

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 390/JPR/2019**  
**In CP No. (IB)- 17/7/JPR/2018**

**IN THE MATTER OF:**

**M/S RELIANCE COMMERCIAL FINANCE LTD.**

**...FINANCIAL CREDITOR**

**VERSUS**

**M/S MAXIMUM SYNTHETICS PVT. LTD.**

**...CORPORATE DEBTOR**

**MEMO OF PARTIES**

**IA No. 390/JPR/2019:**

**M/S MAXIMUM SYNTHETICS PVT. LTD.**

*Through Liquidator Mr. Satyendra Prasad Khorania*  
402, 4<sup>th</sup> Floor, OK Plus DP Metro,  
Opp. Pillar No. 94, New Sanganer  
Road, Jaipur- 302019 (Rajasthan)

**...Applicant**

**VERSUS**

**MR. SHIV RATAN CHANDAK**

*(Erstwhile Director)*

134, Ambaji Market, Gangapur  
Choraha, Bhilwara- 311001  
(Rajasthan)

**...Respondent No. 1**

**MR. KAILASH CHANDAK**

*(Erstwhile Director)*

5, Surendra Bhawan New Housing  
Board, Shastri Nagar, Bhilwara-  
311001 (Rajasthan)

**...Respondent No. 2**

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FOR THE APPLICANT(S) : Amol Vyas, Adv.

**Order Pronounced On: 22.02.2024**

**ORDER**


**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This present Application bearing *IA No. 390/JPR/2019* has been filed by *Mr. Satyendra Prasad Khorania*, Resolution Professional ('Applicant'/ 'Resolution Professional') of *M/s Maximum Synthetics Pvt. Ltd.* ('Corporate Debtor') under Section 66 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') for declaring the transactions as mentioned in the Application as Fraudulent Transaction and for directions to the Respondents to reverse the Transactions as mentioned therein.
2. This Adjudicating Authority vide order dated 17.05.2019 had admitted the application filed by *Reliance Commercial Finance Limited* ('Financial Creditor') under Section 7 of Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor and as a consequence thereof, appointed Mr. Rajiv Sharma, as Interim Resolution Professional ('IRP'). Later on, vide order dated 12.07.2019, *Mr. Satyendra Prasad Khorania* was appointed as the RP ('RP') as approved by the CoC. Consequently, an order for Liquidation was passed by this Authority on 09.02.2021 and *Mr. Satyendra Prasad Khorania* was appointed as the Liquidator.

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3. The present application has been filed by the Resolution Professional on the set of facts mentioned in the Application. The Resolution Professional appointed *M/s H Mittal & Co.* to conduct Transaction Audit of the Financial Statement and books of the account of the Corporate Debtor to identify the transactions under Section 43, 45, 49, 50 and 66 of the Code. The RP on various occasions requested the Suspended directors to provide complete books of accounts, however, owing to the non-cooperation the Transaction Audit was limited to the records available i.e. tally data for the financial year 2017-18 and audited financial Statement as on 31.03.2017.
4. The Respondents have failed to either appear before this court or extend their co-operation as required by the Applicant for Liquidation of the Corporate Debtor in consonance with the provisions of the law. Due to non-cooperation in proceedings initiated under Section 95 of IBC against the Respondents also, Bailable Warrants were issued against the Respondents multiple times but the Respondents chose to appear in other proceedings through their counsel, hence, it was observed that the Respondents are wilfully absconding from the present proceedings. Therefore, ex-parte proceedings were initiated against the Respondents.
5. To inspect the various transactions under the aforesaid sections, the Resolution Professional wrote a letter to the VAT & GST Dept. and obtained the copies of the returns filed by the Corporate Debtor before the



commencement of the CIRP. The following documents have been reviewed by the Auditor:

- a) *Audited Financial Statements as provided by the RP.*
- b) *Tally data as provided by RP.*
- c) *Public documents from the MCA portal.*
- d) *Bank statements as provided by the Resolution Professional.*
- e) *VAT Returns received by the RP from VAT Authorities.*
- f) *Bills of various other related firms found during our personal visit to factory premises of Corporate Debtors.*

6. The Transaction Auditor has identified the following transactions under Section 66 of IBC:

6.1. *FRAUDULENT PURCHASES FROM BASIL POWERTEK PVT. LTD:*

6.1.1. It is mentioned that as on 01.04.2016, the balance of the Debtor i.e. *Basil Powertek Pvt. Ltd* stood at Rs. 99,41,263/- (Rupees Ninety-Nine Lakhs Forty-One Thousand Two Hundred and Sixty Three Only). Further, during the financial year 2016-17, the Corporate Debtor paid a sum of Rs. 95,25,000/- (Rupees Ninety-Five Lakhs Twenty-Five Thousand Only) and received a sum of Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousand Only) from the Debtor. Hence, to close the account of the Debtor, the Corporate Debtor had passed an entry for purchase of Finished Fabrics of Rs. 1,88,16,263/- (Rupees One Crores Eighty-Eight Lakhs Sixteen Thousand Two Hundred and Sixty Three Only) on 31.03.2017 whereas the NIC

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Code along with the MOU/AOA of Debtor shows the object of the company is manufacturing and dealing in electronic components.

6.1.2. There was one more account containing the same name in the books, having transactions in continuance to the debtor account. On 31.03.2017, there was purchase of Rs. 34,76,553/- (Rupees Thirty-Four Lakhs Seventy-Six Thousand Five Hundred and Fifty-Three Only) and sales of Rs. 35,61,600/- (Rupees Thirty-Five Thousand Sixty-One Lakhs Six Hundred Only) after 31.03.2017, which shows that the entries have been undertaken to close the account of Debtor.

6.1.3. As per the returns available with the Transaction Auditor, the purchase shown in VAT return is only Rs. 28,07,733/- (Rupees Twenty-Eight Lakhs Seven Thousand Seven Hundred and Thirty-Three Only). The Corporate Debtor had passed the entry in Journal Voucher but not in purchase voucher. Hence, it shows that the entries have been passed to increase the sale figure of the Corporate Debtor to attain Cash Credit Limit from the Bank.

## 6.2. FRAUDULENT TRANSACTIONS FROM PRAJESH SYNTAX:

6.2.1. On 01.04.2015, the Debtor namely, *Prajesh Syntax* had a balance of Rs. 6,76,42,571/- (Rupees Six Crores Seventy-Six Lakhs Forty-Two Thousand Five Hundred and Seventy-One Only) in the books of the Corporate Debtor. During the Financial Year 2016-17,

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the Corporate Debtor has passed the following 4 entries of Finished Fabric sale return which is reiterated below:

<i>Date</i>	<i>Particular</i>	<i>Amount</i>	<i>Remarks</i>
30.04.2016	Finish Sale Return	1,39,69,040 (cr.)	Sales Return
31.05.2016	Finish Sale Return	2,76,13,465 (cr.)	Sales Return
30.06.2016	Finish Sale Return	1,57,50,238 (cr.)	Sales Return
31.07.2016	Finish Sale Return	1,03,09,774 (cr.)	Sales Return
<b>Total</b>		<b>6,76,42,517</b>	

6.2.2. It has been contended that there is no address of the Debtor herein in the books of accounts of the Corporate Debtor and when the Transaction Auditor tried to search its name online, no details were found. The aforesaid entries have been done in the books of accounts to show more inventory than the actual.

6.2.3. Further, as per VAT returns, there is only sale return of Rs. 4,93,630/- (Rupees Four Lakhs Ninety Three Thousand Six Hundred and Thirty Only) during the period 01.10.2016 to 31.12.2016. Hence, the sales returns as tabulated above were not actually incurred but only passed to increase the stock of Corporate Debtor and write-off old Debtors, which enhances the drawing power of the Corporate Debtor by fabricating books of accounts.

### 6.3. TRANSACTIONS WITH MAXIMA TEXTILES:

6.3.1. It is submitted that the Debtor i.e. *Maxima Textiles* is a related party and is mentioned as one of the Debtors in the books of the Corporate Debtor. *Maxima Textiles* is proprietorship concern of

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*Mr. Shiv Ratan Chandak*, who was the erstwhile director of Corporate Debtor. It is mentioned that during the year 2016-17, there was sale and purchase of Rs. 2,44,69,092/- (Rupees Two Crores Forty-Four Lakhs Sixty-Nine Thousand and Ninety-Two Only) from the Corporate Debtor on 05.01.2017 and 03.02.2017 respectively.

6.3.2. On year end i.e. 31.03.2017, an adjustment entry has been passed for the amount of Rs. 99,99,999/- (Rupees Ninety-Nine Lakhs Ninety-Nine Thousand Nine Hundred and Ninety-Nine Only) settling the amount with *BRC Fashion Pvt. Ltd.* which is the related party of Corporate Debtor as *Taruna Chandak W/o Shiv Ratan Chandak* is a Director in the said company. The entries were done to increase the amount of Debtor in the month of January 2017 and secondly, to increase in amount of stock in month of February 2017.

#### 6.4. *DIFFERENCE IN PHYSICAL STOCK AND STOCK IN BOOKS OF ACCOUNTS:*

6.4.1. The Transaction Auditor examined the stock value in the books of accounts of the Corporate Debtor was Rs. 32,02,91,326/- (Rupees Thirty-Two Crores Two Lakhs Ninety-One Thousand Three Hundred and Twenty-Six Only) as on 31.03.2017 as per audited financial statements. The stock calculation after 31.03.2017 is tabulated below:

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<i>Particulars</i>	<i>Amount</i>
<i>Stock as on 31.03.2017 as per audited books of accounts</i>	<i>32,02,91,326/-</i>
<i>Add: Purchases made between 01.04.2017 to 11.07.2019 as per tally data provided</i>	<i>2,00,53,299/-</i>
<i>Less: Sales made between 01.04.2017 to 11.07.2019 as per tally data provided</i>	<i>4,22,63,363/-</i>
<b><i>Closing Stock as on 11.07.2019</i></b>	<b><i>29,80,81,262/-</i></b>

*While doing the above calculation the applicant have not taken any profit margin.*

6.4.2. However, during the visit to the factory, the valuation of the stock available in the factory premises is in some lacs only. It was also found that huge number of sales invoices of *M/s BRC Fashions Pvt. Ltd.*, *M/s Maxima Textiles* and *M/s Suiting World* was lying in the factory premises of the Corporate Debtor. This clearly showed that the Corporate Debtor had sold the stock of the company in different companies including the above-mentioned companies incorporated with an ulterior motive for the purpose of siphoning the amount of sale of stock of Corporate Debtor.

#### 6.5. *SKEPTICAL TRANSACTIONS SHOWN FOR SALES*

6.5.1. The Corporate Debtor has shown sales of Rs. 14,07,67,725/- (Rupees Fourteen Lakhs Seven Thousand Sixty-Seven Thousand Seven Hundred and Twenty-Five Only) to the account opened in the name of "other debtors" in the month of Oct 2016 and Nov 2016 and adjusted the same in ledger by passing sales return entry, which are as follows:

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<i>Date</i>	<i>Particular</i>	<i>Amount (dr.)</i>	<i>Amount (cr.)</i>	<i>Remarks</i>
08.10.2016	Finish Fabric Sales		8,02,46,516	Sales
03.11.2016	Finish Fabric Sales		6,05,21,209	Sales
30.11.2016	Finish sale Return	8,02,46,516		Sales Return
10.12.2016	Finish sale Return	6,05,21,209		Sales Return
	<b>Total</b>	<b>14,07,67,725</b>	<b>14,07,67,725</b>	

6.5.2. The above entries were passed to increase the stock of the Corporate Debtor and write-off the old Debtors, which enhances the drawing power of the Corporate Debtor. Moreover, as per VAT returns available with the auditor, there is only a sale return of Rs. 4,93,630/- (Rupees Four Lakhs Ninety-Three Thousand Six Hundred and Thirty Only) during the period 01.10.2016 to 31.12.2016. This clearly shows that the sales return was not incurred and same entry was passed to enhance the stock value by booking sales return.

6.6. *FRAUDULENT TRANSACTIONS WITH PRAVATHI*

*COLLECTIONS:* The auditor had examined that the account of *Pravathi Collections*, one of the debtors in the books of Corporate Debtor. The balance of the debtor was Rs. 3,05,644/- (Rupees Three Lakhs Five Thousand Six Hundred and Forty-Four Only) as on 01.04.2016. During the year 2016-17, the Corporate Debtor sold garments of Rs. 3,09,133/- (Rupees Three Lakhs Nine Thousand One Hundred and Thirty-Three Only) to the said debtor. To close the account of the Debtor, the Corporate Debtor has passed an entry of sales return of the garments of Rs. 5,81,314/- (Rupees Five Lakhs

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Eighty-One Lakhs Three Hundred and Fourteen Only) during the 2016-17.

**6.7. MISMATCH OF PURCHASES FROM VAT RETURNS:**

6.7.1. The transaction auditor tallied the amount of sales and purchases made as per books to that shown in VAT Returns to the tax authorities of financial year 2016-17. There was a difference in Purchases shown in books and as per VAT Form 7A but there is no difference in sales, which is tabulated below for reference:

Quarter	Sales			Purchases		
	As per Return (10)	As per Tally	Difference	As per Return (7A)	As per Tally	Difference
Apr. 16- Jun. 16	17,22,73,544	17,22,73,544	0	15,39,250	20,98,24,273	20,82,85,023
July 16- Sep. 16	16,93,83,334	16,93,83,333	1	1,86,813	17,51,63,862	17,49,77,049
Oct. 16- Dec. 16	13,50,07,655	13,50,07,655	0	8,47,865	12,44,83,569	12,36,35,704
Jan. 17- Mar 17	7,96,72,196	7,96,72,197	-1	2,33,805	9,74,06,012	9,71,72,207
<b>Total</b>	<b>55,63,36,729</b>	<b>55,63,36,729</b>	<b>0</b>	<b>28,07,733</b>	<b>60,68,77,716</b>	<b>60,40,69,983</b>

6.7.2. It is clear that the Corporate Debtor has defrauded the creditors. The Corporate Debtor had filed VAT 10, yearly return for the financial year 2016-17 on 24.03.2018 almost after six months of audit date 04.09.2017 in which the Corporate Debtor shown exempted purchases of 60,68,77,717/- (Rupees Sixty Crores Sixty-Eight Lakhs Seventy-Seven Thousand Seven Hundred and Seventeen) which is

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extract matching with purchases as per tally/ audited financial statements. It is clear from the VAT returns filed quarterly that the same purchases are not incurred in the books of accounts of Corporate Debtor and to match with the books of accounts, the Corporate Debtor had filed VAT 10 with extract figure matching with audited figures.

6.8. Hence, the Auditor prepared the summary of identified transactions under Section 66 of IBC, which is as below:

<i>Sr. No.</i>	<i>Transaction With</i>	<i>Amount (In Rs. )</i>
1.	<i>Basil Powertek Pvt. Ltd.</i>	<i>1,88,16,263</i>
2.	<i>Prajesh Syntax</i>	<i>6,76,42,517</i>
3.	<i>Maxima Textiles</i>	<i>2,44,69,092</i>
4.	<i>Physical Stock Fraud</i>	<i>29,80,81,262</i>
5.	<i>Other Debtors</i>	<i>14,07,67,725</i>
6.	<i>Parvathi Collection</i>	<i>5,81,314</i>
<b><i>TOTAL</i></b>		<b><i>55,03,58,173</i></b>

7. We have heard the submissions made by the learned counsel for the Applicant. There was no appearance on behalf of the Respondents despite repeated service, hence, vide Order dated 19.10.2023, ex-parte proceedings were initiated against the Respondents.
8. Before delving into the facts of the matter at hand, we refer to Section 66 of the Code which reads as below:

*Section 66: Fraudulent trading or wrongful trading.*

*(1) If during the Corporate Insolvency Resolution Process or a liquidation process, it is found that any business of the Corporate Debtor has been carried on with intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose, the Adjudicating*

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*Authority may on the application of the Resolution professional passed an order that any persons who are knowingly parties to the carrying on of the business is in such manner shall be liable to make such contributions to the assets of the Corporate Debtor as it may deem fit.*

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

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

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

(3) *Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under 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.*

9. Bare perusal of Section 66(1) of the Code outlines that in order to attract Section 66 of the Code, the following ingredients must be fulfilled:

9.1. The Director/Partner participated in conducting the business of the Corporate Debtor;

9.2. The business transactions led to defraud the creditors of the Company or any other fraudulent purposes;

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- 9.3. The Director/Partner had knowledge that the transactions it was participating in, were intended to defraud the Creditors of the Company or were in some other way fraudulent.
10. Hence, the scope of Section 66(1) contemplates that the business of the Corporate Debtor has been carried on with the intent to defraud its creditors or for any fraudulent purpose. The clause (2) of Section 66 of the Code mandates that when directors knew that there was no reasonable prospect of avoiding the initiation of the CIRP, they did not exercise due diligence in minimizing the loss. Section 66(2) deals with a scenario where the directors take action at the instant onset of any financial distress, without sufficient due diligence. Section 66(1) deals with fraudulent trading where there is mandatory requirement of knowledge and presence of dishonest intention whereas Section 66(2) deals with wrongful trading as it includes the element negligence. For a transaction to qualify under sub-section (2) of Section 66 of the Code, it has to be substantiated that the Director/Partner of the Corporate Debtor is aware is insolvent and continues to trade negligently.
11. The core difference between Section 66 and other avoidance transactions is that the fraudulent intention to defraud the creditors has to be proved by the person asserting such allegation. Moreover, it is settled law that while alleging fraud, the burden of proof is on the party alleging the same. It has been laid down by the Supreme Court in the case of *Union of India v.*

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*Chaturbhai M Patel & Co* that fraud must be established beyond reasonable doubt and the mere suspicion, however may be the circumstances, however strange the coincidences, and however grave the doubt, suspicion alone can never take the place of proof. It is therefore stated that the burden of proof lies on the person who alleges it and the same does not shift on the Respondents until the burden cast on the person alleging the same has been discharged.

12. Further the Hon'ble NCLAT in the case of *Regen Powertech Pvt. Ltd. Vs. M/s Wind Construction Private Limited Company Appeal (AT)(CH)(Ins) No.349/2022 dated 23.09.2022* has thrown light upon the aspect of fraud under Section 66 of the Code. For reference, the observations made by the Hon'ble NCLAT are as reiterated below for reference:

33. *Be it noted, this Tribunal, significantly, points out that, whenever Fraud on a Creditor is perpetrated in the course of carrying on Business, it does not necessarily follow that the Business is being carried on with an intent to defraud the Creditors.*
34. *One cannot remain oblivious of the candid fact that, if the Directors of a Company had acted on a bonafide belief that the Company would recover from its Financial Problems/Difficulties, then they will not be held liable for the act/offence of Fraudulent Trading.*
35. *As a matter of fact, the aspect of Fraudulent Trading requires a very high degree of proof which is attached to the Fraudulent Intent. To put it emphatically, a more compelling material/evidence is required to satisfy the conscience of this Tribunal on a preponderance of probability. Apart from that, an isolated/solo fraud case, against the person, then, action in tort can be resorted to, as opined by this Tribunal. No wonder a Creditor who was defrauded, will have recourse to an alternative remedy under civil law.*

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13. In the matter of *Tridhaatu Kirti Developers LLP vs. Mr. Arihant Nenawati & ors. Company Appeal (At)(Insolvency) No.95/2021 dated 02.01.2023*, the Hon'ble NCLAT had observed that, *"It is also well settled law that the establishment of fraudulent conduct does not require the same standard of proof as in criminal trial. It is not necessary that each instance of fund being siphoned needs to be established from inception to the end and even one conduct of director of CD can depict an act of fraud."*
14. The Hon'ble NCLAT in the matter of *Shri Baiju Trading and Investment Private Limited vs. Mr. Arihant Nenawati (Liquidator for Royal Refinery Private Limited) & Ors., Company Appeal (AT) (Ins.) No. 699 of 2021 dated 29.03.2023* has held the following with respect to the provision of Section 66 of the Code:

*"35. This 'Appellate Tribunal' notes that as per Section 66, the 'Adjudicating Authority' can pass suitable orders, if it is found that any person has carried on the business of the 'Corporate Debtor' with intent to defraud its creditors and such persons can be directed to make contributions to the assets of the 'Corporate Debtor'. It can also be inferred that the 'fraud' can, inter alia, consist of such debts which debtor has no intention of paying or does not expect to be able to pay or such fraud may also happen by way of false representation and without intention to pay back. The expression any person includes a knowing party to the carrying out fraudulent transactions.*

*36. Section 66 of the I & B Code, 2016, therefore, clearly provides that if it is found that any business of the 'Corporate Debtor' has been carried on with an intent to defraud the creditors of the 'Corporate Debtor' or for any fraudulent purpose, the 'Adjudicating Authority' may on the application of the Resolution*

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*Professional pass an order to make liable to such contribution to the assets of the 'Corporate Debtor' as may deemed fit."*

15. In the case at hand, the Transactional Auditor has identified the following as related parties of the Corporate Debtor while relying on the MCA Website and Books:

<i>Sr. No.</i>	<i>Individual Name</i>	<i>Relation to the Company/Corporate Debtor</i>
1.	<i>Kailash Chandak</i>	Director
2.	<i>Shiv Ratan Chandak</i>	Director
3.	<i>BRC Fashion Pvt. Ltd.</i>	<i>Taruna Chandak</i> (Director in BRC Fashion Pvt. Ltd.) <i>W/o Shiv Ratan Chandak</i> (Director in Corporate Debtor)
4.	<i>BRC Fashion</i>	<i>Suraj Chandak</i> (Director in BRC Fashion Pvt. Ltd.) is Partner
5.	<i>Maxima Textiles</i>	Shiv Ratan Chandak (Proprietor)
6.	<i>Suiting World</i>	Shiv Ratan Chandak (Director in Corporate Debtor) is Proprietor
7.	<i>Maxicom Synthetics Pvt. Ltd.</i>	MurliDhar Chandak (Director in Corporate Debtor) brother of Shiv Ratan Chandak and Kailash Chandak (Directors in Corporate Debtor)

16. The Application filed under Section 66 of the Code, on the basis of Transaction Auditor's report, has identified the following transactions under Section 66 of the Code:

<i>Sr. No.</i>	<i>Transaction With</i>	<i>Amount (In Rs. )</i>
1.	Basil Powertek Pvt. Ltd.	1,88,16,263
2.	Prajesh Syntax	6,76,42,517
3.	Maxima Textiles	2,44,69,092
4.	Physical Stock Fraud	29,80,81,262
5.	Other Debtors	14,07,67,725
6.	Parvathi Collection	5,81,314
<b>TOTAL</b>		<b>55,03,58,173</b>

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17. First, we deal with the transaction carried out by the Corporate Debtor with *M/s Basil Powertek Private Limited*. It has been contended that the balance of the Debtor stood at Rs. 99,41,263/- (Rupees Ninety-Nine Lakhs Forty-One Thousand Two Hundred and Sixty-Three Only) and subsequently during the financial year 2016-17, the Corporate Debtor paid a sum of Rs. 95 Lakhs and received a sum of Rs. 6.50 Lakhs, hence, the Corporate Debtor passed an entry for purchase of Finished Fabrics of Rs. 1,88,16,263/- (Rupees One Crore Eighty-Eight Lakhs Sixteen Thousand Two Hundred and Sixty-Three Only) on 31.03.2017. Moreover, when the Articles of the Debtor were examined by the Applicant, it was found out that as per MCA and MOA/AOA of the Debtor that the Company was registered for manufacturing of other electronic components. Further the VAT Returns only showed return worth Rs. 28,07,733/- (Rupees Twenty-Eight Lakhs Seven Thousand Seven Hundred and Thirty-Three Only). The Applicant has time and again alleged that the transactions were undertaken to write off the Debtor so as to enhance the drawing power of the Corporate Debtor. Therefore, the entry of Rs. 1,88,16,263/- (Rupees One Crore Eighty-Eight Lakhs Sixteen Thousand Two Hundred and Sixty-Three Only) as indicated from the Ledger, is nothing but wrongful trading on part of the Respondents under Section 66 of the Code.

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18. With respect to the transaction carried out with *Prajesh Syntax*, it is noted that as per the Ledger, the Debtor had a balance of Rs. 6,76,42,571/- (Rupees Six Crores Seventy-Six Lakhs Forty-Two Thousand Five Hundred and Seventy-One Only) but during the financial year 2016-2017, the Corporate Debtor passed four entries of Finished Fabric Sale Return to close the account. However, this particular Debtor is nowhere to be found and the Respondents have wilfully absconded from the proceedings in the present matter. Further, the Finished Fabric Sale Return has not been recorded in the VAT Returns as well. The action of the Respondents does not exhibit due diligence in conducting the business in conducting the affairs of the Corporate Debtor. Therefore, the same shall be termed as Wrongful Trading under Section 66(2) of the Code.
19. The cross entries carried out with *Maxima Textiles*, *Other Debtors* and *Parvathi Collections* cannot be categorised under Section 66 of the Code as the same is evident from the Leger that it was done during the course of business transactions. The transactions made in ordinary course of business in absence of any contrary evidence, to show that they were made to defraud the creditors or for any fraudulent purposes, on mere allegation made by the RP, shall not come within the meaning of Fraudulent Trading or Wrongful Trading under Section 66 of the Code.
20. Further, the Application alleges difference in stock as per the books of accounts and as per the actual stock available in the factory premises. It has

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been contended that while visiting the factory premises, it was found that the valuation of stock available in the factory premises is in some lakhs only but the value of the same is not given. No specific number has been provided to actually determine the value of stock which is not present. There is a difference of Rs. 60,40,69,983/- (Rupees Sixty Crores Forty Lakhs Sixty-Nine Thousand Nine Hundred and Eighty-Three Only) from the stock available as per the Returns recorded in VAT Form 7A and as per the tally data available with the Transaction Auditor alleging mismatch and defrauding the Creditors but there is no indication towards the stock which was present in the premises of the Corporate Debtor during the visit by the Transaction Auditor. It is relevant to mention that since the Applicant is alleging that difference in stock shall be termed as fraudulent transaction, it has to give the details disclosing how the present Respondents have committed fraud in respect to the missing stocks. In absence of conclusive finding regarding the individual personal role of the Directors in variance in stock, this difference in the stock cannot be termed as a Fraudulent Transaction under Section 66 of the Code.

21. The Hon'ble NCLAT in *Mr. Tenny Jose & Ors. Vs. Mr. Prathap Pillai, Resolution Professional of M/s Tenny Jose Limited, Company Appeal (AT) (CH)(INS.) No. 95/2023 dated 04.08.2023* held that if a fraudulent intent or fraudulent purpose is made out, the liability must follow. An action can also lie, when there is a fraudulent purpose, upon the customers of the

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company. The burden of proof, is the same as in a Civil case, where serious allegations of misconduct, such as fraud are in issue. In an isolated fraud case, an individual tort action ('civil wrong'), will lie.

22. In the factual matrix presented in the matter at hand, we have categorised the following transactions under Section 66 of the Code:

<i>Sr. No.</i>	<i>Transaction With</i>	<i>Amount (In Rs. )</i>
1.	<i>Basil Powertek Pvt. Ltd.</i>	1,88,16,263/-
2.	<i>Prajesh Syntax</i>	6,76,42,517/-
<i>TOTAL</i>		8,64,58,780/-

23. As regards Section 66(2)(b) of the IBC, 2016, on an application made by a Resolution Professional, 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 such director or partner did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor. Therefore, in view of the foregoing, we direct Respondents No.1 and 2 to contribute a sum of Rs. 8,64,58,780/- ( Rupees Eight Crores Sixty-Four Lakhs Fifty-Eight Thousand Seven Hundred and Eighty Only) to the assets of the Corporate Debtor.

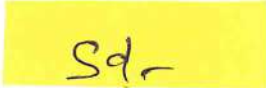
Sd/-

Sd/-

24. Hence, in view of the foregoing, the Application filed under Section 66 of the Code numbered as *IA No. 390/JPR/2019* is hereby dismissed against the Respondents.

Sd-

**DEEP CHANDRA JOSHI**  
**JUDICIAL MEMBER**

Sd-

**RAJEEV MEHROTRA**  
**TECHNICAL MEMBER**