



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI, COURT-III**

**IA-1262/2024**

**In**

**(IB) – 189(ND)/2017**

Order under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 read with regulation 35A of the Insolvency and Bankruptcy Board of India Regulations, 2016.

**IN THE MATTER OF (IB)-189(ND)/2017:**

**M/s. STATE BANK OF INDIA**

**.... Financial Creditor**

**VERSUS**

**M/s. NAMDHARI FOOD INTERNATIONAL PRIVATE LIMITED**

**.... Corporate Debtor**

**AND IN THE MATTER OF IA-1262/2024:**

**Mr. RAKESH KUMAR GUPTA**

(Liquidator of M/s. Namdhari Food International Pvt. Ltd.)

**.... Applicant/Resolution Professional**

**VERSUS**

**IQBAL SINGH**

Sri Jiwan Nagar

District Sirsa, Haryana-125075.

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

**SURJIT SINGH**

Sri Jiwan Nagar

District Sirsa, Haryana-125075

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

**Order Pronounced On: 29.11.2024**



**CORAM:**

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

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Liquidator:** Mr. Abhishek Anand, Mr. Karan Kohli, Advs.

**For the Respondent:** Mr. Himanshu Gupta, Ms. Ayushi Vats, Mr. Rohan S. Nandy, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application is being filed by Mr. Rakesh Kumar Gupta, the Liquidator of the Corporate Debtor, i.e., M/s. Namdhari Food International Pvt. Ltd. before this Adjudicating Authority Order under Section 66 read with Section 67 of the Insolvency and Bankruptcy Code for the avoidance of certain fraudulent transactions as observed in the Transaction Audit Report ("**TAR**") based on Transaction Audit review audited by A.K.G. & Associates, Chartered Accountants ("**Transaction Auditors**") prepared for the review period from 30.08.2015 to Insolvency Commencement Date, i.e., 30.08.2017 ("**Audit Period**"). The Applicant/Liquidator is seeking the following reliefs: -

- a) *"Allow the present Application;*
- b) *Pass an order declaring the transactions as set out in paragraph 25 to 41 entered into by the Respondents under Section: 66 of the Code as fraudulent transactions with the intention to defraud the creditors of the Corporate Debtor;*
- c) *Consequentially, pass an appropriate Order under Section 67 of the Code, directing the Respondents to pay amount of Rs. 49,44,54,202/- in respect of benefits received by such person to the Corporate Debtor and reverse the effect of such transaction as it may deem fit;*
- d) *Pass such other order/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*



## **2. Applicant's Case: -**

- i. The Corporate Debtor is a private limited company incorporated on 24 May 2005 under the Companies Act, 1956, having its registered office at 307, NDM 2, Netaji Subhash Place, Pitampura, New Delhi 110034. The Corporate Debtor was formed after taking over the assets, liabilities and overall business of a partnership firm, namely M/s. Namdhari Food International.
- ii. The Corporate Debtor had two directors namely, Mr. Iqbal Singh and Mr. Surjt Singh ("**Ex-Directors**"). The Ex-Directors were also the initial subscribers to the MOA of the Corporate Debtor and hence the promoters of the Corporate Debtor. The Ex-Directors have been in control and management of the Corporate Debtor.
- iii. The Corporate Debtor has been engaged in milling and par boiling of paddy and sorting/processing and sale (including export) of rice. The factory/production unit of the Corporate Debtor is situated at Shri Jiwan Nagar-125075, District Sirsa, Haryana.
- iv. The Corporate Debtor has two other branch offices/ factories at the following locations-
  - i. Off. No.-307, NOM-2, N.S.P. Pitampura, Delhi- 110034
  - ii. 3/228, Ganesh Talab, Basant Vihar, Kota, Rajasthan.
- v. This Adjudicating Authority, vide Order dated 30.08.2017, initiated Corporate Insolvency Resolution Process in CP(IB) 189/(ND)/2017 filed on behalf of the Financial Creditor, i.e., State Bank of India against the Corporate Debtor, i.e., M/s. Namdhari Food International Pvt. Ltd. Accordingly, Mr. Anil Katia was appointed as Interim Resolution Professional and thereafter confirmed as Resolution Professional ("**Erstwhile RP**"),
- vi. Subsequently, the Erstwhile RP convened the meeting of the CoC on 09.01.2018, wherein the Erstwhile RP appointed A.K.G. & Associates, Chartered Accountants as forensic auditor for the purpose of conducting a transactional audit review for a period of two years prior to the insolvency commencement date i.e. 30.08.2017 and to report transactions falling under Section 43, 45, 50 and 66 of the Code.



- vii. On 13.03.2018, the Forensic Auditor submitted the final Transactional Forensic Audit Report ("Forensic Audit Report") of the Corporate Debtor to the Erstwhile RP wherein a questionnaire was prepared for the directors seeking their responses to certain transactions involving Sales; Purchases; Purchase and sale of fixed assets; Expenses; job works; related party transactions; statutory compliances; general ledger scrutiny; analysis of debtors and creditors; and other observations. The Ex-Directors responded to selective questions relating to Purchase, Purchase and sale of fixed asset, Job work, related party transactions, statutory compliances and analysis of debtors and creditors.
- viii. Upon the detailed inspection and investigation of the report, it was concluded that the Ex-Directors of the Corporate Debtor are liable for prosecution under Insolvency & Bankruptcy Code, 2016. The Transaction Audit Report further revealed the following key observations in respect of the business of the Corporate Debtor: -
- i. Undervalued Transactions as defined under Section 45; and
  - ii. Fraudulent Trading as defined u/s 66 of the Code, 2016.
- ix. In view of the above, IRP filed a composite avoidance application bearing C.A. No. 150 of 2018 filed under Sections 60(5), 43, 45, 46, 48, 49, 66, 67 of the Code before this Adjudicating Authority. This Adjudicating Authority vide Order dated 11.06.2018 issued notice upon the Respondents. During the pendency of C.A. No. 150 of 2018, this Adjudicating Authority passed an Order dated 13.03.2019 for Liquidation of the Corporate Debtor and appointed Mr. Rakesh Kumar Gupta as Liquidator/Applicant herein.
- x. This Adjudicating Authority vide Order dated 24.01.2024 granted liberty to the Liquidator to segregate the applications in view of the decision of the Hon'ble Supreme Court in **Anuj Jain, IRP for Jaypee Infratech Limited v. Axis Bank Limited**, Civil Appeal No. 8512-8527 of 2019. Furthermore, this Adjudicating Authority directed the Applicant to file a fresh application after bifurcating the transactions under Section 43,45,50 and 66 of the Code. This Adjudicating Authority vide Order dated 13.09.2024 dismissed the C.A. No. 150 of 2018 (re-numbered as **IA 2177/2024**) as withdrawn.



### **3. FRAUDULENT TRANSACTIONS UNDER SECTION 66 OF THE CODE**

The Applicant/Liquidator submits that the object of the Code inter-alia is to maximise the assets of the Corporate Debtor, which was wrongfully dissipated on account of the avoidable transactions. The present Application under Section 66 of the Code is filed to bring the fraudulent transactions to the notice of this Adjudicating Authority, so that appropriate orders may be passed for the avoidance of such transactions.

#### **A. MISAPPROPRIATION AND SIPHONING OFF FUNDS OF THE CORPORATE DEBTOR BY THE SUSPENDED DIRECTORS**

##### ***1. Loans and Advances made to various parties***

- i. The Transaction Auditor observed that the Corporate Debtor had made payments to various parties at multiple instances without corresponding receipt of any consideration, stock, goods or services in lieu of those payments. Thus, total amount of Rs. 75,56,751/-is reflecting in the balance sheet of the Corporate Debtor under the heading "Loans and Advances". These are:

<b>S.NO.</b>	<b>NAME OF THE PARTY</b>	<b>YEAR OF TRANSACTION</b>	<b>AMOUNT (IN RS.)</b>
1.	Arihant Trading Company, Pillukhera	2011	12,00,000
2.	Anuj Traders, Tilhar	2014	1,03,799
3.	BS Jain & Company, Delhi	2017	1,35,000
4.	NS Enterprises, Bareilly	2014	6,25,129
5.	Neeraj Jain & Brothers, Pillukhera	2016	10,60,000
6.	OM Traders, Myaaun	2014	22,32,823
7.	Sita Ram Hari Ram, Pillukhera	2013	14,00,000
8.	Vimlesh Traders, Myaaun	2014	8,00,000
<b>TOTAL</b>			<b>75,56,751</b>



- ii. It was further observed that no agreements with respect to the abovementioned "Loans and Advances" were provided either to the erstwhile RP or to the Applicant. When the Erstwhile RP questioned the Ex-Directors about the status of these loans and the interest percentage on which these loans were given, the Ex-Directors verbally stated that these advances were given to these parties in ordinary course of business and no other explanation was provided by the Ex-Directors. No steps were taken or shown to have been taken by the Corporate Debtor for recovery of the aforesaid "Loans and Advances".

**2. Advances Made to Neeraj Jain & Brothers (Clause 4.1.2 Of Forensic Report at Page No. 89)**

In case of M/s. Neeraj Jain. & Brothers, an advance of Rs. 50,000/- was made to them in 2016 in spite of the fact that there was already an opening debit balance of Rs. 10,10,000/- with Mis. Neeraj Jain & Brothers. When queried about the same, the Ex-Directors responded stating that "Neeraj Jain & Brothers are our pakka aaditva of Pillukhera Mandi, who have made a guarantee of payment on our behalf to kachha Aaditva of that mandi. In our books, creditors of Pillukhera Mandi are still outstanding towards paddy purchase & interest thereon. We have made this payment to Neeraj Jain & Brothers for part settlement against that outstanding." The aforesaid explanation is not tenable because the said amounts are outstanding as "Loans and Advances" and not a settlement towards on account of delayed payment for paddy purchase.

**3. Advances made to M/s. Sunita Trading Company (Clause 4.7.5 Of Forensic Report at Page No. 107)**

The Corporate Debtor paid Rs. 1,00,000/- to M/s. Sunita Trading Company, Ellenabad on 04.02.2017, after clearing the balance outstanding of Rs. 3,33,137/- for the year 2016-2017.

**4. Advances made to Uttam Chand Ved Prakash (Clause 4.7.10 of Forensic Report at Page No. 108)**

It is further submitted that the Corporate Debtor paid Rs. 67,342 to M/s. Uttam Chand Ved Prakash on 10.08.2016, however, there was an opening balance receivable of Rs. 2,32,658 and these balances are still pending.



When inquired about the same, the directors could only provide the explanation that "In our books balance of Sunita Trading Co. and Uttam Chand Ved Prakash are made as advance against interest".

- iii. Hence, in the opinion of the Erstwhile RP, the Ex-Directors have indulged in "fraudulent trading" and "wrongful trading". Accordingly, the Ex-Directors, who were in control of the Corporate Debtor, are liable to contribute an amount of Rs. 90,16,751/- (75,56,751 + 10,60,000 + 1,00,000 + 3,00,000) to the Corporate Debtor.

**B. UNRECOVERABLE RECEIVABLES**

- i. The balance sheet of the Corporate Debtor showed receivables of Rs. 50.58 Crores from its trade debtors of which Rs. 5.79 Crores were domestic receivables while Rs. 44.76 Crores were ex-port receivables.
- ii. The erstwhile RP had appointed two valuers M/s. Raj Ompraksh and Company and M/s. Aarsh and Associates for valuing the stock and receivables of the Corporate Debtor. The said valuers had sent the letters to the debtors, asking them to confirm the balances as showing in the books of the Corporate Debtor ("Balance Confirmation Requests").
- iii. It was noticed that while some of the Balance Confirmation Requests were returned back without confirmation, the balance of the letters sent were neither confirmed, nor any reply was issued against the requests. Only one debtor, being Indian Bullion Markets Association responded, stating they have NIL outstanding balance in their books as against confirmation account of Rs. 6,65,986 in the books of the Corporate Debtor.
- iv. Not a single trade debtor confirmed that any money was outstanding from it by the Corporate Debtor. As per the valuation report of the valuers, all receivables were termed bad and doubtful and could not be recovered. The Corporate Debtor did not classify these debts as bad debts in its books of accounts and no information pertaining to these book debts were provided to the Erstwhile RP except for M/s. Bush Food Overseas Pvt. Ltd.
- v. It was observed by the Forensic Auditors that out of all the export receivables, invoices except one invoice were issued prior to CIRP commencement date, however no legal actions have been shown to be taken by the Corporate Debtor for recovering these export receivables. There were



many other receivables which were outstanding for many years and the debts have been allowed to be time barred. With respect to domestic receivables, no information was provided by the Ex- Directors to the amount outstanding to Rs. 5.79 Crores

#### **4. Analysis and Findings:**

- i. We have heard the Ld. Counsel appearing for the Applicant and also perused the documents on record. The present application has been filed under Section 66 of Insolvency and Bankruptcy Code, 2016. The said Sections 66 and 67 of the Code are reproduced as under:

***“Section 66: Fraudulent trading or wrongful trading.***

*66.(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.*



**Section 67: Proceedings under section 66.**

*\*67. (1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—*

*(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and*  
*(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.*

ii. On the issue of maintainability, the Ld. Counsel for the Applicant submitted that Section 66 provides that **“any person”** who were knowingly parties to carrying on business which is held to be with an **intent to defraud the creditors**, then the Adjudicating Authority has power to direct any person to make such contribution to the assets of the Corporate Debtor as it may deem fit. The sub clause (2) of Section 66 of the Code also provides that this Adjudicating Authority by an order direct the **director or partner** to make such contribution of the assets of the Corporate Debtor. The Respondents were directors of the Corporate Debtor who had made payment to various parties at the multiple instances without corresponding receipt of any consideration stock, goods or service in lieu of those payments, which led to CIRP proceedings of the Corporate Debtor and hence fall within the ambit of section 66 of the Code.

iii. The Ld. Counsel for the Applicant/Liquidator submitted that under Section 25(2)(j) of the Code, it is the duty of a resolution professional to file application for avoidance of transactions in accordance with Chapter III of the Code. Further Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate



Persons) Regulations, 2016, obligates the Resolution Professional to report to the CoC, details of avoidance transactions as "observed, found or determined" by him. In this regard, it is submitted that the Forensic Audit Report was placed by the Erstwhile RP before the CoC in its 5th meeting held on 12.03.2018.

iv. The Hon'ble NCLAT in the case of **Aditya Tibrewal v. Om Prakash Pandey & Ors.**, Company Appeal (AT) (Insolvency) No. 583 of 2021 held:

*“viii. Regulation 35A of the CIRP Regulations imposes a duty on the Resolution Professional to take measure within the timeline as prescribed. In performance of such duty the public in general has no control including the Corporate Debtor. In event it is held that any action taken by Resolution Professional beyond the time prescribed in Regulation 35A of the CIRP Regulations is prohibited, it shall cause serious general inconvenience or injustice to the Corporate Debtor. One of the objectives of the Code is to maximize the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of Resolution Process, reach of the Court and shall cause great inconvenience and injustice to Corporate Debtor.*

*Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations.”*

v. In view of the aforesaid facts and circumstances, the Applicant has filed the present Application under Section 66 of the Code, 2016 as per the duty casted in terms of Section 35 of the Code seeking directions against the Respondents/Ex-Directors of the Corporate Debtor for balancing the interest of the stakeholders by restoring the funds diverted and maximization of value of the Corporate Debtor as there are certain



transactions incurred by the Ex-Directors with an intention to defraud the Creditors of the Corporate Debtor.

- vi. We are of the considered view that the Erstwhile Resolution Professional performed his duties as per the provisions of the Code and in compliance of Regulation 35A of the CIRP Regulation which provides that when the resolution Professional is of the opinion that the Corporate Debtor has been subjected to any transaction covered under section 43, 45, 50, and 66, he shall make a determination on or before the one hundred fifteenth days of the Insolvency commencement date and after making a determination, he shall apply to the Adjudicating Authority for Appropriate relief on or before the one hundred and thirtieth days of the Insolvency commencement date, which is only directory in nature.
- vii. Unlike other Avoidance Transactions where there is a lookback period of two years in case of related party and one year in other cases, there is no lookback period as far as fraudulent transactions under Section 66 of the Code are concerned. The fraudulent transactions in the present Application range between the period from 2011 to 2017, which is just prior to the CIRP order dated 30.08.2017 of the Corporate Debtor. Thus, the present application is maintainable.
- viii. This Adjudicating Authority vide Order dated 09.04.2024 directed the Applicant/Liquidator to take necessary steps for publication of notice in two local newspapers and to file proof and affidavit of service within two weeks. The Respondents were directed to file their reply, within one week after the publication of notice. In compliance with Order dated 09.04.2024, the Respondents were served the notices by publication in two local newspapers. However, no one appeared for the Respondents. Therefore, the Respondents were set ex-parte vide Order dated 13.08.2024. The relevant part of the Order is reproduced below:

***“IA-1262/2024***

*Mr. Abhishek Anand, Ld. Counsel appearing for Applicant has stated that in compliance with order dated 09.04.2024 the notices have been published in two local newspapers and proof and affidavit of service has been filed on 08.05.2024.*



*No one has appeared on behalf of the Respondents. The Respondents are therefore set ex-parte.”*

- ix.** On the perusal of the Transactional Forensic Audit Report of M/s. Namdhari Food International Private Limited prepared by M/s. A.K.G. & Associates, Chartered Accountants, it is observed that the Ex-Directors have willfully diverted the fund of the Corporate Debtor to the aforesaid entities, in the garb of "Loans and Advances" and "Advance against Interest" in complete disregard to the interest of the creditors and other stake holders of the Corporate Debtor. No documentary evidence for the aforesaid payments have been placed on record. However, interest has been charged from these parties for the alleged payments. While the aforesaid amounts are showing as receivables, no steps for recovery of such amounts have been shown. Such loans and advances have been provided during the period when the Corporate Debtor was undergoing financial stress. The Ex-Directors have indulged in "fraudulent trading" and "wrongful trading". Accordingly, the Ex-Directors, who were in control of the Corporate Debtor, are liable to contribute an amount of Rs. 90,16,751/- (75,56,751 +10,60,000 + 1,00,000 + 3,00,000) to the Corporate Debtor.
- x.** On the perusal of the status of Balance confirmation letter and the Valuation Report prepared by the two valuers M/s. Raj Ompraksh and Company and M/s. Aarsh and Associates, it is seen that balance sheets of Corporate Debtor shows receivables of Rs. 50.58 Crores from trade debtors to which Rs. 5.79 Crore were domestic receivables while Rs. 44.76 Crores were export receivables. With respect to domestic receivable, the Respondents failed to provide any information to the tune of Rs. 5.79 Crore. Therefore, the Ex-Directors are not only liable for fraudulent transactions but have also indulged in wrongful trading by diverting funds of the Corporate Debtor, without any documentation, without any benefit in return, at a time when Corporate Debtor needed such funds for its business and to meet its liabilities.



**xi.** Accordingly, we allow the prayer of the Applicant and declare the above-mentioned transactions entered into by the Respondents under Section 66 of the Code as fraudulent transactions with the intention to defraud the creditors of the Corporate Debtor and direct Respondent No.1 and 2 to make total contributions of Rs. 49,44,54,202/- to the Corporate Debtor within two months from the date of the Order failing which necessary legal actions may be taken.

#### **5. Order**

- i. In light of the above facts and circumstances, the Application bearing **IA-1262/2024** filed under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 read with regulation 35A of the Insolvency and Bankruptcy Board of India Regulations, 2016 stands **allowed**.
- ii. The Registry is directed to send a copy of the Order to the parties concerned.

No order as to costs.

**-Sd-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**-Sd-**

**BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**