



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – V**

**IA 1305/2020 IN C.P. (I.B) No. 2392/MB/2019**

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Sections 30(2) and 31(2) of the Insolvency and Bankruptcy Code, 2016]

**Rekha Shah,**

**Liquidator of Adya Oils and Chemicals Ltd.**

**...Applicant**

*Vs*

**1. Sudhir Dinanath Chaturvedi**

502, Adibaba, 16<sup>th</sup> Road, Santacruz (West),  
Mumbai - 400054, (Maharashtra)

**... Respondent No. 1**

**2. Deepak Balakrishna Chaturvedi**

1204, Dhiraj Jamuna, D – Wing, Chincholi Bunder,  
Malad (West), Mumbai - 400064, (Maharashtra)

**... Respondent No. 2**

**3. Sunil Santoshilal Chaturvedi**

A/303, Sai Shanti Building, Cabin Cross Road,  
Paliwal Milk Center, Bhayander, Thane - 401105,  
(Maharashtra)

**... Respondent No. 3**

**4. Stressed Asset Stabilisation fund**



C/O IDBI Bank, IDBI Towers, Cuffee Parade,  
Mumbai - 400005, (Maharashtra)

**... Respondent No. 4**

**5. Industrial Development Bank of India**

**... Respondent No. 5**

*In the matter of*

**Stressed Assets Stabilisation fund**

**...Financial Creditor**

*Vs*

**Adya Oils and Chemicals Ltd.**

**...Corporate Debtor**

**Order Dated: 22.01.2025**

**Coram:**

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

**Appearances:**

For the Applicant: Adv. Devarajan Raman (VC)

For R1 and R5: Adv. Chirag Mody (PH)(R1) and Adv. Sagar Hate (PH)(R5)



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**ORDER**

*Per: Reeta Kohli, Member (Judicial)*

I. The above application I.A. No. 1305 OF 2020 is filed by Rekha Shah, Liquidator of Adya Oils and Chemicals Ltd. (hereinafter referred as the “**Applicant**”) seeking directions against **Sudhir Dinanath Chaturvedi & Anr** (hereinafter referred as the “**Respondent/Respondents**”) under **Section 66** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”), praying for following reliefs:

- A. *That this Hon’ble Tribunal may be pleased to declare the loan transaction with IDBI bank by the Corporate Debtor as fraudulent and initiate further investigation in the matter through the appropriate central agency as per the provisions of Section 66 of the I&B Code, 2016.*
- B. *That this Hon’ble Tribunal may be pleased to direct Respondent no-4 to obtain the Search Report & Title Clearance Report.*
- C. *Direct Financial Creditors to make payment of stamp duty and other related dues, if any, to get the original documents from the stamp office.*
- D. *Direct the Financial Creditors to make the necessary payment for conversion of the Agricultural Property to NA, after receipt of the title clearance Report.*
- E. *Direct the demolition of the wall that has been constructed to obstruct entry and exit to the factory.*
- F. *Any other relief as the Hon’ble Tribunal may deem fit and proper.*


II. **Submissions of the Applicant**


1. The Applicant, Rekha Shah, was appointed as the Liquidator of the Corporate Debtor on 04.03.2020. The Corporate Debtor, Adya Oils and Chemicals Ltd., was admitted to Corporate Insolvency Resolution Process



(CIRP) vide order dated 16.09.2019 and the Applicant was appointed as the IRP. Thereafter, the Hon'ble Tribunal, vide order dated 04.03.2020, passed the liquidation order as there was no Resolution Plan that was approved.

2. The Applicant submitted that during the CIRP process, the Applicant received claims from Stressed Assets Stabilisation Fund (SASF) for Rs. 1,44,18,29,164/-. The said claim is with respect to a Loan which was originally sanctioned by Industrial Development Bank of India (IDBI) and was later assigned to SASF. The Applicant, after going through all the documents available, discovered that the Corporate Debtor has created an equitable mortgage in favour of IDBI by virtue of Loan Agreement dated 22.12.1998 and Memorandum of Entry (MOE) dated 13.12.2001. The claim of the Financial Creditor seemed legitimate in the first blush but after further deliberation, the Applicant has discovered that the Financial Creditor is not in possession of the original title deeds, as required, for creation of an equitable mortgage. Furthermore, during the deliberations at the 4th and the 5th CoC meeting, it is evident that the search report issued before the loan disbursement, stating that the mortgaged premises was free from any defect is untraceable and the same casts shadow on the whole transaction between the parties. Further, when the said fact was placed before the CoC in the 4<sup>th</sup> and 5<sup>th</sup> CoC meeting, the Applicant suggested that a fresh title search of the premise would be beneficial in clarifying the true and correct facts. However, the same was turned down by CoC.
3. The Applicant submitted that the transaction between the Corporate Debtor and IDBI (Respondent No. 5) is tainted and the underlying ulterior motive of the Corporate Debtor to defraud IDBI can be evidenced by the following-

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- a. The first repayment of instalment of the loan was due on October 1, 2000. The default was committed on March 30, 2001 as disclosed in FORM C.
  - b. IDBI granted the loan to the Corporate Debtor in 1998 and the special terms and conditions in Article V of Loan Agreement state that the disbursement is to be made only after creation of security. However, the security was created in 2001 by depositing the title deeds on 13th December 2001 much after the default in repayment.
  - c. It is not clear whether IDBI had sought internal approvals for disbursement, prior to creation of the security. This is required as Article III mandates creation of security. However, the pre-disbursement conditions in Schedule IV have not made the creation of security a precondition for disbursement. Significantly, Article V which succeeds the aforesaid article and are termed as "Special Conditions", making it obligatory for IDBI to create security before disbursement, which is an essential pre-condition. The reading of the loan documents suggests that as the "Special Conditions" in Article V succeeds the pre-disbursement conditions in Schedule IV under Article III, it is obligatory that internal permission from the competent authority is obtained before such disbursement is made without creation of security. The Applicant is not aware whether such a permission was sought as there are no documents available on record with respect to the same.
  - d. The Original title deeds which have not been deposited at the time of creation of security is, as stated, with the stamp office pending adjudication of stamp duty. Only a certified true copy of the title documents was deposited when the MOE was drawn up.

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- e.** The Stamp Office issued a notice for payment of stamp duty in 2010, for 2 blocks out of the 6 blocks which was lying in factory premises. The matter was taken up by the Applicant (Resolution Professional) with Promoter/Director of the Corporate Debtor; however, no satisfactory response was received. Further, the Applicant received a notice cum order dated 28.02.2020 for block no.83 from the Stamp Office and due to the ongoing CIRP, the Stamp Office kept the process on hold. The said notice was discussed with the CoC and Respondent No. 1 stated that all the liabilities pertaining to the land were paid in 2007-08 and he is not aware of the notice from the Stamp Office regarding payment of stamp duty.
- f.** It is evident from the 7/12 title extracts that of the 6 blocks only 3 blocks are in the name of the Corporate Debtor, whereas, out of the remaining 3 blocks, 2 blocks are in the name of Government of Gujarat and 1 is in the name of Mr. Solanki. Further, it is not possible to find a buyer under liquidation, unless the title document of all the 6 blocks are with the Corporate Debtor.
- g.** It remains unclear as to how Respondent No. 4 (SASF) initiated action under SARFAESI in November 2003 to sell all the 6 blocks when title to the 3 blocks are not with the Corporate Debtor and the original title deeds have not been deposited by Respondent No. 1. It is also pertinent to point out that the title search report dated 16.02.2016 issued by Shrivastava & Associates, indicates that 3 of the 6 blocks are not owned by the Corporate Debtor
- h.** The matter was raised at the 4th & 5th CoC meeting by the Applicant (Resolution Professional), suggesting a fresh search report and title clearance report, However, CoC did not approve the said request. The

answers given were evasive and the CoC suggested that these issues may be addressed by the Liquidator.

- i. On perusal of the documents available, it is clear that the Corporate Debtor does not hold the title of all the blocks of land purchased and mortgaged to IDBI. Further, tenancy land has been acquired in respect of blocks 84,85, & 86 which are categorised as New Tenure land as per the provisions of the Gujarat Tenancy and Agricultural Land Act, 1948.
- j. Under the provisions of Section 43, the State Government issued instructions from time to time laying down the conditions for granting permission under Section 43(1). In cases where the restrictions under Section 43(1) are applied, the land is known as new tenure land. In cases where such restrictions are not applied the land is known as old tenure land. Hence, if any land is purchased by tenant under the aforesaid provisions of the Tenancy Act, he cannot sell the land without prior permission of the Collector, and the tenant would have to apply to the Collector for such permission. Further, the tenant would have to specify the purpose for sale and the purpose for which purchaser would utilise the land. Since the tenant was given the advantage of purchasing the land at a very low cost, whatever profits he would derive on selling the land, he would be required to share the same with the society at large, because he was granted the land at a throwaway price for his personal cultivation. The State Government accordingly issued instructions laying down how to determine the profit being made by the tenant turned purchaser. The part of the price to be paid by the seller to the State Government is known as premium. Therefore, the premium would have to be paid for selling a new tenure land to another person even as a new tenure

land. While applying for the permission, the permission could also be sought for converting the new tenure land into old tenure land, which would free the land from all restrictions under Section 43 of the Act. For converting the new tenure land into old tenure land, the premium would be much higher.

- k.** In view of the aforesaid provision, it is clear that the premium in respect of the land bearing Block No. 84, 85, and 86 will have to be paid to the State Government. However, as such premium has not been paid, the land has been mutated in favour of the State Government. Further, it remains unclear as to why Block No. 86 was mutated to Mr. Arjunsinh Solanki as the records are insufficient to determine whether he was the original tenant and the seller, Dahyabhai Kakalbhai, who was the landlord, had bypassed the tenancy rights of Mr. Solanki and sold the land to the Corporate Debtor. Furthermore, the Applicant was unable to establish a correct position in this regard as the CoC did not permit title search and title report to be obtained.
- l.** The Applicant completed valuation with great difficulty, in the absence of the Original bills and devoid of details regarding the breakup of the original cost incurred for the project. On receipt of the valuation, it became clear that the current value is not comparable and the original cost appears to be inflated and disproportional to the assets available currently in the unit. The Respondent No. 1 to 4, despite several request by the Applicant, neither made any efforts to get the original documents from the factory which, incidentally, is lying closed since the past 12 years, nor made any efforts to retrieve the original documents or original bills from the factory. The Applicant could not get hold of anything in view of the dilapidated

condition of the unit and it was impossible to retrieve any document from the unit without the active cooperation of Respondent No. 1 to 3. Respondent no 4 (SASF) too is unable to give the detailed break-up of the Project Cost, which should be available in the files of IDBI, which sanctioned the original loan. The break-up will be very useful for comparing whether the assets that were to have been acquired as a part of the project cost have been acquired and commissioned. Further, the cost comparison would be possible once the breakup is available.

- m.** The Applicant did extensive search to trace some details of the amount that has been incurred by the Corporate Debtor in the project for which loan was sanctioned by IDBI. The financial statement of 2003-04 of the Corporate Debtor reveals that the operations of the Corporate Debtor commenced only in 2003-04. The total project expenses as per the balance sheet is Rs. 1667.33 lakhs (excluding CWIP). The major break up is as follows:

Land: Rs. 47.33 Lakhs

Building: Rs. 425.83 Lakhs

Plant & Machinery: Rs. 1180.79 Lakhs

CWIP: Rs. 165.04 Lakhs

The total amount of term loan availed by the Corporate Debtor was Rs. 700 Lakhs and the total project cost was Rs 1544 Lakhs. It is interesting to note that the building is about 2435 Sq. mts. and based on the total spent on the building the cost of construction is about Rs.17,500/- per sq mts which is way above the cost prevalent during the years 2000-2003. This also has to be viewed in the light of the fact that there are half constructed structures in the total built up area.



- n.** The breakup of the plant and machinery is not available and compared to the valuation obtained by the Applicant, the cost incurred in 2001 appears to be disproportionate.
- o.** Another aspect that came to light is that based on the Financial Statements of 2014-15 the Gross Block has increased considerably and on physical verification, the assets that were found in the factory do not account for all the heads reflected in the Balance Sheet except land and building and a few Plant & Machinery. The aforesaid factors clearly indicate that there could have been a serious inflation in the project cost and the funds lent by IDBI do not appear to have been spent in creating the asset for which the funding was obtained.
- p.** The Applicant (Resolution Professional) after taking control and custody of the unit discovered that Jord Engineering, the alleged owner of the adjacent plot, erected a wall in front of the gate of the unit of the Corporate Debtor, claiming that the land belonged to them and that there is no right of way available for the Corporate Debtor. Respondent No. 1, when questioned, remained silent on the issue. There is a strong suspicion that this has been done deliberately to create hurdles in sale during liquidation. The Applicant has never been able to establish contact with Respondent No. 2 and 3.
- q.** On further investigation, it was revealed that Jord Engineering is a related party of Respondent No. 1. The said issue was taken up at the 4th CoC meeting and it was informed by Respondent No. 1 that once title clearance report is prepared there will be clarity on the title to the land and the access. This is surprising, given the fact that Respondent No. 1 has purportedly deposited all title to the property and has set up a manufacturing unit. It is improbable that the right of way to access the property would not have been addressed when the




unit was set up. The fact that the property in question where the wall has been erected is apparently owned by a related party of Respondent No. 1, it is evident that there is a collusion to obstruct the work of the Applicant and also to deliberately reduce the value of the property by creating legal hurdle of access.

- r. It is pertinent to point out that the Corporate Debtor has enjoyed easement right for access to the property, since for over 20 years, the path has been used for entering and exiting the property and as such is entitled to the right of way for access to the property as per the provisions of The Indian Easement Act.
  - s. It is also necessary to investigate the plan outlay of Rs 15.44 Crores, originally envisaged as the recent valuation obtained by the Applicant for the entire assets are lower than the original Project Cost. Hence, there is a strong suspicion that there could be discrepancies found on such verification which may be in quantity and value or in both.
4. The Applicant submitted that in view of the aforementioned submissions, it is clear that the security creation by way of MOE is defective. It is surprising that an esteemed organisation like IDBI, a leading development bank then, has lent money without adequate verification of title and creating a defective MOE without the deposit of original documents.
5. It was further submitted that Section 66 of the Code, specifies twin conditions viz - the directors knew that there was no reasonable means of avoiding insolvency; and the directors did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor. In the instant case, the transaction in question, i.e., availing loan from IDBI on 22.12.1998 took place when I & B Code 2016 was non-existent and thus, the first condition is not Applicable. However, this is a fit case for initiating action under Section 339

of the Companies Act, 2013 for fraudulent conduct of business. Therefore, the liquidator may be permitted to move a separate application for this purpose once the investigation is complete.

6. Further, the Applicant submitted that the Director did not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor, satisfying the second condition provided under Section 66. The reasons for the same are as under:

- a. The loan was availed by offering as security of 6 blocks of which, it appears, that the corporate debtor is not the title holder in respect of 3 blocks.
- b. The intention was to defraud IDBI as there is no clarity on the investment and the commencement of commercial production.
- c. There is no clarity on whether the investments were made for the intended purposes as set out in the loan agreement.
- d. The default commenced when the first instalment of the repayment due on 01.10.2000 was not paid. Making it evident that either the future forecast, in the original project report, was incorrect and could not have been achieved or the funds were not used for the intended purposes.
- e. The Applicant does not have the wherewithal to investigate this aspect of the business and it is humbly submitted that the Hon'ble Tribunal may, if found fit, order further investigation. There are compelling grounds for further investigation, as the original documents are not available. MOE states that only certified documents have been deposited and this has been confirmed by a senior official of IDBI who have received the documents and appended their signatures on the document. The fact that **the original title deeds were not deposited by Respondent No. 1 has been admitted by Respondent No. 4 at the 5th CoC meeting.**

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- f.** The suspicion that the transaction could be fraudulent is further strengthened by the fact that the land in question is agricultural land and conversion to NA is a prerequisite to commence industrial activity. Since the NA premium was not paid in respect of 3 blocks, Block No. 84 and 85 got vested to the Government of Gujarat and Block No. 86 got vested in favour of Mr. Solanki.
  - g.** Another important pointer that a fraud could have been committed is the fact that there is no proper approach road to the property and a factory has been built, indicating that access was available. However, now a wall has been erected in front of the gate of the factory which means that certain information has been held back by the Directors from the Applicant (Liquidator), with an intention to hide some wrongdoing.
  - h.** There has been a concerted effort on the part of Respondent no. 1 to obstruct the work of the Applicant and information with respect to the property titles has not been provided to the Resolution Professional, despite several request.
  - i.** The CoC did not permit the Applicant to carry out title search when it was brought to their notice that 7/12 extract evidences that title to the property is not in the name of the Corporate Debtor with respect to 3 out of the 6 blocks. Respondent No. 4 is neither able to trace the copy of the search report obtained before the sanction of the loan nor is permitting a fresh search to understand the chain of events leading to the title in 3 of the 6 blocks not held by the Corporate Debtor. The matter was again discussed at the 5th CoC meeting stressing that even for sale a title clearance would be required. The CoC was of the view that since no objection was put forward after a board was placed at the property by the Applicant, they would prefer to wait in the event of an



objection at the time of sale rather than investigate title at this juncture. While, the Applicant (in her capacity as the Resolution Professional) has the authority to appoint the professional for the purpose, since the CoC is not willing to approve the expenses, the Applicant is helpless in this regard.

- j.** The CoC also did not permit the expenses to be incurred for appointing a professional to obtain the original documents from the stamp office. This is particularly strange since it is in the interest of Respondent No. 4 to secure the assets mortgaged to them and ensure that the original document, duly stamped, are obtained so that it could serve as evidence in any proceedings before any court.
- 7.** In view of the above stated submissions, the Applicant preferred the present Application before this Hon'ble Tribunal.
- 8.** Further, the Applicant filed an Additional Affidavit dated 10.10.2020 by stating that the Applicant visited the office of Respondent No. 4 (SASF) to inspect the documents available and discovered additional documents. The Additional Affidavit was filed to bring on record the said documents.
- 9.** The Applicant stated that a Deed of Indemnity was executed between Adya Oils and Chemicals Ltd. and Sudhir Chaturvedi (Respondent No. 1) in favour of IDBI (Respondent No. 5)
- 10.** Further, as stated, the Corporate Debtor by sending letters, made request to the Sub-Registrar of Assurance, Karjan to return Original Sale Deeds executed in favour of the Corporate Debtor directly to Respondent No. 5.

11. The Applicant gave work of Title Investigation to Advocate Kiran H. Trivedi. Pursuant to the said investigation, it was noted that there are 6 Sale Deeds in favour of the Corporate Debtor, the particulars with respect to the same are as under-

New Block No.	Old Block No.	Sale Deed No.	Date of Sale	Name of Seller	Name of present owner as per revenue records
77	81	75	02.02.1999	Ganpatsinh P. Parmar	Adya Oils and Chemicals Ltd.
79	83	78	02.02.1999	Sanatan G. Shukla	Adya Oils and Chemicals Ltd.
80	84	77	02.02.1999	Sindha Anopben M.	Shri Sarkar
81	85	74	02.02.1998	Uked Anoop Rathod	Shri Sarkar
82	86	76	02.02.1998	Rathod Dahya Kala	Arjun S. Solanki
83	87	155	04.03.1999	Pravinchandra R. Joshi	Adya Oils and Chemicals Ltd.

12. As submitted by the Applicant, with respect to Block No. 77, 79, and 80 there are Legal Non-compliances and irregularities under provision of Section 63AA of the Bombay Tenancy & Agricultural Lands Act, 1948 and NA permission has not been obtained and title of the said lands are defective. Further, with respect to Block No. 81 and 82 there are Legal Non-compliance and irregularities under Section 73AA of the Bombay Land Revenue Code, 1879 as the land belonged to tribal community, it was declared as Shri Sarkar due to violation of the said provision. Subsequently, Block No. 82 was sold to Mr. Arjun Solanki and this

mutation entry has not been challenged by the Corporate Debtor. With respect to Block 83, it was observed that the provision of Section 63AA of the Bombay Tenancy & Agricultural Lands Act, 1948 was complied with and NA permission was obtained.

13. The Applicant further submitted that the Corporate Debtor mortgaged Block No. 81 & 83 to 87 (Old Blocks) even after knowing the fact that NA order was available only for Block No. 87. The Corporate Debtor mortgaged agricultural land and failed to obtain requisite permissions for the conversion of agricultural land into non-agricultural land.

### **III. Submission of the Respondent 1**

1. The Respondent No.1 submitted that the Application filed by the Applicant (the Liquidator) is without any specific pleadings and without any material facts in support of the Applicant's contention that the loan transaction between the Corporate Debtor and the Financial Creditor is fraudulent or with an intent to defraud the creditors of the Corporate Debtor. Respondent No. 1 placed reliance on the decision of the Hon'ble Supreme Court in the judgment of Anuj Jain, IRP V/s. Axis Bank Ltd, reported in (2020) 8 SCC, wherein it was categorically held that specific material facts are required to be pleaded if a transaction is sought to be brought under Section 66 of Insolvency and Bankruptcy Code (IBC). As contended, in view of the gross failure of the Applicant to comply with this requirement, the captioned application is required to be dismissed with cost.
2. The Respondent No.1 further submitted that in the captioned Application, the Applicant seeks a declaration that the loan transaction between IDBI Bank and the Corporate Debtor be declared as fraudulent as per the provisions of Section 66 of IBC. A plain reading of Section 66 including the heading 'fraudulent trading or wrongful trading' clearly shows that



Section 66 would apply for transactions carried out by the Corporate Debtor with other creditors or persons and not with the Financial Creditor itself on whose application, the CIRP process has been initiated. Thus, the captioned Application has been filed by the Applicant without any application of mind and is an abuse of process of this Hon'ble Tribunal.

3. As stated by Respondent No. 1, it is pertinent to note that Section 66 of IBC is in two parts, i.e. Section 66(1) and Section 66(2). Section 66(1) deals with 'fraudulent trading' and Section 66(2) deals with 'wrongful trading'. The Respondent No.1 relied upon two judgments of the coordinate bench, i.e., the Chennai Bench in the case of *Ashish Rathi V/s. Rativ Rai & Ors, reported in (2022) SCC Online NCLT 21* and in the case of *Renuka Devi Rangaswamy V/5. Madhusudhan Khemka* dated 21.07.2022. In both these judgements, the Hon'ble NCLT, Chennai has considered and interpreted Sections 66(1) and 66(2). Further, vide an Order dated 10.10.2022, the Hon'ble NCLAT upheld the above-stated judgment of NCLT Chennai Bench in *Renuka Devi Rangaswamy's case*.
4. The Respondent No.1 submitted that Section 66(1) of IBC dealing with fraudulent trading cannot be applied to the transaction between IDBI Bank and the Corporate Debtor because the conditions of Section 66(1) as laid down in *paragraph 10.2 of Ashish Rathi's case* are not complied with viz., (a) there is no person named or otherwise on which the liability can be fixed; (b) there is no material on record to show that the said person knowingly carried on business with the CD and (c) lastly, there is nothing on record to show that the said person had a dishonest intention to defraud the creditors. Moreover, the main creditor of the Corporate Debtor is IDBI / SASF whose loan transaction is sought to be declared as illegal by the Applicant which is totally irrational to say the least. Thus, as contented, it


can be seen that the requirements of Section 66(1) of IBC are not at all made out by the Applicant in the captioned Application.

5. Further, the Respondent No.1 submitted that Section 66(2) of IBC dealing with wrongful trading also cannot be applied to the transaction between IDBI and the Corporate Debtor because the conditions laid down of Section 66(2) of IBC in *paragraph 10.4 of Ashish Rathi's case* are not complied with viz., **(a)** the liability can be affixed upon only director or partner and there is no liability affixed on any specific person(s) either of IDBI or of the Corporate Debtor; **(b)** such person(s) upon whom the liability is affixed, knew or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings. As alleged, no such case is made out or any material produced in the captioned Application; **(c)** that such person(s) did not take due diligence with a view to minimizing the potential loss to the Company creditors. As alleged, no such material is placed on record to show that no due diligence was taken and what was the potential loss which was required to be minimized which was caused to the creditors of the Company. Notably, the main creditor of Corporate Debtor is IDBI / SASF whose loan transaction is sought to be declared as illegal by the Applicant.
6. The Respondent No.1 submits that as held by the Hon'ble NCLAT in Renuka Devi's case, the ingredients of Section 66(1) and 66(2) of IBC operate in different field and for 'fraudulent trading' / 'wrongful trading', relevant facts / acceptable material are required to be pleaded by a party by providing all details / adequate facts to fall within the parameters of Section 66 of IBC. Moreover, it is held that a high degree of proof is required to make out a case under Section 66 of IBC. Thus, the tests so laid by the Hon'ble NCLAT is not met out in the present case as neither there are relevant and adequate facts pleaded nor acceptable material with details



provided in the application has been placed on record. It is submitted that the Application is vague without any details and particulars and the Application is full of conjectures and surmises based on assumptions and presumptions of the Applicant.

7. Respondent No. 1 further contended that the Applicant has erroneously relied upon the Deed of Indemnity produced with the Additional Affidavit in support of its case. The recital of the Deed of Indemnity relied upon by the Applicant merely states that the Corporate Debtor has represented to IDBI that some of the original link documents / title deeds pertaining to the immovable properties are lost and misplaced by the Corporate Debtor and are not traceable. The Applicant fails to consider that what is stated is that some of the original linked documents / title deeds are misplaced and not the documents by which Corporate Debtor has purchased the immovable properties in question and the recital relied upon contains standard language. Moreover, notably, Public Notice was given before creating mortgage and also title report has been taken from the Advocate Mr. Babubhai V. Patel / M.V. Patel in August 1999 which are at page 91 to 103 of the Additional Affidavit. These documents clearly show that there is a copy of the Sale Deed between the purchaser i.e. the Corporate Debtor and the Seller which is available for each of the parcels of land and what is lost and/or misplaced are only documents in the chain of linked documents / title deeds. Typically, every property would have a chain of title deeds vesting the title in the Seller and it these Chain of title documents which are referred to in the deed of indemnity and not the purchase deed of the Corporate Debtor. Despite this, a totally vague and frivolous allegation is made by the Applicant that title deeds showing title in favour of the Corporate Debtor are missing and despite that mortgage is created.

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8. As stated Respondent No. 1, this contention is further falsified by the letters dated 18.10.2000 addressed by CD to the Sub-Registrar of Assurances, Karjan (pages 14 to 19 of the Additional Affidavit of the Applicant). By these letters, it is recorded that Sale Deed is executed in favour of the Corporate Debtor and that Sale Deed is lodged for registration and it is requested that the original Sale Deeds be forwarded directly to IDBI Bank in whose favour the mortgage is created by the Corporate Debtor. As alleged, these letters clearly show that Sale Deeds were executed that they are lodged with the Sub-Registrar for registration and letters were addressed to the Sub-Registrar who would directly forward the Sale Deeds to IDBI Bank. As contended, this further clearly shows that the mortgage was validly created and that as per the prevailing practice, then, the Sub-Registrar was requested to directly send the Sale Deeds to the Bank on account of mortgage created. As stated, this clearly establishes that the transaction of mortgage was validly entered into and as per the practice prevailing at that point of time as in the years late 1990s and early 2000, when registration and stamping of documents would take time.
  9. The Respondent No.1 submitted that it is absurd on the part of the Applicant to contend that the loan transaction and/or the mortgage created is fraudulent as it is neither the case of IDBI or that of SASF or the financial creditors that no mortgage was created by Corporate Debtor. As contended by Respondent No. 1, in fact, paras 5,6,7,8,12, and 23 to Affidavit in reply of SASF supports the case of the Respondent No.1 that the mortgage was validly created and the loan transaction was validly entered into between IDBI and Corporate Debtor. The Respondent No.1 relied upon these paragraphs in support of its case that the loan transaction between IDBI and Corporate Debtor is valid and lawful and no case is made out under section 66 of IBC.




- 10.**Further, the Respondent No.1 submitted that as per the loan agreement at page 68 of the Application, the financial plan clearly shows that the term loan of Rs.7 crores only was taken from IDBI Bank and the rest of the money to the tune of Rs. 8.44 crores were infused by the promoters, amounting to the total project cost to be Rs. 15.55 crores. The same can be supported by paragraph 6 at page 13 & 14 of Application wherein the total project cost is shown as Rs.16.67 crores. Therefore, after deducting Rs.7 crores advanced by IDBI under the loan transaction, it can be seen that the promoters have infused about Rs.9 crores in the project of the Corporate Debtor. Thus, there would be no question of any party who have infused such a large amount which is more than the loan amount of Rs. 7 crores to have any fraudulent intention whilst entering into the loan transaction as sough to be alleged.
- 11.**Furthermore, as submitted by Respondent No. 1, the land cost as per the project expenses in only Rs. 47.33 lakhs whereas large component of project expenses is towards building cost (Rs.425.83 lakhs), Plant & Machinery cost (Rs. 1,180.79 lakhs) and CWIP cost (Rs.165.04 lakhs). As stated, the building and the plant were constructed in the year 2000 and after a lapse of 23 years, there is ought to be natural deterioration and wear and tear with passage of time and thus, there is no question of fraud being committed by the Respondent No.1, as alleged.
- 12.**Respondent No. 1 further contended that there is no details or particulars provided and mere allegations are made of alleged fraud which as per the abovementioned judgments of the Hon'ble NCLT and the Hon'ble NCLAT, cannot be considered sufficient to make out a case under Section 66 of IBC. The allegation that the construction cost of Rs. 17,500/- per sq. mtrs., which comes to Rs.1626/-per sq. ft. upon conversion is way above the cost prevailing during the years 2000-2003, is without any details,

particulars or material in support. Thus, in view of the abovestated, Respondent No. 1 alleged that the entire application is full of vague allegations and without any details and particulars substantiating the allegations made therein.

**13.**The Respondent No.1 submitted that the Corporate Debtor has made all possible attempts to revive the project, however, despite numerous efforts, the Corporate Debtor was unable to do so. As submitted, the Corporate Debtor has made part payment to the Financial Creditor to the tune of Rs. 2.85 Crores and further amount paid by investor, introduced by Respondent No. 1 to SASF in the year 2005. The Corporate Debtor also brought a third party to run the Plant, however, unfortunately the plant was not successful. Therefore, the Corporate Debtor has acted in a diligent manner and merely because the business has suffered a loss due to various diverse reasons such as delay in electricity connection, earthquake, market conditions, competition, etc. it cannot be said that the Corporate Debtor or its directors have engaged in fraudulent trading or wrongful trading.

**14.**Further, as submitted by Respondent No. 1 that the allegation made by the Applicant that the Director did not exercise due diligence in minimizing the potential loss to the Corporate Debtor is totally false and incorrect and bereft of materials and particulars. As stated, the Corporate Debtor purchased all the 6 blocks from the Seller and mortgaged them in favour of IDBI and also addressed letters to the Sub-Registrar regarding the assurances to forward the said Sale Deeds directly to IDBI Bank, pursuant to the creation of the said mortgage. Thus, as alleged, it cannot be said that the intentions of the Corporate Debtor were fraudulent or that the Corporate Debtor has not taken the requisite steps for protecting the loss to the creditors of the Corporate Debtor.

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- 15.** The Respondent No.1 submitted that further vague allegations are made by the Applicant that there is no clarity on investments or the intended purposes of the loan or commencement of commercial production. The mere non deposit of original title deeds at the time of creation of mortgage does not mean any fraudulent intention as the mortgage creation is not disputed and, as contended, the same is evident from the letters addressed to the Sub-Registrar at Karjan (pages 14 to 19 of the Additional Affidavit), as per the prevailing practice then, the Sub-Registrar was informed to forward the original title deeds to IDBI on account of mortgage creation.
- 16.** As contended by Respondent No. 1, there is no claim by IDBI / SASF that the mortgage was not created and clearly the allegations made by the Applicant are totally false and bogus. As stated, the same is evident from other applications filed in the main matter, it is evident that the SASF has sought for removal of the Applicant as the Liquidator and the present Application appears to be a counterblast to the Application filed for removal of the Applicant as several allegations are made against IDBI Bank and SASF which is the Financial Creditor and the main creditor of Corporate Debtor. As contended, Respondent No.1 is made a scapegoat on account of disputes between SASF and the Applicant.
- 17.** The Respondent No.1 submitted that conversion of agricultural land to N.A. land is permissible upon obtaining premium. The plant and the factory of the Corporate Debtor is not built on agricultural land which is the land adjoining to the plant and factory of Corporate Debtor. Furthermore, on account of financial stress, the Corporate Debtor was not able to pay the premium for conversion of land. It is settled legal position that mere financial inability does not make a party liable for fraud or any other wrongdoing including even for Contempt of Court.



18. The Respondent No.1 submitted that it is pertinent to note that even the Applicant admitted (Ground 10(k) at page 20 of the Application) that the original documents of title can be obtained from the stamp office appointing a professional. Therefore, there cannot be any fraud in the creation of mortgage as the original title deeds which are lying with the Sub-Registrar office can be obtained even at this stage. Therefore, it is clear that no case is made out for any orders being passed under Section 66 of IBC in the Application made by the Applicant.
19. Respondent No.1 further submitted that the Applicant, during the course of oral arguments, restricted the relief sought to prayer clauses (a) and (d) of the Application. Furthermore, the Applicant has largely relied upon an Additional Affidavit dated 10.10.2020 and despite having been given an opportunity to amend the captioned Application has chosen not to amend the captioned Application. Therefore, the Additional Affidavit cannot be considered as the Respondent No.1 has not been given an opportunity to deal with the contents of the additional affidavit by filing Additional Affidavit in reply. Hence, the contents of the Additional Affidavit not forming part of the main Application ought not to be considered as the Applicant has chosen not to amend the Application.
20. In light of above-stated submissions, Respondent No. 1 submitted that no case is made out by the Applicant. Hence, the present Application deserves to be rejected with cost.

#### **IV. Submission of the Respondent 4- SASF**

1. Respondent No. 4, i.e., Stressed Assets Stabilisation Fund, denied all the contentions put forward by the Applicant. As submitted by Respondent No. 4, Adya Oils & Chemicals Limited (Corporate Debtor) promoted by Shri RP. Chaturvedi, J.P. Chaturvedi, Sudhir Chaturvedi, and Samir Chaturvedi, undertook a project to set up facilities for manufacture of BSS Grade Castor




Oil and its derivatives, in Gujarat. Erstwhile Industrial Development Bank of India (IDBI) (Respondent No. 5), sanctioned a Loan of about Rs.700 Lakh in November 1997 to Corporate Debtor for part-financing of the project. In order to secure the Loan, the Corporate Debtor created hypothecation charge over all its movable properties and mortgage over all its immovable properties and also procured furnished guarantees/ other securities in favour of IDBI. The project was expected to be complete by Feb 1999. However, the commercial production was delayed by 3 years due to various reasons like earthquake, delay in electricity permission etc. Even after granting two restructuring packages, the Corporate Debtor was unable to repay its dues based on which the Respondent No. 5 recalled the said Loan in November, 2003. Further, Respondent No. 5 issued a notice to guarantors/ pledgers in December, 2003 and filed an Original Application (OA) before the Debt Recovery Tribunal, Mumbai under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

2. As submitted by Respondent No. 4, Respondent No. 5, in April 2004, granted third restructuring package to the Corporate Debtor but the Corporate Debtor failed to honour the same. In September 2004, Respondent No. 5 transferred/assigned the Loan granted to the Corporate Debtor, to the Respondent No. 4, together with all the underlying securities. Incidentally, the Corporate Debtor was sanctioned a One Time Settlement (OTS) in January 2006, however, the Corporate Debtor defaulted in payment and requested for modification in OTS terms which was also approved by Respondent No. 4. Subsequently, the OTS was revoked by Respondent No. 4 in May, 2011 as the Corporate Debtor did not honour the modified OTS payment terms as well. As stated, in view of the continued default by the Corporate Debtor, action under SARFAESI was initiated in October 2012 and steps were also taken for filing an application for revocation of consent terms



before DRT, Mumbai. However, further action was kept in abeyance as the Corporate Debtor approached the Respondent No. 4 for settlement of its dues, but the proposals submitted by the Corporate Debtor were unacceptable. In October 2017, the Respondent No 4 filed an application in DRT, Mumbai for withdrawal of consent terms and activation of OA. Thereafter, an application under Section 7 of Insolvency and Bankruptcy Code, 2016 was filed by the Respondent No. 4 in May 2019 and the same was admitted on 16.09.2019. Hence, in view of the above, as alleged, Respondent No. 4 too has suffered gravely at the hands of the Corporate Debtor. Therefore, alleging the transaction is fraudulent is an inaccurate statement.

3. With regard to the contention of Original Title deed and Stamp duty payment, the Respondent No. 4 submitted that in times before digitalization when any sale was made in favour an entity, the Title Deeds of the property were sent back to the Stamp Office for Registration, the same used to take a long time. Hence, when the loan was sanctioned to the Corporate Debtor, the mortgage was created based on the certified true copy of the Title Deeds as documents were not back from the Karjan Sub-Registrar's Office. Hence, as alleged, the non-availability of the original title deeds even though the same are still at the Karjan Sub-Registrar's Office would not make the transaction fraudulent nor should it throw a bad light on the transaction or the assignment of loan. Further, on 18.10.2000, six letters were dispatched to the office of the Sub-Registrar informing them of the loan taken and requesting them to send original documents of the Title Deeds to the Respondent No. 5. Hence, as contended by Respondent No. 5, at no point could the transaction be considered wrong as the non-availability of the Original documents, in no manner, attributes to any negligence.
4. With respect to the title clearance certificates, the Respondent No. 4 submitted that the Title Clearance certificates were issued by Babubhai V.



Patel on 20.08.1999 and Manharbhai T. Patel on 18.02.2000 (Annexed as "Exhibit G" to the Additional Affidavit of the Applicant). The same reflects that at that time the land was free from all encumbrances. Hence, at the time of assignment of loan in the year September 2004, the assignment was undertaken on the basis of the said clearance certificate.

5. Respondent No. 4 further submitted that on 25.10.2000, a Deed of Indemnity was entered into between the Corporate Debtor, Mr. Sudhir Chaturvedi (Director of the Corporate Debtor) who were the Obligors, and Respondent No. 5 (IDBI) who was the Oblige. By the means of the said Deed of Indemnity, Respondent No. 5 was indemnified against any claim or any demand arising out of the immovable property and in view of the assignment of loan to Respondent No. 4, the Respondent No. 4 is also indemnified against the same.
6. Therefore, in view of the aforementioned submissions, the Respondent No. 4 submitted that the reliefs sought by the Applicant are thoroughly misplaced and mala fide and ought to be rejected.

**V. Submissions by Respondent No. 5 – IDBI BANK**

1. Respondent No. 5 submitted that the Application filed by the Liquidator is not maintainable under section 66 of IBC as the application filed by the Liquidator is misconceived and not tenable qua the Respondent no. 5. Further, Respondent No. 5 stated that the provision laid down in Section 66(1) clearly states 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...", making it amply clear that the section provides for the action against the persons of corporate debtor and not the financial creditors.



2. Respondent No. 5 stated that the Hon'ble Supreme Court of India in matter of *Gulkrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors.* has held that:

*“8. We may also observe that the Tripura High Court has rightly relied upon the observations made by this Court in a binding precedent, in Usha Ananthasubramanian Vs. Union of India, which pertains to a matter under Section 339(1) of the Companies Act, 2013 which is pari materia with Section 66 of IBC. The High Court in the case of Sudipa Nath (Supra) has rightly observed that:- "13..... That Section 66 (1) also directed towards making such persons personally liable for such fraudulent trading to recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on NCLT to pass such orders against other organizations/legal entities (other than corporate debtors) with whom such business was carried out against any person responsible in such other organizations/legal entities for carrying on business with corporate debtor. For the said purpose, the ratio of the judgment of the Hon'ble Supreme Court in Usha Ananthasubramanian (supra) in the context of section 339 (2) one of the companies Act, 2013 as extracted above would clearly apply even in the context 66(1) of IBC. Accordingly, an application under Section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of resolution professional or liquidator or by the corporate debtor in its*



*new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organization / legal entities. Such legal action is independent of Section 66(1)."*

*10. We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section."*

3. Further, Respondent No.5 submitted that Section 66 of 1& B Code is to be invoked only in order to protect the interest of the Financial Creditor and to do justice where during the pendency of liquidation it suspects that the Directors of the Corporate Debtor were involved in carrying out any business with an intent to defraud the creditors of the Corporate Debtor or for any fraudulent purpose. In the instant matter, the Application is filed by the Liquidator to investigate the affairs of IDBI Bank Ltd (successor in interest of the erstwhile Development Bank) after 25 year of sanction of loan and 20 years after transfer / assignment of debt to the Financial Creditor, rather than investigating the affairs of the Corporate Debtors or the conduct of the defunct Board of Directors. Such Application will be totally outside the purview of Section 66 of 1&B Code.
4. Respondent no. 5 stated that it does not have any documents in its custody pertaining to the account of Adya Oils and Chemicals Ltd., Industrial Development Bank of India was established as a statutory corporation under the Industrial Development Bank of India Act, 1964 (18 of 1964) with effect from 01.07.1964 vide Government of India ("GoI") notification dated

22.06.1964 for promotion and development of industries. The Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (53 of 2003) was enacted by GoI to facilitate conversion of Development Bank to a Banking Company. Immediately after the enactment of IDBI Repeal Act, a Special Purpose Vehicle ("SPV"), in the form of a company under the Companies Act, 1956 was incorporated & registered by the name "Industrial Development Bank of India Limited" for transfer & vesting of the undertaking of the Development Bank with the SPV. GoI, pursuant to the Notification no. S.O... (E) (F.NO.8/(2)2004-IF-1) dated 29.09.2004, in exercise of the powers conferred under Section 3(1) of IDBI Repeal Act, transferred & vested the undertaking of the Development Bank in the SPV named "Industrial Development Bank of India Limited" (subsequently name changed to "IDBI Bank Ltd.") with effect from the appointed day i.e. 01.10.2004.

5. Furthermore, as stated, GoI made a provision of Rs. 9,000 crores in the Budget of FY 2004-05 for acquiring the non-performing assets of the Development Bank and towards this GoI set up a Trust by the name of 'Stressed Assets Stabilization Fund' (Respondent No. 4) vide Trust Deed dated 24.09.2004 for acquiring non-performing assets to the extent of Rs. 9,000 crores from Development Bank. The trust deed provides for managing the stressed assets acquired from the Development Bank with a view to recover the amounts due and payable by the defaulting borrowers. As contended, the Transfer Deed dated 30.09.2004 was executed by Development Bank in favour of the Financial Creditor, whereby Development Bank had unconditionally, irrevocably and without recourse basis sold, assigned, transferred and released to the Financial Creditor the loan/facility to the extent of Rs.700 Lakh sanctioned to Corporate Debtor. By virtue of the said Transfer Deed, Development Bank has assigned in



favour of the Financial Creditor all its right, title and interest in the loan agreements together with all other collateral and underlying security interest, pledges and/or guarantees created by Corporate Debtor in favour of Development Bank.

6. As contended by Respondent No. 5, in the year 2004 erstwhile Development Bank had assigned the account to the Financial Creditor and at present IDBI Bank Ltd. does not have any documents / information pertaining to the said account. Further, most of the Bank officers who have dealt with the subject account at that point of time have either been superannuated or retired from the Bank and Respondent No. 4 has stepped into the shoes of the Respondent No. 5.
7. Further, as alleged, the reliefs sought by the Applicant in the present application qua IDBI Bank Ltd, cannot be granted as IDBI Bank Ltd. is neither proper nor necessary party to the present proceeding. The proceeding before this Hon'ble Tribunal is initiated by Financial Creditor after assignment of debt i.e. in the year 2004. Further, the entire record and documents pertaining to the account of Corporate Debtor is in the custody of Financial Creditor. It was further submitted that the Financial Creditor has initiated appropriate proceedings against the Corporate Debtor before the Debt Recovery Tribunal for recovery of its dues.
8. Respondent No. 5 submitted that upon perusal of the documents filed by Liquidator herself in the present matter it can be seen that the Bank had relied upon the title search report dated 20.08.1999 (Exhibit G to the Additional Affidavit of Applicant) which was obtained from the Advocate Mr. Babubhai V Patel. At page 93 it is specifically mentioned by the Advocate that:

*"The Title of the property described hereinabove is clear marketable and free from any encumbrances."*

As contended, in regular course of business banks always rely upon the title certificates issued by the Advocates.

9. Further, as alleged, the relief sought by the Liquidator is of declaration, seeking declaration regarding the contract between two parties and this Hon'ble Tribunal cannot grant such declaration. Therefore, in light of the aforementioned submissions, Respondent No. 5 submitted that this Hon'ble Tribunal be pleased to reject the present Application as against IDBI Bank Ltd and pass appropriate directions/ orders as this Hon'ble Tribunal may deem fit and proper.

#### **VI. Rejoinder by the Applicant**

1. The Applicant, in the rejoinder, denied the contentions of Respondent No. 4 and stated that there have been several lapses on the part of Respondent No.5 (IDBI) in issuing loan to the Corporate Debtor. The loan was taken in times prior to digitization, and even after digitization, the Original Title Deeds remain in the custody of Karjan Sub-Registrar's office, as alleged, which demonstrates the lethargy on the part of Respondent No.4 and 5. The Applicant submitted that while the land was mortgaged after a title clearance certificate, the certificate nowhere mentioned the nature of the land (whether Agricultural or Non-Agricultural), and it is surprising that based on such an inconclusive certificate, a loan was disbursed.
2. The Applicant further contended that mere admission of claim does not mean the claim is unassailable. As submitted, at the 4th & 5th CoC meeting, the Applicant clearly pointed out that the 7/12 extracts indicate that the title is not in the name of the Corporate Debtor and hence a Title search is required. Respondent No. 4, despite knowing this fact, refused to permit the title search and the Applicant, who was the Resolution Professional at that time, could not initiate the search as the fee budget was not approved by the CoC.



3. The Applicant alleged that Respondent No. 4 and 5 failed to get the original title deeds and are taking shelter under the indemnity provided by the Directors of the Corporate Debtor to shield themselves. They have refused to take any responsibility for lapses on their part, and neither Respondent No. 4 nor Respondent No. 5 have clarified why a mortgage was created on an agricultural land which is invalid. The Respondent No. 4 did not provide the breakup of the original project cost and the original invoices to facilitate valuation, and upon receipt of the valuation report, it became clear that the current value and the original value are not comparable.
4. Furthermore, the Applicant stressed that the Corporate Debtor is in liquidation, and the Applicant is keen to explore the option of reversing the mutation in favour of the Government of Gujarat by making an appeal and offering a premium which is as less as possible, stating that the recovery of the public financial institution is at stake. As stated, the Applicant is duty bound to examine all fraudulent transactions as per the provisions of the Code.

## VII. FINDINGS

1. After appreciating the submissions of all the parties and perusing the documents available on record, it is evident that the case of the Applicant is that various discrepancies such as non-compliance of the Loan Agreement, inflated project cost, non-completion of the project, non-availability of the original title deed, and 3 out of 6 Blocks of land not being in the name of the Corporate Debtor, were found which led the Applicant to file the present Application before this Hon'ble Tribunal. The case of the Respondents (1, 4, and 5) is that the contentions put forward by the Applicant are misconceived and false as the Applicant has failed to provide any material facts in support of the said contentions and further the Applicant has failed



to make out a case under Section 66 of the Code. It is also pertinent to note that this Tribunal, vide Order dated 13.02.2024, forfeited Respondent No. 2 and 3's right to file a reply to the present Petition in light of the said Respondents' absence despite service. Thus, in light of the arguments and submissions put forth by the parties, the main point for consideration is-

***Whether the acts complained of in the present application make out a case under Section 66 of the Insolvency and Bankruptcy Code, 2016? If so, for what relief?***

2. Before proceeding further on the matter, this Bench would refer to Section 66 of the IBC relating to fraudulent transaction which reads as under:

**“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 Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.*

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

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

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

3. In light of the above-stated provision, it becomes clear that the scope of Section 66(1) is to demonstrate that the business of Corporate Debtor has been carried on with the “intent to defraud its creditor” or for “any fraudulent purpose”. Further, on analysing Section 66(2), it is evident that it deals with the liability of the Director or Partner of the Corporate Debtor in the case where the director or partner “knew or ought to have known” that there was no reasonable prospect of avoiding the commencement of the insolvency process. Furthermore, it must be demonstrated that the director or partner “failed to exercise due diligence” in minimizing the potential loss to the creditors of the corporate debtor.
4. This Bench, in the succeeding paragraphs, will analyse the contentions put forward by the Applicant and see if the same justifies the preconditions laid down in Section 66. The pointwise analysis in this regard is as follows-

#### **4.1 Disbursement of Loan amount prior to the creation of security-**

As stated by the Applicant, Respondent No. 5 (IDBI) granted the loan to the Corporate Debtor in 1998. Default with respect to the said loan was committed on 30.03.2001 (as in FORM C). In terms of provisions laid down in the Loan Agreement dated 22.12.1998, the disbursement of the said loan was to be made only after the

creation of security. The same can be substantiated by **Article V – PRE DISBURSEMENT CONDITIONS** of the said Loan Agreement (Page 50 of the IA). However, security with respect to the loan was created in 2001 as Title Deeds were deposited on 13.12.2001.

**4.2 Non-availability of the Original Title Deeds-** On perusal of the documents available on record, it has come to light that the Corporate Debtor is not in possession of the Original Title Deeds on the basis of which security for the said Loan was created. Security/Mortgage was created based on the certified true copy of the Title Deeds (As admitted by Respondent No.4 in its reply). With respect to the said issue, the Respondents have argued that the Original Title Deeds of the (Mortgaged) property were sent to the Stamp Office for registration and at the time of creation of Mortgage, the said documents were not received back from the Karjan Sub-Registrar's Office. It was further argued that the non-availability of the said Original Title Deeds does not render the transaction to be fraudulent. It is also pertinent to take notice of the Letters dated 18.10.2000 by the Corporate Debtor to the Sub-Registrar of Assurance, Karjan, informing them of the loan taken and requesting them to send Original Title Deeds to the address of Respondent No. 5 (IDBI). However, it deserves to be appreciated that the said letters were sent in the year 2000 and after that, in view of the documents available on record, no steps towards procuring the said Original Title Deeds were ever taken by the Corporate Debtor or Respondent No. 4 & 5. The said Original Title Deeds are still non-traceable and it is concerning that the main document, on the basis of which security was created, was not retrieved by any of

the interest parties. On perusal of the minutes of 4<sup>th</sup> and 5<sup>th</sup> CoC Meeting, it was noticed that when the said issue pertaining to retrieving the Original Title Deeds was proposed by the Applicant, CoC members dissented with 100% vote. In view of the above, it becomes evident that there was no intention on part of Respondent No. 1, 2, and 3 to ensure that the Original Documents are retrieved and there is also negligence on part of Respondent No. 4 & 5 as no steps were taken to get the Original Documents, rather they attempted to justify the said non-availability by stating that the said documents are at the Sub-Registrar's office.

**4.3 Deed of Indemnity dated 25.10.2000-** A Deed of Indemnity was executed by the Corporate Debtor and Respondent No. 1 (Obligors) in favour of Respondent No. 5 (IDBI) on 25.10.2000. The said Deed of Indemnity was executed as the Obligors agreed to indemnify IDBI for the non-submission of the Title Deeds, on the basis of which security was created, and informed IDBI that *“some of the original link documents/title deeds pertaining to the said immovable properties have been lost and misplaced by Obligor No. 1 and the same are not traceable in spite of best endeavours and efforts made by Obligor No. 1”*. A relevant excerpt from the said Deed of Indemnity is as follows-

AND WHEREAS the Obligors further represented to IDBI as follows:-

- (a) That the Obligor No.1 has not created any charge/mortgage on the said immovable properties with any individual/bank/financial institution/housing finance company/body corporate for any purpose whatsoever by depositing the said title deeds or notarised copies/certified true copies thereof ;
- (b) That the said title deeds are not in the possession of the Obligors ;
- (c) That inspite of the best efforts made by the Obligors, the said title deeds are not found/located ;
- (d) That the Obligors cannot locate/trace out/retrieve the said title deeds ;
- (e) That the said title deeds are not in the possession of the any of the directors/authorised persons of the Obligor No.1 ; and
- (f) As and when the said title deeds are traced out, the same would be produced and deposited with IDBI immediately.

Therefore, upon perusal of the aforesaid excerpt, especially point (c) and (d), it becomes evident that the Obligors (The Corporate Debtor and Respondent No. 1) have admitted that the Original Title Deeds “*are not found/located*” and “*the Obligors cannot locate/trace out/retrieve the said title deeds*”. However, it deserves to be appreciated that the said Deed of Indemnity was executed on 25.10.2000 which is merely a week after the Letters dated 18.10.2000 were sent by the Corporate Debtor to the Sub-Registrar of Assurance, Karjan, informing them of the loan taken and requesting them to send Original Title Deeds to the address of Respondent No. 5 (IDBI). The close proximity in the execution of the Deed of Indemnity and the date on which the letters were sent to the Sub-registrar requires close examination as the said letters to the Sub-registrar evidence that the Original Title Deeds were at the said office, whereas, the reason for the execution of the said Indemnity Deeds was stated to be “*the Obligors cannot locate/trace out/retrieve the said title deeds*”.

**4.4 Title Search with respect to the properties of the Corporate Debtor-** Title Clearance certificates dated 20.08.1999 and 18.02.2000 were issues by Babubhai V. Patel and Manharbhai T. Patel, respectively. The said certificates showed that the Title of the 6 blocks (properties of the Corporate Debtor) were free from all encumbrances. However, a Title search dated 16.02.2016 was conducted by Atul B. Shrivastava which revealed that 3 out of the 6 Block of land are not under the name of the Corporate Debtor as out of the remaining 3, 2 Blocks of land were mutated to the Government of Gujrat and 1 Block was mutated to Mr. Solanki. The said Title Search also revealed that the Blocks of land are required

to be converted to Non-Agricultural Land for industrial purposes. Further, a Title Clearance Report dated 27.09.2020 conducted by Adv. Kiran H. Trivedi also revealed the same and the said report clearly stated that titles of all properties are defective except for Block No. 83, as the title to the said Block was found to be clear. The aforementioned Title Search reports clearly indicates that the Blocks allegedly owned by the Corporate Debtor are stated to be “Agricultural Land” which is not suitable for industrial use and the Corporate Debtor was required to obtain the requisite “Non-Agricultural” Order/permission from the Collector which, as stipulated in the Title Clearance Report dated 27.09.2020., was never obtained and the same is a violation of the **Bombay Land Revenue Code and Gujarat Agricultural and Tenancy Act**. Therefore, this Bench is of the opinion that Respondent No. 1, 2, and 3 were negligent in obtaining the requisite permissions with respect to the industrial use of the said land even when the conversion to NA is a prerequisite condition to commence industrial activity and the said Respondents were also negligent in clearing the Title of the said property. Furthermore, upon perusal of the Minutes of the 5<sup>th</sup> CoC Meeting, it becomes evident that when the Applicant presented the desired issue pertaining to a fresh Title Search report and clearance before the CoC, the same was declined with 100% vote. The Applicant further informed the CoC Members that 3 out of the 6 Blocks do not belong to the Corporate Debtor and the same cannot be sold by the Liquidator and selling individual Block will fetch lesser value which would affect the Creditors of the Corporate Debtor. Respondent No. 4 (SASF) stated that *“they would prefer to wait till the time any incident gets triggered such as no bidder*

*showing interest or any of those parties raising objections at the time of sale.*” This statement by the Respondent No. 4, being the main Creditor of the Corporate Debtor, evidences that Respondent No. 4 has no interest in recovering its claim from the Corporate Debtor, despite being aware of the fact that the loan is only secured by 1 Block of land.

**4.5 The issue pertaining to way of right to Corporate Debtor’s property-** In view of the contentions of the Applicant, it has come to light that a wall has been erected in front of the gate of the factory unit of the Corporate Debtor, thereby restricting the way of right available for the Corporate Debtor and the same is evident from the perusal of the documents available on record. The said issue was duly discussed in the 4<sup>th</sup> CoC Meeting and the RP (Applicant) informed the CoC members that she visited the said location on 03.01.2020 and noticed the said wall. However, when she visited the factory earlier on 10.10.2019, there was no wall erected in front of the main gate of the Corporate Debtor’s factory. Upon questioning the local people, the Applicant found out that the said wall was erected by “Jord Engineering group” and, as alleged, *“the promoter of Adya Oils is son in law of owners of Jord group.”* It is pertinent to note that Respondent No. 1 (Suspended Director and Promoter of the Corporate Debtor) was present in the said CoC Meeting and as per the Minutes of the said Meeting, Respondent No. 1 did not deny the said contention and remained silent on the issue. It deserves to be appreciated that there is nothing available on record to show that the said issue was addressed by any of the concerned parties (Respondent No. 1, 4, and 5) and this evidences

that neither the Creditors nor the Director of the Corporate Debtor are concerned with the resolution of the Corporate Debtor company.

#### **4.6 Negligence on part of the stakeholders of the Corporate Debtor-**

This Bench, after close examination of the documents available on record, is of the judicious opinion that neither the Creditors nor the Director of the Corporate Debtor are primarily concerned with the resolution of the Corporate Debtor. Respondent No. 4, and 5 have failed to exercise the requisite due diligence with respect to their claim and the affairs of the Corporate Debtor. As is evident from the preceding paragraphs, 3 out of 6 Blocks of Land (used as Security) are not in the name of the Corporate Debtor and title of only one Block is clear, evidencing that Security with respect to the Loan sanctioned by Respondent No. 5 (Later assigned to Respondent No. 4) is defective. Further, the said issue was duly discussed in the 4<sup>th</sup> and 5<sup>th</sup> CoC Meetings and the Applicant suggested that a fresh Title Report/Clearance Certificate should be obtained with respect to the said Block of land, however, the said suggestion was turned down by Respondent No. 4 by stating that *“they would prefer to wait till the time any incident gets triggered”*. This alone substantiates the negligence on the of part of Respondent No. 4. Furthermore, Respondent No. 5 (IDBI) sanctioned the Loan merely on the basis of true certified copies of the title deeds and never, as per records, made any effort to retrieve the Original Title Deeds, rather, an Indemnity Deed was obtained from the Corporate Debtor and Respondent No. 1 which indemnified IDBI against the said non-submission of the Original Title Deed. This evidences gross negligence on part of Respondent No. 5. Repeated negligence and non-cooperation has been noted on part of Respondent No. 1 as



the Original Title Deeds for the mortgaged properties were never obtained, there is nothing available on record to evidence that the factory premises were visited by the Promoters/Directors of the Corporate Debtor, and the requisite NA permission was never obtained which rendered the Title of the Blocks of land defective. This demonstrates lack of due diligence in protecting creditors' interests on part of Respondent No. 1, 2, and 3.

5. Therefore, in view of the aforementioned, this Bench is of the opinion that the conduct of Respondent No. 1, 2, 3 has not been that of a prudent businessman which in turn has not only caused admissions of the Corporate Debtor into CIRP but has also miserably failed to protect the interest of the creditors because of the following conduct-
  - a) Respondents No. 1,2, and 3 failed to make any efforts to retrieve the original title deed.
  - b) The land that was bought for the factory was never converted from “Agricultural” to “Non-Agricultural” which is a pre-requisite for industrial use of the said land.
  - c) Because of the above stated action, the land was mutated in favour of the Government of Gujarat.
  - d) There were no efforts on part of Respondents No. 1, 2, and 3 to get the said land back. (The land for SC ST, reverted back to govt.)
6. Therefore, in view of the above stated, it is evident that the amount of loan received from IDBI was never used for setting up the factory as firstly, the said land was never converted to “Non-Agricultural” and secondly, the Applicant has stated that there are half-constructed structures in the total build up area of the factory.



Furthermore, not only that the conduct of the Respondents No. 1,2, and 3 has been fraudulent which caused loss to its creditors but even the conduct on part of Respondent No. 4 and 5 has not only been negligent but also unprofessional as –

- a) Respondent No. 4 and 5 failed to retrieve the Original Title Deed.
  - b) Mortgage was created without any of the original documents.
  - c) Respondent No. 4 and 5 were apparently satisfied on the strength of Deed of Indemnity knowing fully well that there is no land in the name of the Corporate Debtor except for 1 Block, i.e., Block 83.
  - d) The Applicants efforts to get the title search done and convert the land to “Non-Agricultural” were shot down by Respondent No. 4 and 5 despite the fact that the same was done to protect their interest.
7. Therefore, keeping in view the totality of the circumstance, it is evident that Respondents No. 1, 2, and 3 have acted in fraudulent manner. The tribunal notes that while the present case may not explicitly fall within the frame of Section 66, Section 60(5) empowers this tribunal to take notice of fraudulent conduct of the parties, thus exercising powers under the said section. The tribunal is further of the considered opinion that the conduct of Respondents 1, 2, and 3 has been imprudent, and Respondents 4 and 5 have not been sufficiently vigilant enough to protect their own interests. Thus, the present **IA No. 1305 of 2020** is hereby **allowed**.

Sd/-

**MADHU SINHA**  
**Member (Technical)**

/Jhanvi/

Sd/-

**REETA KOHLI**  
**Member (Judicial)**