

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT – VI**

**ITEM NO. 802**  
**IA/3749/PB/2020**  
**IN**  
**(IB) 494/PB/2019**

**IN THE MATTER OF:**

**Ms. Reshma Mittal V/s. Mr. Ashok Raja and Ors.**

**Order under Section 43(1) read with Section 66(1) of Insolvency and  
Bankruptcy Code, 2016**

**Order delivered on 14.09.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS,**  
**HON'BLE MEMBER (JUDICIAL)**  
**SHRI RAHUL BHATNAGAR,**  
**HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

IA/3749/PB/2020 in (IB) 494/PB/2019 stands allowed.

**SD/-**  
**(Rahul Bhatnagar)**  
**Member Technical**

**SD/-**  
**(Bachu Venkat Balaram Das)**  
**Member Judicial**

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-VI**

**IA/3749/PB/2020**  
**IN**  
**(IB) 494/PB/2019**

**IN THE MATTER OF:**

**SYNDICATE BANK**

**... FINANCIAL CREDITOR**

**Versus**

**HIM STEEL PVT LTD.**

**... CORPORATE DEBTOR**

**AND IN THE MATTER OF:**

**MS. RESHMA MITTAL**  
**RESOLUTION PROFESSIONAL**  
**HIM STEELS PVT. LTD**

**... (Resolution Professional / Applicant)**

**Versus**

**MR. ASHOK RAJA**  
**DIRECTOR, SUSPENDED BOARD OF THE CD**  
**Residence at: -**  
**42/72, West Punjabi Bagh, New Delhi,**  
**India 110026**

**.... Respondent No. 1**

**MR. ABHISHEK RAJA**  
**DIRECTOR, SUSPENDED BOARD OF THE CD**  
**Residence at: -**  
**42/72, West Punjabi Bagh, New Delhi,**  
**India 110026**

**....Respondent No.2**

**MR. SHANTI SWARUP RAJA**  
**DIRECTOR, SUSPENDED BOARD OF THE CD**  
**Residence at: -**  
**42/72, West Punjabi Bagh, New Delhi,**  
**India 110026**

**....Respondent No.3**

**MR. ARVIN RAJA**  
**DIRECTOR, SUSPENDED BOARD OF THE CD**

**Residence at: -  
42/72, West Punjabi Bagh, New Delhi,  
India 110026**

**.... Respondent No. 4**

**HIM ALLOY & STEELS PVT. LTD  
AT:- Plot No 1-4 Industrial Area, AMB  
Distt UNA, Himachal Pradesh  
BATHINDA PB 151001 IN**

**....Respondent No. 5**

**HIM CYLINDERS LTD.  
At:- C/O Ashok Raja, Director  
42/72, West Punjabi Bagh, New Delhi,  
India 110026**

**.... Respondent No. 6**

**HIM MOTORS LTD.  
At:- C/O Ashok Raja, Director  
42/72, West Punjabi Bagh, New Delhi,  
India 110026**

**.... Respondent No. 7**

**CA VISHAL SEHGAL  
Statutory Auditor of HIM Steels Pvt Ltd.  
At: - A.L Sehgal & Co (Chartered Accountants)  
514, Arunachal Building, 19, Barakhamba Road  
New Delhi 110001**

**....Respondent No.8**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT: -**

For the Liquidator: Mr. Lalit Mohan, Mr. Videh Vaish, Ms. Aakansha and Mr. Abhay Gupta, Advs. & Ms. Reshma Mittal, Liquidator

**ORDER**

**PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Order Pronounced on: 14.09.2023**

1. The present Application under Section 43(1) read with Section 66(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') has been filed by the Applicant/Resolution Professional (Ms. Reshma Mittal) of the Corporate Debtor i.e., M/s HIM Steels Pvt Ltd. for reporting preferential and fraudulent transactions done by the Respondents. The applicant is seeking following reliefs:
  - a. That Hon'ble Tribunal may allow this application under Section 43(1) and 66(1) of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.;
  - b. That Hon'ble Tribunal may be pleased to pass such order under section 43(1) declaring the transactions as preferential transactions and reverse it and consequently directing the respondents to pay Rs. 3.82 crores to the corporate debtor.
  - c. That Hon'ble Tribunal may be pleased to pass such order under section 66(1) declaring the transactions as Fraudulent transactions and directing the Respondents to make contribution of Rs. 96.19 crores to the assets of the corporate debtor.

- d. That Hon'ble Tribunal may be pleased to pass such order as it deems appropriate as per the provisions of Section 43 read with Section 44 and Section 66 read with Section 67 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
  - e. That Hon'ble Tribunal may be pleased to pass such other relief as the Hon'ble Tribunal may deems fit and proper in this case.
2. That the details and material facts leading to the filing of the present application are stated as under
- I. That this Tribunal vide order dated 15.07.2019 admitted the petition and initiated the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. The Applicant was appointed as the Interim Resolution Professional (IRP) in the instant case.
  - II. That in the First meeting of CoC held on 09.08.2019 the IRP was appointed as RP.
  - III. That on 07.10.2019, the applicant appointed VMRS Associate, Chartered Accountants (hereinafter "Transaction Auditor") to conduct the Transaction Audit of the Corporate Debtor to assist Resolution Professional in identifying whether the Corporate Debtor has been subject to any transactions covered under Sections 43, 45, 50 or 66 of the IBC.

- IV. That due to non-cooperation on the part of the ex-directors of the suspended board of the Corporate Debtors to hand over the records/books of accounts of the Corporate Debtor the applicant filed application under section 19(2) of the Code.
- V. That this Tribunal vide order dated 22.08.2019 directed the ex-directors to appear in the office of the Resolution Professional. Ex directors appeared in the office of the applicant and provided 30% information including tally data and informed that books are not audited after 31.03.2016. Ex-directors hid the fact that Audited Balance Sheet as on 31.03.2017 is available with them. The applicant came across an E-mail dated 07.03.2019 in which scan copies of Audited Balance Sheet of Corporate Debtor as of 31.03.2017 duly signed by the statutory auditors and ex-directors was available.
- VI. The applicant conducted comparison of Audited financials as on 31.03.2017 with the tally data provided by the ex-directors on 27.08.2019 and found huge differences between both of them.
- VII. That this Tribunal disposed off the application filed under section 19(2) of the Code and observed that the respondents (directors of the Corporate Debtor as well as the purchasers of the property where the books of accounts /records of the Corporate Debtor is kept) are not inclined to provide records of the Corporate Debtor to the applicant.
- VIII. The Transaction Auditor submitted its draft audit report which was shared with the ex-directors on 18.08.2020 however, the ex-

directors chose not to file any reply/ response to the draft Transaction Audit Report.

- IX. That final Transaction Audit Report was submitted on 06.04.2020 and a copy of the same was sent to the ex- directors. The ex-director filed his response which was shared with the Transaction Auditor. The Transaction Auditor submitted that reply submitted by ex-directors is theoretical in nature and no supporting documents commensurate with the replies were provided and ex-directors failed to submit any concrete evidence in support of their objections.
- X. That the CoC in its 6th meeting held on 09.04.2020 adopted the Transaction Audit Report.
- XI. That relevant transactions in the aforesaid Transaction Audit Report are stated as under: -
- A. Management had manipulated their books of accounts and all the books of accounts which were provided were incomplete and all transactions were not recorded.
  - B. Entries posted in tally books are not complete and posted entries are suspicious whether it is made or not.
  - C. That the physical records were not in support of the Tally Books and Bank Statement.
  - D. Genuineness of creditors 86 debtors are doubtful.
  - E. Diversion of money through suspense account worth Rs. 33.26 crores

F. Preferential transactions as per the provisions of section 43 of the IBC were carried out by ex-management. Preferential payments to related parties worth Rs. 3.82 crores were made during 2 years prior to insolvency commencement date. Details of the same are reproduced as under: -.

<b>Period</b>	<b>Name of Related party</b>	<b>Total Net Amount paid</b>	<b>No. of Transactions</b>
24.08.2017 to 31.03.2018	HIM Alloys & Steel Pvt Ltd	Rs. 2.49 cr	13
15.07.2017 To 28.09.2017	HIM Cylinders Pvt Ltd	Rs. 0.17 cr	02
28.08.2017 to 30.08.2017	HIM Motors Pvt Ltd	Rs. 1.17 cr	20

G. That aforesaid repayment to related parties as named above is in the nature of transfer of property (i.e. money) worth Rs. 3.82 crores and it has the effect of putting such vendors/respondents in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53 of the IBC.

H. Fraudulent transactions under section 66 of the IBC were carried out by ex-management. Transactions worth Rs. 7.83 crores were found in respect of Related party transactions.

I. Misappropriation of cash worth Rs. 2.55 crores were made.

J. Misappropriation of stock worth Rs. 78.50 crores were made

- K. Non-reconciliation of balances of ledger under consolidated bank statement and tally books of Corporate Debtor was found.
  - L. Diversion of fund through dummy transactions reported under bank statement of Corporate Debtor was found, net effect worth Rs 7.31 crores.
  - M. Kamakshi enterprises - an adjustment account cooked to defraud the public and private authorities.
- XII. That considering the above background, this instant application is being moved under Sections 43(1) & Section 66 (1) of the Insolvency and Bankruptcy Code, 2016 for seeking directions from this Tribunal.

3. The Respondent No 1 to 4 has filed its reply to the application. However, after filing reply no one appeared for any of the Respondent(s) for arguments and other Respondents. Therefore, the Respondents were set ex-parte vide order dated 15.05.2023. The Reply filed by Respondent No1 to 4 are stated as under: -

- I. The RP has filed preferred a Composite Application by clubbing preferential as well as fraudulent transactions allegedly done by the Corporate Debtor. therefore, violated guidelines issued by Hon'ble Supreme Court in the matter of *Anuj Jain vs Axis Bank & Limited & Ors. [(Civil Appeal Nos. 8512-8527 of 2019)* wherein it was held as under: -

*"However, we are impelled to make one comment as regards the application made by IRP. It is noticed that in the present case, the IRP moved one composite*

*application purportedly under Sections 43, 45 and 66 of the Code while alleging that the transactions in question were preferential as also undervalued and fraudulent. In our view, in the scheme of the Code, the parameters and the requisite enquiries as also the consequences in relation to these aspects are different and such difference is explicit in the related provisions. As noticed, the question of intent is not involved in Section 43 and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time. However, whether a transaction is undervalued requires a different enquiry as per Sections 45 and 46 of the Code and significantly, such application can also be made by the creditor Under Section 47 of the Code. The consequences of undervaluation are contained in Sections 48 and 49. Per Section 49, if the undervalued transaction is referable to Subsection (2) of Section 45, the Adjudicating Authority may look at the intent to examine if such undervaluation was to defraud the creditors. On the other hand, the provisions of Section 66 related to fraudulent trading and wrongful trading entail the liabilities on the persons responsible therefor. We are not elaborating on all these aspects for being not necessary as the transactions in question are already held preferential and hence, the order for their avoidance is required to be approved; but it appears expedient to observe that the arena and scope of the requisite enquiries, to find if the transaction is undervalued or is intended to defraud the creditors or had been of wrongful/fraudulent trading are entirely different. Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority."*

- II. That the RP is duty bound to file an application for avoidance of transactions, if any, within the time-frame provided in

Regulation 35A read with Section 25 (2) (j) of the Code. The said aspect is further fortified in view of Regulation 40A of the above stated Regulations, providing model time-line for corporate insolvency resolution process. In the present case, the Applicant admits that she had approached the Transaction Auditor on 07.10.2020 and the Auditor had, thereafter, submitted its report on 04.04.2020. Thus, the RP has categorically failed in its statutory duty to make a determination within 115 days from the date of the insolvency commencement date i.e. by 07.11.2019. The failure of the RP to adhere to this time-frame provided by the Code alone itself merits rejection of the present Application. The Applicant has filed the present application after 6 months from the model timeline.

- III. The RP is misrepresenting the Report and trying to pigeon-hole a transaction under Section 43 of the Code to one under Section 66 of the Code without any justification for the same in order to bypass the look-back period.
- IV. That the Applicant, in light of the Report, has alleged that cash transactions were entered in the books of CD to manage the books and Rs. 2.55 Cr were siphoned off. Before, advertent to the unfounded allegations therein, it needs to be highlighted that the RP has committed a grave error by portraying an alleged preferential transaction as an alleged fraudulent transaction. The said error on the part of the RP

goes to the root of the present application and thus, the present Application deserves to be dismissed with exemplary costs

- V. That the RP, in light of the Report, has alleged that Kamakshi Enterprises is an adjustment account where fund inflows represent the bank receipts and cash receipts and fund application is adjustment of vehicle running expenses and purchase entries. Before, advertng to the unfounded allegations therein, it needs to be highlighted that the RP has committed a grave error by portraying an alleged preferential transaction as an alleged fraudulent transaction. The said error on the part of the RP goes to the root of the present application and thus, the present Application deserves to be dismissed with exemplary costs.
- VI. The RP/Applicant, in light of the Report, has alleged that inventory showing positive and negative variances which is an indication of misappropriation of stock worth Rs. 78.50 Cr. either by way of sale of stock under other Group company or revenue is understated or unaccounted under books of accounts of CD. Before, advertng to the unfounded allegations therein, it needs to be highlighted that the RP has committed a grave error by portraying an alleged undervalued transaction as an alleged fraudulent transaction. The said error on the part of the RP goes to the root of the present

application and thus, the present Application deserves to be dismissed with exemplary costs.

VII. That upon taking a preliminary view of the report and the contents therein, it is submitted that the authorization, conduct, procedure, outcome, and report are all vehemently opposed. It is submitted that only an independent audit shall reveal the real truth and the scope of audit, as conducted in present case, is limited and biased. The language of the report reveals that it has been carried out with a specific purpose of predetermined agenda of proving allegations against the directors. The auditors seem to have formed an opinion before taking up the audit and carried out the audit to validate the opinion formed beforehand.

VIII. In the light of submissions made hereinabove, this Hon'ble Tribunal may please to dismiss the instant Application being devoid of merit and in contravention of the settled canons of law.

4. The applicant has filed its rejoinder and made the following submissions: -

I. It is submitted that under the provisions of the Code there is no provision that prohibits the filing of a composite application. It is submitted that Affidavit-in Support under section 43(1) & 66(1) has categorically bifurcated the Application into different parts namely 1.) Manipulated & Incomplete Books of Accounts, 2.) Preferential Transactions As per provision of Section 43 of

the IBC, 3) Fraudulent Transactions under Section 66 of the IBC and no two allegations are clubbed together.

- II. That, in the matter of *Anuj Jain V. Axis Bank Limited CA. No.-8512-8527/2019* the Hon'ble Supreme Court of India has merely observed that the Resolution Professional is expected to keep the averments under Preferential Transactions and Fraudulent Transactions separately and nowhere prohibits any composite application. Further, it is submitted that the pleadings made by the Applicant/RP against the Respondent Nos. 1 to 4 have facts that are overlapping in nature and are against the same Respondents. Therefore, in order to decide one aspect other has to be considered & vice versa.
- III. It is denied that the application is barred under Regulation 35A of the CIRP regulations read with section 25(2)U of the Code. At the outset, it is submitted that the Applicant/RP has duly performed her duties. It is submitted that under section 19(1) of the Code "the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor". However, in the present matter, the Respondent Nos. 1 to 4 ex-directors of the Corporate Debtor failed to cooperate with the Applicant/RP and did not provide the relevant documents, books of accounts, and necessary information to form opinion on the transactions of the

Corporate Debtor. It is submitted that due to the non-cooperation of the Respondent Nos. 1 to 4 the Applicant/RP had moved an application under 19(2) of the Code on 29.07.2019 against the Respondent Nos. 1 to 4 to provide the relevant documents, books of accounts and necessary information to the RP. However, with the limited information and documents available with the Applicant/RP formed its opinion on the financial transactions of the Corporate Debtor and appointed a transaction auditor to assist in evaluating the transactions. It is submitted that the Application under 19(2) of the Code was adjudicated on 15.07.2020 by this Tribunal, wherein the Tribunal noted that the ex-directors of the Corporate Debtor have not provided the relevant documents, books of accounts, and necessary information to the RP. Further, it is submitted that based on the elementary principle of law *Nullus commodum capere potest de injuria sua propria* i.e. No man can take advantage of his own wrong hence, the Respondent Nos. 1 to 4 cannot accrue any benefit from non-performance of their own duties under section 19(1) of the Code and now blame the Applicant/RP for the delay in filing the application under section 43(1) and 66(1) of the Code.

- IV. It is submitted that Respondent Nos. 1 to 4 were involved in fraudulent related party transactions and consequently have played fraud amounting to approximately 97 crores and is now trying to take shelter under the minor technicalities of the

provisions of the law. Further, it is submitted that the Respondent Nos. 1 to 4 on the face of it has siphoned off a huge amount of sums in the name of related parties and has intentionally defrauded its creditors. Therefore, the Look-back period is not applicable in the present case.

V. It is submitted that the Respondent Nos. 1 to 4 in the reply have merely copied the same averments again without any application of mind and is trying to mislead this Hon'ble Tribunal.

VI. It is submitted that the intent of the provision is aptly clear that any person who has done any act with malafide intention cannot get away by citing reasons such as the lapse of time.

5. We have heard the submissions made by the applicant and have gone through the documents on record filed by the applicant. The present application has been filed under section 43 and section 66 of Insolvency and Bankruptcy Code, 2016. The said sections are reproduced as under: -

**43. Preferential transactions and relevant time.**

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions

and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if-

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and.

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers- (a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee; (b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and (ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property: Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor. Explanation. - For the purpose of sub-section (3) of this section, "new value" means money or its worth in

goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if – (a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

**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) 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.

6. From the above sections it is clear that for a preferential transaction under section 43 of the Code the lookback period is 2 years, in case of related parties and one year in case of any other party from the insolvency commencement date. However, unlike other Avoidance Transactions there is no lookback period as far as fraudulent transaction under section 66 of the Code is concerned.

7. In the present case, the applicant has reported preferential transaction of Rs. 3.82 Cr. from 24.08.2017 to 30.08.2017 with

related parties i.e., HIM Alloys and Steel Pvt. Ltd., HIM Cylinders Pvt. Ltd. HIM Motors Pvt. Ltd. It is observed that transfer of money was made to these related parties and there is no justification of the same why the said money was transferred. Further, the Respondent has also not explained the reason why they have transferred this amount in their reply to the present application. Hence, on perusal of Transaction Audit Report we are of the considered view that the Directors of the Corporate Debtor have given preference to some of the creditors over other creditors. This constitutes preferential transaction as envisaged in section 43 of the Insolvency and Bankruptcy Code, 2016.

8. The applicant has reported fraudulent transactions, amounting to Rs. 96.19 Crores. In order to bring the transaction within the scope of Section 66 of the Code, 2016, it is necessary 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, Section 66(2) of the Code inter-alia mandates that the directors of the corporate debtor ought to have known that there was no reasonable prospect of avoiding the initiation of the CIRP and the directors did not exercise due diligence in minimizing the loss. Therefore, test is to look into the purported/alleged fraudulent transaction and to ascertain whether the alleged transactions established that the alleged transaction were made with intention to defraud and for fraudulent purpose.

9. In support of the averments made in the application, the Ld. Counsel for the applicant had relied upon the Transaction Audit Report and invited attention of this Adjudicating Authority towards manipulation of their books of accounts, mismatch of Tally Books and Bank Statement of the Corporate Debtor, Diversion of money through suspense account, Misappropriation of cash & stocks of the CD.
10. "It is observed that in reply to the application, the Respondents, instead of objecting to or providing justification for the alleged transactions, were trying to portray that the transactions were not fraudulent but were preferential in nature in order to invoke the lookback period. Since the Respondents have not denied these transactions but have only tried to show that this transaction comes under preferential transactions, it indicates that the alleged transaction was made with the intention to defraud and for fraudulent purposes. In the matter of Vital SA vs. Asian Natural Resources (India) Limited, the Hon'ble NCLT observed that:"

*"Moreover, while a look-back period has been provided for undervalued transactions under section 46, there is no limitation period for fraudulent transactions covered under sections 49 and 66 of the Code. **The intent is that "once a fraud, always a fraud". The maxim "fraud vitiates every transaction into which it enters as well as to contracts and other transactions". The basic essence is that any person who has carried out any willful act should not be allowed to get away by citing reasons such as the lapse of time or look back period is 2 years only. "***

11. *In the matter of Anuj Jain IRP for Jaypee Ifratech Limited vs. Axis Bank Limited [Civil Appeal No. 8512 -8527 of 2019, it was held that during the CIRP or liquidation process if 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.*
12. A perusal of the Transaction Audit Report and its contents, relevant Tally entries of the books of the corporate debtor showing payments to related entities, mismatch of Tally Books and Bank Statement of the Corporate Debtor, Diversion of money through suspense account, Misappropriation of cash & stocks of the CD will squarely attract the provisions of Section 66 of the Code, 2016.
13. Accordingly, we allow the prayer of the applicant and direct Respondent no 1 to Respondent No 4 (i.e., Mr. Ashok Raja, Mr. Abhishek Raja, Mr. Shant Swarup Raja, Mr. Arvin Raja) to make total contributions of Rs. 100.01 Crores which was siphoned-off by the respondent, while managing the affairs of the Corporate Debtor within a period of 30 days from the pronouncement of this order failing which necessary legal actions may be taken.
14. Accordingly, IA 3749/ND/2020 stands allowed.

**SD/-**  
**(Rahul Bhatnagar)**  
**Member (T)**

**SD/-**  
**(Bachu Venkat Balaram Das)**  
**Member (J)**