

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

ITEM No. 309- IA/19(AHM)2022
In
CP(IB) 499 of 2019

Under Sec 66(1) of IBC 2016

IN THE MATTER OF:

Dharit Kishorbhai Shah Liquidator Maktel Control & Systems
Pvt Ltd

.....Applicant

V/s

Manoj Narendrakumar Patel Suspended Management of
Maktel Control & Systems Pvt Ltd & Anr

....Respondent

Order delivered on: 21/09/2026

C O R A M:

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

O R D E R
(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 19(AHM) 2022
In
CP (IB) 499 of 2019**

*[An application under Section 66 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of : Maktel Control & Systems Pvt. Ltd.

Dharit Kishorbhai Shah,
Liquidator of
Maktel Control & Systems Private Limited
Having office at
Bipin& Co, Chartered Accountant,
302, Centre point, R.C. Dutt Road,
Alkapuri, Vadodara, 390007

....Applicant

VERSUS

- 1. Manoj Narendrakumar Patel,**
Suspended Management of
Maktel Control & Systems Private Limited,
Having address at:
Plot No 1421, GIDC Estate,
Waghodia, Vadodara, Gujarat 391760

- 2. Narendrakumar Manilal Patel,**
Suspended Management of
Maktel Control & Systems Private Limited,
Having address at:
Plot No 1421, GIDC Estate,
Waghodia, Vadodara, Gujarat 391760

... Respondents

Order Pronounced On: 21.09.2026

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. Atul Sharma, Adv.
For the Respondents : Mr. Masoom Shah, Adv. for R-1
Mr. Kunal Vaishnav, Adv. for R-2
Mr. Mandeep Singh Saluja, Adv.
for
For the SBI : Mr. Rituraj Meena, Adv.

O R D E R
(Per: BENCH)

1. This Interlocutory application being **IA 19(AHM) 2022** in CP (IB) 499 of 2019 is filed on 27.12.2021 (through e-mode) by Dharit Kishorbhai Shah, Liquidator of Maktel Control & Systems Private Limited (hereinafter referred as "Applicant"), under Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking the following prayers: -

- a. *To allow the present application;*
- b. *To pass an order under Section 66 of the Insolvency and Bankruptcy Code, 2016 against the Respondents for indulging into the activities/transactions falling within the ambit of fraudulent or wrongful trading;*
- c. *To direct the Respondents to revert/reinvest Rs. 337.12 Lakhs being the amount of inventory not found on the premises of the corporate debtor;*
- d. *To grant any other relief or relief as may deem fit in the interest of justice.*

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

2.1 The Applicant, who was appointed as the Liquidator of M/s. Maktel Control & Systems Pvt. Ltd. vide order dated 23.11.2021 passed in I.A. No. 585 of 2021 in C.P. (IB) No. 499/9/NCLT/AHM/2019, submits that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) under Section 9 of the IBC, 2016 vide order dated 02.02.2021, pursuant to which the Applicant was appointed as the Interim Resolution Professional.

2.2 During the CIRP, the Applicant sought from the Suspended Management the details, records and particulars relating to the inventory of the Corporate Debtor vide communications dated 11.02.2021 and 17.03.2021. In response thereto, the Respondents furnished an inventory statement reflecting the stock of the Corporate Debtor as on 30.11.2017 at approximately Rs. 525.43 lakhs.

2.3 However, upon physical verification of the premises and inventory, the Applicant found inventory worth only approximately Rs. 188.31 lakhs, resulting in a substantial discrepancy of approximately Rs. 337.12 lakhs.

2.4 The Applicant thereafter called upon the Respondents to explain the aforesaid discrepancy

and furnish the relevant supporting documents and records, including vide communication dated 29.04.2021; however, according to the Applicant, the Respondents failed to furnish any cogent, satisfactory or documentary explanation accounting for the missing inventory.

2.5 The Applicant submits that the unexplained depletion of inventory constituted substantial loss of assets of the Corporate Debtor and warranted examination of the conduct of the Suspended Management under Section 66 of the Code.

2.6 The matter was accordingly placed before the Committee of Creditors in its 7th meeting held on 01.11.2021, wherein the issue relating to the discrepancy in inventory and the proposed action under Section 66 was considered. The Applicant contends that, despite being afforded sufficient opportunity to explain the discrepancy and furnish the requisite records, the Respondents failed to satisfactorily account for the difference between the inventory reflected in the records and the inventory actually available.

2.7 It is therefore alleged that the inventory valued at approximately Rs. 337.12 lakhs had been sold, diverted or otherwise dealt with in a manner prejudicial to the interests of the Corporate Debtor and its creditors, and that the conduct of the

Respondents falls within the ambit of fraudulent or wrongful trading contemplated under Section 66 of the IBC.

2.8 Accordingly, the Applicant has preferred the present I.A. seeking appropriate directions against the Respondents in respect of the aforesaid depletion and loss of the assets of the Corporate Debtor.

3. The Respondent No.1 (Manoj Narendrakumar Patel) e-filed a preliminary basis reply on 29.07.2024 and an additional reply was e-filed on 14.08.2024.

4. The Respondent No. 02/ Mr. Narendra Manilal Patel e-filed an Affidavit -in-Reply on 30.07.2024 raising the following contentions: -

4.1 It is submitted that the Corporate Debtor, M/s. Maktel Control & Systems Pvt. Ltd., was incorporated in 2009 and, in 2012, 50% of its shareholding was taken over by another group on the understanding that its day-to-day affairs would be managed by an independent CEO and CFO, and therefore the Respondent No. 2 claims that he had not been involved in the day-to-day affairs of the Corporate Debtor since 2008.

4.2 It is further submitted that in or around June 2017, the Bank suspended the credit facilities of the

Corporate Debtor and took possession/control of its assets, including the factory and stock, and thereafter the Bank regularly inspected the premises and inventory.

- 4.3 The Respondent states that the stock audit conducted for the period ending 30.11.2017 did not disclose any mismatch or discrepancy.
- 4.4 It is further submitted that, pursuant to the Income Tax Department raid in or around April 2018, the computers, hard disks, books of accounts and other records of the Corporate Debtor were seized and remained in the custody of the Income Tax Department.
- 4.5 The Respondent further refers to the possession notice dated 28.08.2020 issued by State Bank of India under Section 13(4) of the SARFAESI Act, 2002, pursuant to which the Bank took possession of the property where the inventories were lying.
- 4.6 According to the Respondent, the Applicant relied upon an inventory statement submitted through e-mail dated 11.03.2021, showing stock of approximately Rs. 525.43 lakhs as on 30.11.2017, whereas physical verification allegedly conducted in April 2021 disclosed stock of only Rs. 188.31 lakhs, resulting in an alleged difference of Rs. 337.12 lakhs.

- 4.7 The Respondent contends that the alleged shortage cannot be attributed to him since the assets were under the control of the Bank and the day-to-day affairs were being managed by other persons.
- 4.8 It is further stated that the Respondent had cooperated with the Resolution Professional and that communications exchanged on 11.03.2021, 19.03.2021, 22.03.2021, 26.03.2021, 06.04.2021, 18.05.2021, 02.06.2021, 14.06.2021, 13.07.2021 and 26.07.2021 formed part of the record.
- 4.9 The Respondent also contends that, in the 7th CoC meeting, the CoC directed that the inventory verification be undertaken by tallying the list prepared by the Mamlatdar's office at the time of the Bank taking possession, before any action under Section 66 of the IBC was initiated; however, according to him, the Applicant proceeded without undertaking such verification.
- 4.10 The Respondent further disputes the unsigned stock statement and the basis for arriving at the valuation of Rs. 1.88 crores, alleges suppression of material facts by the Applicant and contends that no case of fraudulent or wrongful trading under Section 66 of the IBC, 2016 is made out against him.

5. That, in compliance with the order dated 10.09.2024, the Applicant filed an Affidavit -in-Rejoinder to the Reply filed

by R-1 on 09.12.2024 vide Inward No. D-8858 raising the following contentions: -

5.1 It is submitted that, after his appointment as Resolution Professional, the Applicant, vide e-mails dated 11.02.2021 and 17.03.2021, called upon the Respondents to furnish details of the inventories of the Corporate Debtor, pursuant to which the Respondents, vide e-mail dated 11.03.2021, furnished an inventory statement showing stock of Rs. 525.43 lakhs as on 30.11.2017, whereas physical verification undertaken in April 2021 disclosed stock of only Rs. 188.31 lakhs.

5.2 The Applicant contends that, despite repeated requests and reminders, the Respondents failed to furnish any cogent explanation, evidence or records reconciling the discrepancy, which, according to the Applicant, indicates fraudulent/wrongful dealing with the inventory of the Corporate Debtor.

5.3 The Applicant denies the Respondent's contention that he was not involved in the day-to-day affairs of the Corporate Debtor and submits that, being a director, he was responsible for maintaining the inventory and ensuring a correct disclosure thereof to the creditors. Reliance is placed upon the decision of the **NCLAT, Chennai Bench in Mr. Shibu Job Cheeran, Suspended Director of the Corporate Debtor and Ors. v. Mr. Ashok Velamur Seshadri,**

Company Appeal (AT) (CH) (Ins.) No. 350 of 2021,
concerning the responsibility of directors under
Section 66 of the IBC.

- 5.4 The Applicant further submits that the Respondent himself had furnished the inventory statement dated 11.03.2021, and therefore the subsequent contention regarding seizure of records by the Income Tax Department or possession of the premises by the Bank cannot explain the alleged discrepancy.
- 5.5 It is further contended that the possession of the Corporate Debtor was taken over by SBI in 2020, and the inventory existing as on 30.11.2017 ought to correspond with the inventory found thereafter; the Applicant accordingly alleges that the inventory was sold by the Respondents and an incorrect inventory statement was maintained to the prejudice of the creditors and stakeholders.
- 5.6 With regard to the 7th CoC meeting, the Applicant states that the CoC merely directed that verification be undertaken before filing the application and that the Applicant duly carried out the requisite verification before initiating the present proceedings.
- 5.7 The Applicant also denies the allegations of suppression of material facts, limitation and want of evidence, and maintains that the ingredients of Section 66 of the IBC are satisfied.

6. That, in compliance with the order dated 10.09.2024, the Applicant filed an Affidavit-in-Rejoinder to the Reply filed by R-2 on 09.12.2024.
7. Further in compliance with order dated 09.12.2024, the Applicant filed its Written Submission on 22.01.2025 (through e-mode), R-1 filed its Written Submission on 28.03.2025 vide Inward No. D-2123, and R-2 filed Written Submission on 22.09.2025 vide Inward No. D-412.
8. This Tribunal vide order dated 05.12.2025 issued notice to State Bank of India to place on record the entire physical possession proceedings/documents regarding inventory of the Corporate Debtor.
9. In compliance of order dated 05.12.2025, the State Bank of India filed its Affidavit on 28.01.2026 (through e-mode) stating the following: -
 - 9.1 It is submitted that the present Affidavit has been filed by the State Bank of India in compliance with the order dated 05.12.2025 passed by this Tribunal, whereby the Bank was directed to produce the entire record pertaining to the physical possession proceedings, including the Panchanama and inventory.

9.2 It is stated that, pursuant to the proceedings under the SARFAESI Act, 2002, the authorised officer of the answering Respondent, through the Mamlatdar, had taken physical possession of the secured assets of M/s. Maktel Control & Systems Private Limited, prepared the requisite inventory and drawn the Panchanama. The Affidavit annexes the possession receipt dated 20.08.2020, along with the relevant Panchanamas and inventories recording the secured immovable and movable assets situated at Vaghodia Industrial Estate, Vaghodia, Vadodara, and other connected documents.

9.3 The records further contain subsequent possession-related documents, including the receipt acknowledging physical possession and inventories of the assets, thereby evidencing the handing over and taking over of possession of the secured assets.

10. In compliance of order dated 05.12.2025, the State Bank of India filed its further Affidavit on 05.02.2026 vide Inward No D-1089.

11. The Applicant filed its Affidavit-of-Reply against the affidavit filed by State Bank of India on 24.03.2026 (through e-mode) stating the following: -

11.1 It is further submitted that the Applicant took possession of the premises and inventory on

26.09.2021, and the contemporaneous Panchnama records that the plant, machinery and inventory had earlier remained under the custody and control of State Bank of India under the SARFAESI Act, 2002.

11.2 The Applicant points out that the inventory recorded in the Panchnama was largely consolidated and non-itemised, with several items being recorded merely as “lots” or “racks”, thereby necessitating detailed physical verification.

11.3 Upon such verification, a substantial shortage and discrepancy was found between the inventory records and the inventory actually available.

11.4 The Applicant contends that the aforesaid discrepancy cannot be treated as a mere accounting variation and, in the absence of any satisfactory explanation from the Respondents regarding the depletion of inventory, constitutes an indication of diversion and wrongful depletion of the assets of the Corporate Debtor, causing prejudice to its creditors and stakeholders.

12. The R-1 filed its Affidavit-of-Reply against the affidavit filed by State Bank of India on 28.04.2026 vide Inward No D-3704 stating the following: -

12.1 It is further submitted that the premises where the inventory was situated had remained under the control and supervision of State Bank of India since

November 2017, following suspension of the operations of the Corporate Debtor, and that the Bank officials were making weekly visits to the premises; the stock audit for the period ending 30.11.2017 was also conducted by the Bank.

12.2 The Respondent further contends that the Applicant suppressed the fact that the Bank was in control of the premises and inventory and that the Bank had never raised any complaint regarding reduction or mismatch in the stock.

12.3 The Respondent states that he had duly cooperated with the Applicant and, through e-mails dated 18.05.2021, 02.06.2021, 14.06.2021, 13.07.2021 and 26.07.2021, repeatedly clarified that he was not involved in the day-to-day affairs of the Corporate Debtor and that possession of the property and inventory was with SBI; he also furnished such information and details as were available with him.

12.4 The Respondent accordingly disputes the allegation that he failed to provide an explanation for the alleged stock discrepancy, contends that mere mismatch in inventory does not establish fraudulent or wrongful trading, and submits that the essential ingredients of Section 66 of the IBC, 2016 are not satisfied.

- 13.** Further in compliance with order dated 15.06.2026, the Applicant filed its revised Written Submission on 11.09.2026 vide Inward No. D-7762.
- 14.** We have heard the Learned Counsel appearing for the Applicant/Liquidator and the Learned Counsel appearing for the Respondents and have carefully perused the pleadings, affidavits, written submissions and documents placed on record. We have also considered the material placed on record by State Bank of India pursuant to the directions of this Tribunal.
- 15.** Before proceeding to examine the issues arising for consideration, this Tribunal deems it appropriate to take note of the chronology of the important dates and events which are as follows: -

DATE	PARTICULAR
30.11.2017	Inventory of stock of the Corporate Debtor was stated to be approximately Rs. 525.43 lakhs. The inventory was shared by the Respondents with the Applicant after the same was sought by the Applicant vide correspondence of 11.02.2021 and 17.03.2021.
28.08.2020	SBI issued possession notice under Section 13(4) of the SARFAESI Act, 2002.
02.02.2021	Corporate Debtor admitted into CIRP and IRP appointed.
11.02.2021 onwards	Applicant sought books, records and information from the Suspended Management.
11.03.2021	Inventory details furnished to the Applicant by

	the Suspended Management.
April 2021	Physical verification of the inventory was undertaken, wherein stock of approximately Rs. 188.31 lakhs was found.
29.04.2021 onwards	Applicant sought clarification/information concerning inventory and related discrepancies.
18.05.2021 / 02.06.2021	Respondent No. 1 asserted that he was not in charge of day-to-day affairs and that the inventory was with SBI.
14.06.2021	Respondent No. 1 reiterated his stand regarding non-involvement in day-to-day affairs and SBI possession.
26.07.2021	Respondent reiterated his stand regarding information available with him, stock audit and SBI visits.
26.09.2021	The Applicant took possession of the premises and inventory of the Corporate Debtor.
01.11.2021	7th CoC meeting held; discrepancy of Rs. 337.12 lakhs between book stock and physical stock discussed.
23.11.2021	Liquidation order passed and Applicant appointed as Liquidator.
27.12.2021	Present application under Section 66 of the IBC instituted.
05.12.2025	This Tribunal directed SBI to place on record the physical possession proceedings/documents relating to the inventory of the Corporate Debtor.

16. After filing the Application, the case was listed for compliance on 13.01.2022, 17.03.2022, 28.04.2022, 30.06.2022, 06.09.2022, 20.10.2022, 14.03.2023, 18.05.2023, 25.07.2023, 06.10.2023, 20.10.2023, 16.12.2023, 06.02.2024, 11.03.2024, and 06.05.2024. Notices were served on the Respondents; however, none attended for them till 19.10.2023 and an order for service of notice of hearing through publication was ordered on

19.10.2023. Mr. Kunal Vaishnav, Advocate attends for the first time on 24.06.2024 to represent the Respondents and sought four weeks' time to file reply. Reply Affidavits and Rejoinder were filed and these are discussed above.

17. The issue which arises for consideration is whether the Respondents have satisfactorily explained the substantial discrepancy between the inventory of the Corporate Debtor reflected at approximately Rs. 525.43 lakhs as on 30.11.2017 and the inventory of approximately Rs. 188.31 lakhs actually found upon physical verification, resulting in a difference of approximately Rs. 337.12 lakhs.

18. At the outset, it is material to note that the figure of inventory of Rs. 525.43 lakhs as on 30.11.2017 is not a figure unilaterally generated by the Applicant. The said inventory statement was furnished by the Respondents themselves vide e-mail dated 11.03.2021 in response to the requisitions made by the Resolution Professional (page 161 of the Application). Pages 40 to 165 of the Application has stock details in which name of material, unit, unit cost, total quantity, and total amount is given. A summary is given on page 40 of the Application and inventory is

valued at Rs 5,25,43,737. Therefore, this inventory cannot be disputed and not contested also. On the other hand, upon physical verification, only inventory valued at approximately Rs. 188.31 lakhs was found at the premises of the Corporate Debtor.

19. Thus, there exists a substantial difference of approximately Rs. 337.12 lakhs between the inventory that should have been available, as no sale or disposal has been claimed between the period of November 2017 and April 2021, and the inventory actually found on physical verification. The magnitude of such difference is too substantial to be brushed aside as a mere accounting variation, valuation difference or inconsequential discrepancy.

20. What assumes significance is that despite repeated communications and opportunities granted by the Applicant, the Respondents have failed to place before the Liquidator or this Tribunal any cogent, contemporaneous and verifiable material demonstrating the whereabouts or lawful disposition of the balance inventory of approximately Rs. 337.12 lakhs.

- 21.** The initial burden of establishing the ingredients of Section 66(1) of the Code lies upon the Applicant. However, once the substantial discrepancy and the source of the inventory statement are established, the failure of the Respondents to produce contemporaneous records reconciling the difference is a relevant circumstance for determining the Applicant's case.
- 22.** The Respondents, being persons in the control and management of the Corporate Debtor, were expected to explain the whereabouts of the assets reflected in the inventory statement furnished by them. A bald denial, unsupported by documentary evidence capable of reconciling the difference, cannot discharge such obligation.
- 23.** The contention of Respondent No. 1 that he had ceased to be involved in the day-to-day affairs of the Corporate Debtor since 2012 and that the affairs were being managed by an independent CEO and CFO does not, by itself, furnish any explanation regarding the missing inventory. The existence of an independent managerial arrangement does not explain how assets admittedly

reflected in the Corporate Debtor's inventory came to be unavailable subsequently. Otherwise also, the claims made of transfer of 50% of ownership and transfer of management are not supported.

- 24.** In the absence of any material demonstrating the actual transfer, sale, utilisation or other lawful disposition of such inventory, the plea of non-involvement in day-to-day affairs cannot be accepted as a complete answer to the substantial depletion of the Corporate Debtor's assets.
- 25.** Similarly, Respondent No. 2 has contended that he was not involved in the day-to-day affairs of the Corporate Debtor since 2008 and that the management was entrusted to an independent management. However, this contention also does not satisfactorily account for the missing inventory.
- 26.** The Respondents cannot merely distance themselves from the affairs of the Corporate Debtor without placing on record the underlying records which would demonstrate when, how and under whose authority the inventory of approximately Rs. 337.12 lakhs ceased to be available or

they were not the directors or in the management or control of the company.

27. The principal defence raised by the Respondents is that State Bank of India had suspended the credit facilities and allegedly taken control/possession of the factory and inventory in or around September 2017 and thereafter conducted periodic inspections. This contention has been carefully considered.

28. However, the assertion of the Respondents that SBI was in possession and control of the factory and inventory as early as September 2017 is conspicuously unsupported by any contemporaneous possession document, Panchnama, inventory list, possession certificate, seizure memo, inspection report or other reliable documentary evidence placed by the Respondents on record. The mere assertion that the State Bank of India had taken possession/control of the premises in September 2017 cannot, in the absence of supporting evidence, be treated as an established fact.

29. On the contrary, the material on record indicates that the formal possession notice relied upon by the Respondents

is dated 28.08.2020 under Section 13(4) of the SARFAESI Act, 2002. The Respondents' attempt to rely upon the said subsequent possession notice to establish that SBI had already been in possession and control of the inventory from September 2017 is, therefore, not supported by the documentary material placed before us.

30. The Respondents were required to demonstrate, by contemporaneous records, the precise date on which possession was taken, the nature and extent of such possession, and, more importantly, the inventory which was actually taken over by SBI. No such convincing material has been brought on record by the Respondents.

31. The subsequent Panchnama relied upon in the proceedings also records the plant, machinery and inventory in a consolidated and non-itemised manner, with certain items recorded merely as "lots" or "racks". It is in this background that the detailed physical verification undertaken by the Applicant IN April 2021 assumes significance.

- 32.** The Respondents have not demonstrated through any contemporaneous item-wise inventory or other documentary evidence that the entire inventory of Rs. 525.43 lakhs reflected as on 30.11.2017 continued to remain intact and under the custody of SBI.
- 33.** The contention that the stock audit for the period ending 30.11.2017 did not disclose any discrepancy also does not advance the case of the Respondents. At best, such audit may establish the position recorded as on the relevant date; it does not explain the subsequent disappearance or depletion of inventory which was admittedly represented to exist. More importantly, the Respondents have not produced any subsequent stock statement or authenticated inventory record establishing that the entire stock of Rs. 525.43 lakhs continued to be available thereafter.
- 34.** The reliance placed upon the seizure of books, computers and records by the Income Tax Department in or around April 2018 is equally insufficient. The seizure of books or electronic records may explain the availability of records with the Respondents, but it does not explain the physical

disappearance of inventory. The Respondent also did not submit any of Income Tax Proceedings like Panchanama or information on any inventory of books of account or stock prepared by the authorities. The Respondents have not demonstrated that any action of the Income Tax Department, if any, prevented them from providing any material whatsoever regarding the movement, sale, transfer or utilisation of the inventory.

35. Significantly, the inventory statement dated 11.03.2021 was itself furnished by the Respondents. Therefore, the subsequent plea of non-availability of records cannot, in the facts of the present case, satisfactorily explain the substantial discrepancy.

36. We also find no merit in the Respondents' contention that the Applicant proceeded under Section 66 without undertaking the verification contemplated by the CoC in its 7th meeting. The Applicant has specifically stated that the direction of the CoC was to undertake verification before initiating proceedings and that such verification was duly undertaken.

37. The physical verification ultimately disclosed inventory of only approximately Rs. 188.31 lakhs against the inventory of approximately Rs. 525.43 lakhs reflected in the statement furnished by the Respondents. Thus, the very exercise which the Respondents claim was required to be undertaken was in fact carried out before initiation of the present proceedings.

38. The challenge to the unsigned nature of the stock statement as of November 2017 and to the valuation of the inventory found at approximately Rs. 188.31 lakhs also does not satisfactorily demolish the Applicant's case. The crucial circumstance is not merely the exact valuation of the stock found, but the existence of a substantial and unexplained difference between the inventory represented by the Respondents and the inventory physically available when possession was taken over. Even assuming that there may be some variation in valuation methodology, the Respondents have not explained the disappearance of such a substantial quantity/value of inventory.

39. The repeated communications exchanged between the parties, including the e-mails dated 18.05.2021,

02.06.2021, 14.06.2021, 13.07.2021 and 26.07.2021, have also been considered. The fact that the Respondents responded to the Applicant cannot, by itself, be treated as an explanation of the discrepancy. What was required was a substantive reconciliation supported by contemporaneous records showing the movement or accounted sale/disposal of the inventory. Such material has not been placed on record.

40. The defence taken by the Respondents essentially seeks to shift the responsibility to the Bank, the independent management and the Income Tax Department. However, a party seeking to avoid liability on the ground that the assets were under the custody of a third party must establish such custody through cogent documentary evidence and must also establish the quantity and nature of the assets actually handed over to such third party.

41. In the present case, the Respondents have failed to establish either aspect satisfactorily. The contention regarding SBI's possession from September 2017, in particular, remains a bare assertion unsupported by contemporaneous documentary evidence.

42. It is also material that the inventory statement showing approximately Rs. 525.43 lakhs as on 30.11.2017 was furnished by the Respondents themselves. Having furnished such statement, the Respondents cannot simply disown its contents when physical verification subsequently reveals a substantial shortfall. If the inventory had been sold, transferred, consumed, removed or otherwise disposed of in the ordinary course of business and accounted in the regular books of account, the Respondents were expected to produce corresponding invoices, sale records, delivery challans, stock registers, ledger entries, bank statements or other contemporaneous records. No satisfactory chain of documentary evidence has been placed before this Tribunal to account for the missing inventory.

43. The conduct assumes greater significance in the context of the insolvency proceedings, where the assets of the Corporate Debtor constitute the pool available for the benefit of its creditors and stakeholders. The unexplained depletion of assets of approximately Rs. 337.12 lakhs, coupled with the failure of the persons associated with the

management to furnish a credible and documentary explanation, cannot be viewed lightly. The assets of a Corporate Debtor cannot be allowed to disappear without accountability, particularly when the disappearance directly prejudices the interests of its creditors.

44. Upon an overall consideration of the material on record, this Tribunal is satisfied that the Applicant has established the substantial depletion of the Corporate Debtor's inventory and that the Respondents have failed to provide a credible, cogent and documentary explanation for the same. The explanation offered by the Respondents is primarily in the nature of general denials and shifting of responsibility and does not reconcile the specific difference of approximately Rs. 337.12 lakhs.

45. The unexplained disappearance/depletion of inventory belonging to the Corporate Debtor, in the facts and circumstances of the present case, warrants examination of applicability of section 66 of the Code including fraudulent intent or purpose and the knowing participation of the Respondents.

46. We now refer to the provisions of section 66 of the Code dealing with fraudulent or wrongful trading and the section reads as below:

- (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 or the liquidator 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 or by a liquidator, 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.

47. Section 66(1) of the Code deals with fraudulent trading where, during CIRP or liquidation, the business of the Corporate Debtor is carried on with intent to defraud creditors or for any fraudulent purpose. Section 66(2)

deals separately with wrongful trading and contains distinct statutory requirements which must independently be satisfied.

48. For Section 66(1), it must be established that the business was carried on with intent to defraud creditors or for a fraudulent purpose and that the concerned persons were knowingly parties to such conduct. Mere existence of an unexplained loss or depletion of assets, without establishing these ingredients, is insufficient. Section 66(2) operates independently and is not being invoked for determining the present liability. Thus, 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.

49. Accordingly, liability under Section 66(1) cannot be imposed merely on the basis of the Respondents' status as directors. Their knowledge, participation and connection with the conduct alleged to constitute fraudulent trading

must be established from the material available on record. Thus, the provision contemplates **lifting of the corporate veil** and imposing **personal liability** upon those responsible for fraudulent or wrongful conduct.

50. 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 of depletion of stock took place. However, their designation as directors, by itself, does not establish that they were knowingly parties to the conduct concerning the depletion of inventory; their individual role and knowledge must therefore be examined from the evidence.

51. The material on record establishes a substantial discrepancy between the inventory statement furnished by the Respondents and the inventory subsequently found. However, the precise act or transaction by which the balance inventory ceased to be available must be established before such depletion can be characterised as fraudulent trading under Section 66(1). The material on record demonstrates that: -

- i. The Respondents were in control of the affairs and management of the Corporate Debtor;
- ii. The transactions held as fraudulent transactions were executed during their tenure;
- iii. No evidence has been produced to show that such transactions were undertaken without their knowledge or authority.

52. 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.

53. This Authority finds that the impugned transactions of depletion of stock of the corporate debtor took place after the corporate debtor was experiencing financial distress. The proceedings under the SARFAESI Act were started by SBI. The unaccounted disappearance of stock resulted into a loss to the corporate debtor and effectively to the creditors. The question whether such diminution was caused by fraudulent conduct attributable to the Respondents must, however, be determined independently on the evidence.

54. The Respondents have not produced satisfactory contemporaneous records explaining the substantial

difference between the inventory statement furnished by them and the inventory found upon physical verification. Such failure is a relevant circumstance, but it must be considered along with the entire evidence relating to their knowledge and participation. In the present case, the conduct of the Respondents demonstrates:

- i. Failure to act in the best interest of the Corporate Debtor;
- ii. Active depletion of the asset base of the company.

55. Such actions amount to a **clear breach of fiduciary duties**. It is a settled principle that **directors cannot take shelter of unsupported claims**, particularly when they have failed to exercise due diligence expected of them. Creditors were prejudiced as the asset pool in the form of stock of goods available for resolution/liquidation was significantly reduced.

56. 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 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.

57. 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 stock of the corporate debtor that was not accounted in the regular books of account and the proceeds did not come to the corporate debtor.

58. In light of the above findings, this Authority is satisfied that, 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 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.

- 59.** Accordingly, this Adjudicating Authority is satisfied that the ingredients of Section 66(2) of the Code stand established. Accordingly, the Respondents, being the persons found liable under Section 66 are liable to make contributions of **Rs 337.12 lakhs** to the assets of the Corporate Debtor.
- 60.** The object of Section 66 is compensatory and restorative rather than penal. The contribution directed herein is intended only to restore the value wrongfully depleted from the assets of the Corporate Debtor.
- 61.** The amount of **Rs.337.12 lakhs** represent the difference between the inventory valued at Rs.525.43 lakhs as reflected in the statement furnished by the Respondents and the inventory valued at approximately Rs.188.31 lakhs found upon physical verification, subject to both figures being established on a comparable valuation basis.
- 62.** In view of the foregoing discussion and having regard to the totality of circumstances, the contentions raised by the

Respondents are found insufficient to rebut the material placed by the Applicant. The present application therefore deserves to be allowed to the extent of the unexplained inventory difference of **Rs. 337.12 lakhs**.

63. Accordingly, the following directions are issued: -

- (a)** In exercise of the powers under Section 66(1) of the Insolvency and Bankruptcy Code, 2016, the Respondents are directed to contribute jointly and severally a sum of **Rs.337.12 lakhs** to the assets of Maktel Control & Systems Private Limited, being the value of the inventory established to be unavailable/unaccounted for, together with simple interest at 10% per annum, considered reasonable in the facts of the case from the date of filing of the present Application until realization, within **30 days** from the date of this order.
- (b)** In case of non-compliance with the aforesaid direction within the prescribed period, the Applicant/Liquidator shall be at liberty to seek enforcement of this order by initiating appropriate execution proceedings in accordance with law before the competent forum.
- (c)** The Applicant / Liquidator is directed to maintain the amount so recovered as part of the liquidation estate and utilise/distribute the same in accordance

with the provisions of the Code and the orders of this Tribunal.

64. Accordingly, **IA No. 19(AHM) 2022** in CP (IB) 499 of 2019 is **allowed** and disposed of in the above terms. No order as to costs.

65. A certified copy of this order be issued to the parties, if applied for, upon compliance with all requisite formalities.

-SD-
SANJEEV SHARMA
MEMBER (TECHNICAL)
Jeel Pathak/LRA

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)