIRP process, but cannot be construed in a manner that defeats substantive justice. The Code is a beneficial legislation aimed at maximization of value and protection of creditors' interests.

11.5 The object of Section 66 is to identify and undo fraudulent or wrongful conduct. Such proceedings are in the nature of **value recovery actions**, and cannot be defeated merely on account of procedural delay, particularly when the delay is attributable to the process of audit, investigation, and collation of financial data.

11.6 In the present case, the Transaction Auditor was appointed by the Committee of Creditors, and the report was submitted on 03.07.2023. The filing of the present application is based on the findings of the said report. The time consumed in conducting a detailed transaction audit cannot be held against the Resolution Professional.

11.7 The Hon'ble NCLAT in ***Aditya Kumar Tibrewal (RP) v. Om Prakash Pandey and Ors., (2022) ibclaw.in 278 NCLAT*** decided on 06.04.2022) and in ***Prasant Chandra***

***Rath v. Surya Kanta Satapathy (RP), (2022) ibclaw.in 789 NCLAT*** decided on 30.09.2022) has held that the timeline under Regulation 35A is directory and not mandatory, as rigid enforcement would defeat the purpose of identifying avoidance transactions dependent on factors beyond the RP's control. Similar views have been expressed in ***Jagdish Kumar Parulkar RP v. Vinod Agarwal Ex-Director, (2023) ibclaw.in 132 NCLAT*** decided on 16.02.2023 and ***Tenny Jose v. Prathap Pillai (RP), (2023) ibclaw.in 495 NCLAT***, decided on 04.08.2023) emphasising that the provision imposes a duty but allows flexibility.

11.8 The Respondents have failed to demonstrate any prejudice caused due to the alleged delay in filing the application. In view of the above, this Authority holds that the objection raised by the Respondents on the ground of limitation under Regulation 35A is **untenable and liable to be rejected**.

11.9 The Respondents have further contended that they have filed applications under Section 94 of the Code for initiation of personal insolvency proceedings, and consequently, an **interim moratorium under Section 96** has come into effect, thereby staying all proceedings in respect of any debt against them, including the present application.

11.10 This Authority has examined the scope and applicability of Section 96, which provides that upon filing of an application under Section 94 or 95:

i. An interim moratorium shall commence in respect of all debts, and

ii. Any legal action or proceeding in respect of any debt shall be deemed to have been stayed.

11.11 However, the crucial question is whether proceedings under Section 66 fall within the ambit of "legal action in respect of any debt".

11.12 In this regard, this Authority observes as under:

1. **Nature of proceedings under Section 66**

Proceedings under Section 66 are not recovery proceedings simpliciter, but are in the nature of avoidance and accountability proceedings, aimed at:

i. Determining fraudulent or wrongful conduct;

ii. Fixing responsibility on persons involved; and

iii. Directing contribution to the assets of the Corporate Debtor.

Such proceedings are **in rem** and are intended to augment the asset pool of the Corporate Debtor for the benefit of all creditors.

2. **Distinction between 'debt recovery' and 'fraud adjudication'**

   The interim moratorium under Section 96, in Part III of the IBC, 2016 applies to proceedings for recovery of debts owed by the personal debtor. However, the present application under section 66 of the Code, in Part II of the Code, is not for recovery of a personal debt, but for adjudication of fraudulent conduct and restoration of value wrongfully diverted. Section 96 protects individual's estate and it does not protect him from Section 66 liability as a director of the Company in which the assets of the company have been reduced or diverted to defraud the creditors.

3. **No direct claim as creditor against personal debtor**

   The Applicant, in the present proceedings, is not seeking enforcement of a personal debt against the Respondents. It is not a proceedings against the individual to recover his/her debt, but is invoking statutory powers under Section 66 to seek contribution of money from the delinquent directors in the assets of the Corporate Debtor on account of fraudulent trading.

4. **Object and purpose of the Code** Accepting the Respondents' contention would defeat the very purpose of Section 66, as persons involved in fraudulent conduct could escape liability merely by initiating personal insolvency proceedings.

11.13 This Authority is of the view that a harmonious construction of Sections 66 and 96 would require that:

i. Section 96 protects personal debtors from coercive recovery actions;

ii. Section 66 ensures accountability for fraudulent conduct affecting the Corporate Debtor.

Both provisions operate in distinct fields and cannot be interpreted in a manner that renders either provision otiose.

11.14 The Hon'ble NCLAT in ***Praful Satra and Ors. v. Vaishali Patrikar*** (2025) has held that interim moratorium under Sections 96/124 does not bar proceedings under Section 66, as such proceedings are not in respect of any debt but relate to fraudulent and wrongful trading. In view of the foregoing discussion, this Adjudicating Authority holds as under:

i. The objection regarding limitation under Regulation 35A is **not sustainable**, as the timelines prescribed therein are directory in nature and do not bar the filing of an application under Section 66;

ii. The interim moratorium under Section 96 does **not apply** to proceedings under Section 66, as the present application is not a proceeding for recovery of a debt, but one for adjudication of fraudulent conduct and restoration of value to the Corporate Debtor.

Accordingly, this Authority is of the considered opinion that the present application is **maintainable in law**, and the objections raised by the Respondents on the grounds of limitation and interim moratorium are hereby **rejected**.

**12.** **Findings on Issue No. 2:** Whether the transactions carried out by the erstwhile management of the Corporate Debtor constitute fraudulent or wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016?

12.1 We state below the chronology of events denoting the material facts leading to the filing of the present Application, as filed in the Application and available on record.

| Para No. | Material facts |
|---|---|
| **1A.** | That the Corporate Debtor had availed various credit facilities from the sole Financial Creditor namely Bank of India for carrying on its business activities from time to time. The said facilities were secured by charge over the movable and immovable assets of the Corporate Debtor and further supported by personal guarantees of the promoters/directors of the Corporate Debtor. |
| **1B.** | The Corporate Debtor had obtained a loan facility of **Rs. 19.91 Crores on 30.01.2014** from the Applicant Bank and the Bank had created charge over the assets of the Corporate Debtor to secure the aforesaid debt. |
| **1C.** | That owing to persistent defaults and non-payment of the dues of the Financial Creditor, the account of the Corporate Debtor was classified as **Non-Performing Asset on 30.06.2015**. The Corporate Debtor and its management were fully aware of the said classification and continuing defaults. |
| **1D.** | That thereafter the Applicant Bank issued demand notice dated **31.07.2015** under Section 13(2) of the SARFAESI Act, 2002 demanding an amount of **Rs. 20,33,55,877/-** from the Corporate Debtor. The said notice clearly reflected the deteriorating financial condition of the Corporate Debtor and imminent recovery proceedings. |
| **1E.** | That subsequently another notice dated **20.01.2018** under Section 13(2) of the SARFAESI Act, 2002 was issued by the Applicant Bank claiming an amount of **Rs. 27,12,42,334/-**, followed by possession notices dated **10.04.2018** and **19.04.2018** under Section 13(4) of the SARFAESI Act for taking possession of secured assets. |
| **1F.** | That despite full knowledge of the aforesaid outstanding liabilities and coercive measures initiated by the Financial Creditor, the Erstwhile Management of the Corporate Debtor failed to preserve the value of the assets of the Corporate Debtor and instead entered into several suspect transactions with related parties and connected entities. |
| **1G.** | That during the transaction audit period commencing from **01.04.2018 to 27.11.2022**, the Applicant claimed that the Corporate Debtor/Respondents caused diversion / depletion of assets aggregating to **Rs. 16.65 Crores**, including undervalued sales of stock, routing of sales to related parties, write-off of receivables, and withdrawal of funds under questionable heads. |
| **1H.** | It has been claimed that the impugned transactions commenced immediately after lender enforcement proceedings had intensified in **April 2018**, thereby clearly showing that the Respondents knew or ought to have known that there existed no reasonable prospect of avoiding insolvency of the Corporate Debtor. |
| **1I.** | That instead of minimizing losses to the creditors, the Respondents continued to dissipate the assets of the Corporate Debtor and caused |

| Para No. | Material facts |
|---|---|
| | grave prejudice to the sole Financial Creditor. The said acts squarely fall within the ambit of fraudulent trading / wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016. |
| **2.** | That the Hon'ble National Company Law Tribunal, Ahmedabad Bench was pleased to admit the application for initiation of Corporate Insolvency Resolution Process filed by the Corporate Applicant vide order dated **28th November 2022**). |

12.2 Section 66 of the code is been reproduce as:-

Sec. 66 : Fraudulent trading or wrongful trading

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

*(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to* make such contribution to the assets of the corporate debtor as it may deem fit, if—

*(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and*

*(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.*

*1[(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub- section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]*

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

12.3 At the outset, it is pertinent to note that Section 66 of the Code empowers this Authority to pass appropriate orders where it is established that the business of the Corporate Debtor has been carried on with an intent to defraud creditors or for any fraudulent purpose, or where the directors knew or ought to have known that there was no reasonable prospect of avoiding insolvency and failed to exercise due diligence.

12.4 From the material available on record, particularly the Transaction Audit Report dated 03.07.2023, it emerges that multiple transactions undertaken during the relevant period exhibit a pattern indicative of siphoning of funds and diversion of assets:

**a) Undervalued Related Party Transactions**

i. It is observed that the Corporate Debtor had entered into transactions with related parties such as *Essenzaa Nutrition Private Limited*, *Proyurveda Lifescience Private Limited*, and *Maximus Storage Solutions Private Limited*, wherein goods and materials were sold at prices significantly lower than the prevailing market value, in certain cases ranging between **50% to 75% below the normal rates**.

ii. Further, materials having an aggregate value of approximately **Rs. 12.47 Crores were sold for a consideration of merely Rs. 1.80 Crores**, thereby causing substantial loss to the Corporate Debtor. Such transactions, being neither at arm's length nor supported by any commercial justification, clearly indicate an intent to divert value to related entities.

**b) Concentration of Sales to Related Entities**

i. It is further noted that a substantial portion of sales (approximately **99%**) from the Storage Division was made to a single related entity, namely *Maximus Storage Solutions Private Limited.* The disproportionate concentration of transactions with related parties, coupled with undervaluation, reinforces the inference of preferential and fraudulent conduct.

**c) Siphoning and Round-Tripping of Funds**

i. The record further reveals that funds introduced as share capital were subsequently written off as bad debts, without any cogent explanation or supporting documentation. This raises serious concerns regarding **round-tripping of funds** and misuse of corporate structure for non-genuine transactions.

ii. Additionally, withdrawals of unsecured loans by promoters and payments to related entities without proper approvals or board resolutions indicate lack of transparency and breach of fiduciary duties.

**d) Write-off of Assets and Intangible Properties**

i. It is also observed that valuable assets, including patents and trademarks, were either written off or transferred at grossly undervalued prices. For instance, assets reflected at over **Rs. 1 Crore** in the financial statements were disposed of for a fraction of their value. Such conduct cannot be termed as prudent business decision-making and appears to be a deliberate attempt to diminish the asset base of the Corporate Debtor.

e) **Write-off of Trade Receivables**

i. A significant portion of trade receivables was written off as bad debts without adequate justification, and the same appears to be selectively done. This further indicates an attempt to camouflage diversion of funds under the guise of accounting adjustments.

12.5 The Respondents have primarily contended that:

i. The Transaction Audit Report is based on assumptions;
ii. Certain Respondents were not involved in day-to-day management;
iii. The transactions lack supporting evidence of fraud

12.6 However, this Authority finds that the Respondents have failed to provide any substantive documentary evidence to rebut the specific findings of the Transaction Auditor. Mere denial, without cogent material, cannot displace the detailed analysis reflected in the audit report.

12.7 Further, directors of a company are entrusted with fiduciary duties, and cannot evade liability merely by claiming lack of involvement, particularly when the transactions occurred during their tenure.

12.8 For invoking Section 66, it is not necessary to establish fraud beyond reasonable doubt as in criminal proceedings; rather, the standard is one of **preponderance of probabilities**. The cumulative effect of the transactions, their pattern, timing, and lack of commercial rationale must be considered.

12.9 In the present case, the following factors are clearly established:

i. Transactions with related parties at gross undervaluation;
ii. Diversion and siphoning of funds;
iii. Absence of bona fide business justification;
iv. Erosion of asset value to the detriment of creditors;
v. Failure of directors to act with due diligence.

12.10 In view of the foregoing analysis, this Adjudicating Authority is of the considered opinion that the transactions carried out by the erstwhile management of the Corporate Debtor were not in the ordinary course of business, but were executed with an intent to reduce the asset base or funds of the Corporate Debtor for granting benefits to related parties and defraud the creditors and siphon off funds through related entities as soon as they came to know, as stated in the chronology of events, that there was no reasonable prospect of avoiding the commencement of the CIRP in respect of the corporate debtor.

12.11 Reliance was put upon the case of ***Anuj Jain Interim Resolution vs Axis Bank Limited*** on 26 February, 2020 wherein it was stated that:-

Relevant Para....

> *"It is submitted that even though creation of third party security is a normal practice, the creation of every third party security cannot be always deemed to have been done in the ordinary course of business; that such 'ordinary course' has to be determined under the circumstances when such transactions were entered into; and, considering that JIL was declared NPA and had defaulted on its indebtedness to some of its lenders, securing of JAL's indebtedness under such circumstances cannot be construed to have been done in the ordinary course of business of the corporate debtor JIL....."*

Accordingly, the impugned transactions **squarely fall within the ambit of "fraudulent trading" and "wrongful trading" as contemplated under Section 66 of the Insolvency and Bankruptcy Code, 2016.**

**13.** **Findings on Issue No. 3:** Whether the sale of assets/stock and dealings with related parties at undervalued prices amount to siphoning of funds and are liable to be declared fraudulent?

13.1 At the outset, it is apposite to note that while examining allegations of fraudulent transactions, this Authority is not merely required to assess individual transactions in isolation, but to consider the **cumulative effect, pattern, timing, and surrounding circumstances** in which such transactions were undertaken. The commercial substance of the transaction must prevail over its form.

**A. Analysis of Transactions – Proyurveda Division**

From the records placed on file, it is observed that the Corporate Debtor, through its Proyurveda Division, effected substantial sales to related entities, namely *Essenzaa Nutrition Private Limited* and *Proyurveda Lifescience Private Limited.*

The following aspects emerge:

i. The goods were sold at prices significantly lower than those charged to independent third-party buyers;
ii. Discounts ranging between **50% to 75%** were extended without any substantiated justification;
iii. The pricing was not based on prevailing market value or any recognized valuation methodology.

13.2 More crucially, materials having an aggregate value of approximately **Rs. 12.47 Crores** were sold for a consideration of only **Rs. 1.80 Crores**, thereby resulting in a direct and substantial diminution of the asset base of the Corporate Debtor. This Authority finds that such transactions are not only commercially imprudent but are also indicative of deliberate undervaluation.

**B. Transactions of Storage Division**

A similar pattern is discernible in the Storage Division, wherein:

i. Sales amounting to approximately Rs. 14.99 Crores, constituting nearly 99% of total sales, were made to a single related entity, namely Maximus Storage Solutions Private Limited;

ii. The materials, having a higher intrinsic value, were transferred at comparatively reduced consideration.

Such overwhelming concentration of business dealings with a related party, to the exclusion of independent buyers, cannot be said to be a normal business practice. The absence of diversification of clientele and exclusive routing of transactions through related entities raises serious doubts as to the bona fides of such dealings.

**C. Lack of Arm's Length and Commercial Justification**

This Authority notes with concern that:

i. No board resolutions, approvals, or internal authorizations justifying such pricing decisions have been placed on record;

ii. No valuation reports or independent assessments supporting the discounted pricing have been produced;

iii. There is no material evidencing that such transactions were undertaken in the ordinary course of business.

iv. Transactions between related parties must necessarily adhere to the principle of arm's length, ensuring that the Corporate Debtor is not prejudiced. However, in the present case, the transactions appear to have been structured solely for the benefit of related entities, at the expense of the Corporate Debtor and its creditors.

v. The Respondents have not come out with any plausible explanation to justify why a large number of transactions were undertaken that affected the assets/net worth of the Corporate Debtor and resulted into benefits to related parties.

**D. Inference of Siphoning and Diversion of Funds**

a) The cumulative analysis of the aforesaid transactions reveals a consistent and systematic pattern:

i. Transfer of valuable assets at artificially suppressed prices;

ii. Receipt of grossly inadequate consideration;

iii. Routing of transactions through entities having close nexus with the erstwhile management.

b) Such conduct leads to an irresistible conclusion that the differential value between the actual worth of the assets and the consideration received has been diverted and siphoned off, thereby depleting the resources of the Corporate Debtor.

c) The concept of "***siphoning of funds***" need not always be established through direct evidence; it can be inferred from the surrounding circumstances and the pattern of transactions, particularly where there is no plausible commercial explanation.

**E. Fiduciary Duties of Directors and Breach Thereof**

a) The directors and promoters of a company are under a fiduciary obligation to act in the best interests of the company and its stakeholders. They are expected to exercise due care, diligence, and good faith in all business decisions.

b) In the present case, the conduct of the erstwhile management demonstrates:

i. A failure to safeguard the assets of the Corporate Debtor;

ii. A conscious decision to transact at undervalued prices;

iii. A breach of fiduciary duties owed to the creditors.

c) Such actions cannot be justified as mere business decisions or commercial misjudgments, but rather point towards deliberate misconduct.

13.3 The Respondents have sought to contend that:

i. The Transaction Audit Report is based on assumptions;
ii. The stock remained in possession of the Bank;
iii. Certain Respondents were not involved in day-to-day affairs.

13.4 However, this Authority finds that:

i. The Transaction Audit Report is based on financial records, ledger entries, and audited statements;
ii. The Respondents have failed to produce any documentary evidence to rebut the specific findings;
iii. No alternate explanation or justification for the undervaluation has been provided.

13.5 It is a settled position that **mere denial without substantiation cannot displace documentary evidence**. Further, the plea of non-involvement cannot absolve directors of liability, particularly when the transactions occurred during their tenure.

13.6 For a transaction to be declared fraudulent, it is sufficient to establish that it was carried out with an intent to defraud creditors or lacked bona fide commercial purpose. The standard of proof is that of **preponderance of probabilities**, and not proof beyond reasonable doubt.

13.7 In the present case, the following factors stand established:

i. Transactions with related parties at gross undervaluation;
ii. Lack of arm's length dealings;
iii. Absence of commercial justification;
iv. Resultant loss to the Corporate Debtor;
v. Enrichment of related entities.

These factors, taken cumulatively, clearly satisfy the ingredients of fraudulent conduct.

13.8 In light of the foregoing discussion, this Adjudicating Authority is of the considered view that the sale of assets/stock and dealings with related parties at significantly undervalued prices were not undertaken in the ordinary course of business, but were designed to siphon off funds and divert value from the Corporate Debtor.

13.9 The impugned transactions demonstrate a clear pattern of **value erosion, preferential treatment to related entities, and breach of fiduciary duties**, thereby causing grave prejudice to the interests of the creditors.

Accordingly, this Authority holds that the said transactions are **fraudulent in nature** and are liable to be declared as such under the provisions of the Insolvency and Bankruptcy Code, 2016.

**14. Findings on Issue No.4:** Whether the Respondents (erstwhile directors/promoters) can be held liable for the alleged fraudulent transactions and directed to contribute to the assets of the Corporate Debtor?

14.1 At the outset, it is pertinent to note that Section 66 of the Code empowers this Adjudicating Authority to pass orders against persons who were knowingly parties to the carrying on of the business of the Corporate Debtor with intent to defraud creditors or for any fraudulent purpose.

14.2 Further, in cases of wrongful trading, liability may be fastened where it is established that:

i. The directors knew or ought to have known that there was no reasonable prospect of avoiding insolvency; and

ii. They failed to exercise due diligence in minimizing potential losses to creditors.

14.3 Thus, the provision contemplates **lifting of the corporate veil** and imposing **personal liability** upon those responsible for fraudulent or wrongful conduct.

14.4 From the records, it is evident that the Respondents were **erstwhile directors/promoters** of the Corporate Debtor during the relevant period when the impugned transactions were undertaken.

14.5 The material on record demonstrates that:

i. The Respondents were in control of the affairs and management of the Corporate Debtor;

ii. The transactions with related parties were executed during their tenure;

iii. No evidence has been produced to show that such transactions were undertaken without their knowledge or authority.

14.6 In corporate jurisprudence, directors cannot escape liability merely by attributing responsibility to other individuals when they collectively form part of the decision-making body of the company.

14.7 This Authority finds that the impugned transactions, including:

i. Sale of assets at grossly undervalued prices;

ii. Diversion of funds through related entities;

iii. Write-off of assets and receivables;

iv. Withdrawal of unsecured loans and questionable financial dealings;

Were not isolated or inadvertent acts, but formed part of a systematic pattern of conduct.

14.8 Given the scale, frequency, and nature of these transactions, it is implausible that the same could have been carried out without the **knowledge, consent, or active participation** of the Respondents.

14.9 The doctrine of "**constructive knowledge**" also applies, wherein directors are deemed to be aware of the financial affairs of the company, especially in matters involving substantial financial transactions.

14.10 Directors occupy a fiduciary position and are duty-bound to:

i. Act in good faith;
ii. Exercise due care and diligence;
iii. Protect the interests of the company and its creditors, especially during financial distress.

14.11 In the present case, the conduct of the Respondents demonstrates:

i. Failure to act in the best interest of the Corporate Debtor;
ii. Preferential treatment to related entities;
iii. Active depletion of the asset base of the company.

Such actions amount to a **clear breach of fiduciary duties** and cannot be justified as mere business decisions.

14.12 The Respondents have contended that:

i. They were not involved in day-to-day affairs;

ii. They had no knowledge of the transactions;

iii. Certain financial statements were not signed by them.

14.13 However, this Authority is not persuaded by such submissions, for the following reasons:

i. No documentary evidence has been produced to substantiate disengagement from the affairs of the company;

ii. The Respondents continued to hold positions of authority during the relevant period;

iii. The transactions in question are of such magnitude that ignorance cannot be presumed.

14.14 It is a settled principle that **directors cannot take shelter under the plea of lack of knowledge**, particularly when they have failed to exercise due diligence expected of them.

14.15 The record clearly establishes that:

i. The Corporate Debtor suffered substantial financial losses due to undervalued transactions;

ii. Assets were dissipated and value was diverted to related parties;

iii. Creditors were prejudiced as the asset pool available for resolution/liquidation was significantly reduced.

14.16 The material facts and chronology of events noted in this order demonstrate that the transactions identified in this Application as fraudulent trading or wrongful trading took place after the account of the Corporate Debtor became irregular and was declared NPA and the directors knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a CIRP in respect of such a corporate debtor.

14.17 There exists a direct nexus between the conduct of the Respondents and the losses suffered by the Corporate Debtor. The depletion of assets cannot be attributed to market forces or business exigencies, but to deliberate acts of mismanagement and diversion of funds of the corporate debtor.

14.18 In light of the above findings, this Authority is satisfied that:

i. The Respondents were knowingly parties to the fraudulent conduct and they were knowing or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of the Corporate Debtor in this case and this finding by this Adjudicating Authority is reasonable because multiple transactions were undertaken which defrauded creditors and the Respondents did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor

14.19 Therefore, conditions of section 66(2) are satisfied. Accordingly, the Respondents, being Directors of the Corporate Debtor are liable to make contributions to the assets of the Corporate Debtor.

14.20 The objective of such direction is not punitive alone, but also **restorative**, to bring back the value that was wrongfully diverted.

14.21 In view of the foregoing analysis, this Adjudicating Authority holds that the Respondents, being erstwhile directors/promoters of the Corporate Debtor, were actively involved in and/or had knowledge of the fraudulent transactions carried out during the relevant period.

14.22 The Respondents have failed to discharge their fiduciary duties and have contributed to the depletion of the assets of the Corporate Debtor through transactions that were not in the ordinary course of business and were detrimental to the interests of the creditors.

Accordingly, this Authority is of the considered opinion that the Respondents are **liable** under Section 66 of the Insolvency and Bankruptcy Code, 2016 and they are jointly and severally directed to **contribute to the assets of the Corporate Debtor** to the extent of the losses caused by their actions as discussed in this Application.

**15.** In view of the foregoing findings and discussions on Issue Nos. 1 to 4, this Adjudicating Authority is satisfied that the Respondents were knowingly parties to the fraudulent and wrongful trading carried out in the affairs of the Corporate Debtor and are liable under Section 66 of the Insolvency and Bankruptcy Code, 2016 in following terms:-

i. The transactions carried out by the erstwhile management of the Corporate Debtor, as detailed in the present application, are hereby declared as fraudulent trading and wrongful trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016.

ii. The Respondent Nos. 1 to 3, being erstwhile directors/promoters of the Corporate Debtor and having been found to be knowingly parties to such transactions, are hereby held liable under Section 66 of the Code.

iii. The Respondents are jointly and severally directed to contribute an amount of **INR 16.65 Crores** to the assets of the Corporate Debtor, within a period of 30 days from the date of this order.

iv. In the event of failure to comply with the above direction within the stipulated period, the Applicant is at liberty to take appropriate steps in accordance with law for recovery and enforcement of this order.

v. The objection raised by the Respondents with regard to limitation under Regulation 35A and applicability of interim moratorium under Section 96 is hereby rejected.

**16.** Accordingly, the IA No. 1007 (AHM) of 2023 is **allowed**. No order as to costs.

**17.** The Registry is directed to communicate a copy of this order to the parties concerned forthwith.

—— SD ——

**SANJEEV SHARMA**
**MEMBER (TECHNICAL)**
SS

—— SD ——

**SHAMMI KHAN**
**MEMBER (JUDICIAL)**