

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



ITEM No.302
IA/572(AHM)2021
in
CP(IB) 401 of 2019

Under Section 43, 45, 49 & 66 IBC

IN THE MATTER OF:

Premraj Ramratan Laddha, Liquidator of Bajrang Cotgin Pvt.
Ltd.
V/s
Kirtikumar Bhupatlal Sejpal & Ors

.....Applicant

.....Respondent

Order delivered on: 18/09/2025

CORAM:

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

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

IA/572(AHM)2021

In

C.P (I.B.) No. 401 of 2019

*(An application under Sections 43, 45, 49 and 66 of Insolvency
and Bankruptcy Code, 2016)*

In the matter of: **M/s. Bajrang Cotgin Private Limited.**

**Mr. Premraj Ramratan Laddha
(Resolution Professional) Now Liquidator for
M/s. Bajrang Cotgin Private Limited**

Having address at:

304, Abhijit – 3, Above Pantaloon,
Mithakhali – Law Garden Road,
Ellis Bridge, Ahmedabad,
Gujarat – 380006, India

.....Applicant

VERSUS

1. Mr. Kiritkumar Bhupatlal Sejpal

Having address at:

Flat No. A/501, Shri Sadguru Vatika,
2 – Marutinagar, Airport Road, Rajkot,
Gujarat – 360 001

2. Mr. Yogeshbhai Bhupatlal Sejpal

Having address at:

Awadha, Bank of Baroda, Co. Op.
Society, Block No. 15, Airport Road,
Rajkot, Gujarat – 360 007, India.

3. Mr. Anilkumar Bhupatlal Sejpal

Having address at:

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Raghunath Krupa, 3 – Jalaram,
Shivnagar, B/h. Aalishan Flat,
150 Ft. Ring Road, Rajkot,
Gujarat – 360 007, India

- 4. Mr. Nirav Kiritkumar Sejpal**
Having Address At;
Flat No. A/501, Shri Sadguru Vatika,
2 – Marutinagar, Airport Road, Rajkot,
Gujarat – 360 001
- 5. M/s. R. Kirit & Co.**
Having address at:
C - 55, Marketing Yard, Rajkot,
Gujarat - 360 003, India.
- 6. M/s. Gurukrupa Trading Co.**
Having address at:
C - 55, Marketing Yard, Rajkot,
Gujarat - 360 003, India.
- 7. M/s. Bajrang Cotyarn Overseas**
Having address at:
708, Nakshatra Heights, 150 Ft.
Ring Road, Opp. Raiya Telephone
Exchange, Rajkot, Gujarat - 360 001.
- 8. M/s. Dhaval Agri Exports LLP**
Having address at:
A - 75, New Market Yard,
Morbi Road, Village: Bedi, Rajkot,
Gujarat - 360 003, India.
- 9. M/s. Chandarana & Brothers**
Having address at:
A - 75, New Market Yard,
Morbi Road, Village: Bedi, Rajkot,
Gujarat - 360 003, India.
- 10. M/s. Nirav Corporation**



Having address at:
C - 15, Marketing Yard,
Pedak Road, Rajkot, Gujarat - 360 003.

11. Mr. Rajeshkumar Karshandash

Having address at:
GA/33, Bedi New Marketing Yard,
Bedi Gam, Rajkot - Morbi Road,
Rajkot, Gujarat - 360 003, India.

12. M/s. G M Cotton

Having address at:
Shop No. B - 194, Marketing Yard,
Bedi, Morbi Road, Rajkot,
Gujarat - 360 003, India.

13. M/s. GRV Spintex Private Limited

Having address at:
Shop No. B/1A, Ground Floor,
Elegance Complex, 150 Ft.
Ring Road, Nr. Bengal Sweets,
Nr. Indira Circle, Rajkot - 360 005,
Gujarat, India.

14. M/s. Banshi Cotton Private Limited

Having address at:
304, Center One, Near
Wockhardt Hospital, Kalawad
Road, Rajkot - 360 005, Gujarat, India.

15. M/s. Matangi Cotton Industries

Having address at:
Dhasa Junction, Kachardi Road,
Kachardi, Amreli, Gujarat - 364 740, India.

16. M/s. Raghuvir Steel

Having address at:
Lohanagar, Opp. Bhaktinagar,
Telephone Exchange, Gondal
Road, Rajkot, Gujarat - 360 002.



7. M/s. Shree Ram Proteins Limited

Having address at:
Imperial Heights, Tower - B,
Second Floor, Office No. B-206,
150 Ft. Ring Road, Opp. Big
Bazaar, Rajkot – 360 005, Gujarat.

18. M/s. Arshi Cotton Traders

Having address at:
Shop No. B/42, Pedak Road,
Old Marketing Yard, Rajkot,
Gujarat - 360 003, India.

19. Mrs. Naynaben Sejpal

Having address at:
Flat No. A/501, Shri Sadguru
Vatika, 2 - Marutinagar, Airport
Road, Rajkot, Gujarat - 360 001.

20. Mrs. Pallviben Sejpal

Having address at:
Awadha, Bank of Baroda Co.
Op. Society, Block No. 15, Airport
Road, Rajkot, Gujarat - 360 007, India.

21. M/s. Shree Gurukrupa Cotton Industries

Having address at:
S 319, Rajkot - Jamnagar Highway
Road, Taraghadi, Rajkot - 360 007,
Gujarat, India.

22. M/s. Gurukrupa Agro Proteins Private Limited

Having address at:
230/2/P, Rajkot - Jamnagar Highway,
Paddhari By Pass, Near Railway
Crossings, Village: Movaiya, Taluka:
Paddhari, Rajkot -360 110, Gujarat, India.

23. M/s. Mohini Health & Hygiene Limited



Having address at:
Plot No. 109, Sector 3 Industrial
Area, Pithampur, Dhar, Madhya
Pradesh - 454 774, India.

24. M/s. Vithlani Exports

Having address at:
Shop No. B/22, New Marketing Yard,
Bedi, Rajkot, Gujarat - 360 003, India.

25. Mr. Rameshchandra Bhagwanlal Shah

Having address at:
Moti Chowk, Jasdan, Rajkot,
Gujarat - 360 050, India.

26. M/s. Vedant Kotton Private Limited

Having address at:
Apartment No. 1402 on Fourteenth
Floor of Block Cressida II at Apollo
DB City, Nipaniya, Indore, Madhya
Pradesh - 452 010, India.

27. M/s. Natural Tex Yarn Private Limited

Having address at:
The Spire, Office No. 705, 150 Feet
Ring Road, Rajkot - 360 006, Gujarat, India.

28. M/s. J. K. Enterprise

Having address at:
Shop No. 4, Ground Floor, Rameshwar
Chamber, 4 Manhar Plot, Mangla Road,
Rajkot, Gujarat - 360 001, India.

29. M/s. Shri Bansidhar Enterprise

Having address at:
A - 58, Shri Bansidhar Enterprise,
New Marketing Yard, Morbi Road,
Rajkot, Gujarat - 360 003, India.

30. M/s. Rudra International



Having address at:
Opp. Gokh Kameswar Mahadev Temple,
Near Amity University, Satya Sai
Hospital Road, Kalawad Road,
Rajkot - 360 005, Gujarat, India.

....Respondents

Order Pronounced on 18.09.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant :Mr. Jaimin Dave, Adv. a. w. Ms. Hirva
Dave, Adv.
For the Respondent :Mr. Mohit Gupta, Adv. for R-1 to R-7,
R-19 & R-20
:**R-8 to R-18, R-21 & R-30 already**
Ex-parte

O R D E R
[PER: bench]

1. This Interlocutory Application (IA/572(AHM)2021) has been filed on **18.08.2021** by the Applicant under Sections 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016 for reversal of benefit derived by the Respondents on account of preferential transactions, undervalued transactions, fraudulent Transactions and/or wrongful trading with the following prayers:-



- a. Your Lordship may be pleased to allow the present application;
- b. Your Lordship may be pleased to declare that transactions mentioned under Paragraph No. 4.14 (A) herein above are in the nature of fraudulent and undervalued transactions covered under Sections 66 and 45 of the Insolvency and Bankruptcy Code, 2016 and Respondent Nos. 1 to 6 and 22 shall be called upon to pay a total sum of Rs.3,82,77,690/- (Rupees Three Crores Eighty-Two Lacs Seventy-Seven Thousand Six Hundred and Ninety Only), being an amount of benefit received on account of such fraudulent and undervalued transactions.
- c. Your Lordship may be pleased to declare that transactions mentioned under Paragraph No. 4.14 (B) herein above are in the nature of fraudulent and undervalued transactions covered under Sections 66 and 45 of the Insolvency and Bankruptcy Code, 2016 and Respondent Nos. 1 to 4 and 6 to 9 shall be called upon to pay a total sum of Rs.17,23,150/- (Rupees Seventeen Lacs Twenty-Three Thousand One Hundred and Fifty Only), being an amount of benefit received on account of such fraudulent and undervalued transactions.
- d. Your Lordship may be pleased to declare that transactions mentioned under Paragraph No. 4.14 (C) herein above are in the nature of fraudulent and undervalued transactions covered under Sections 66 and 45 of the Insolvency and Bankruptcy Code, 2016 and Respondent Nos. 1 to 5, 10 and 11 shall be called upon to pay a total sum of Rs.4,33,960/- (Rupees Four Lacs Thirty-Three Thousand Nine Hundred and Sixty Only), being an amount of benefit received on account of such fraudulent and undervalued transactions.
- e. Your Lordship may be pleased to declare that transactions mentioned under Paragraph No. 4.14 (D) herein above are in the nature of fraudulent and undervalued transactions covered under Sections 66 and 45 of the Insolvency and Bankruptcy Code, 2016 and Respondent Nos. 1 to 4, 8



and 9 shall be called upon to pay a total sum of Rs.42,00,000/- (Rupees Forty-Two Lacs Only), being an amount of benefit received on account of such fraudulent and undervalued transactions.

- f. Your Lordship may be pleased to declare that transactions mentioned under Paragraph No. 4.14 (E) herein above are in the nature of fraudulent and undervalued transactions covered under Sections 66 and 45 of the Insolvency and Bankruptcy Code, 2016 and Respondent Nos. 1 to 4 and 12 to 18 shall be called upon to pay a total sum of Rs.2,51,09,923/- (Rupees Two Crores Fifty-One Lacs Nine Thousand Nine Hundred and Twenty-Three Only), being an amount of benefit received on account of such fraudulent and undervalued transactions.
- g. Your Lordship may be pleased to declare that transactions mentioned under Paragraph Nos. 4.15 herein above are in the nature of preferential and fraudulent transactions covered under Sections 43, 44 and 66 of the Insolvency and Bankruptcy Code, 2016 and Respondent Nos. 1 to 4, 19 and 20 shall be called upon to pay a total sum of Rs.4,47,06,188/- (Rupees Four Crores Forty-Seven Lacs Six Thousand One Hundred and Eighty-Eight Only) as indicated under Paragraph No. 4.15 (ii) herein above, being an amount of benefit received on account of such preferential and fraudulent transactions.
- h. Your Lordship may be pleased to declare that transactions mentioned under Paragraph Nos. 4.16 herein above are transactions involving fraudulent and wrongful trading covered under Section 66 r/w 67 of the Insolvency and Bankruptcy Code, 2016 and call upon the Respondent Nos. 1 to 4, 16 and 21 to 30 for restoration of an amount of Rs.11,91,30,564/- (Rupees Eleven Crores Ninety-One Lacs Thirty Thousand Five Hundred and Sixty-Four Only) as indicated in the table under Paragraph No. 4.16 (vi) herein above, being an amount of benefit derived on account of such fraudulent transactions.
- i. To grant any other relief as may deem fit in the interest of



justice.

2. This Interlocutory Application was filed on 18.08.2021 by the Applicant Mr. Premraj Ramratan Laddha who was the Resolution Professional for M/s. Bajrang Cotgin Private Limited at the time of filing and who is now the Liquidator of M/s. Bajrang Cotgin Private Limited under Sections 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016 for the purpose of reversal of benefits derived by the Respondents from transactions identified as preferential transactions, undervalued transactions, fraudulent transactions and transactions involving wrongful trading and for passing orders for contribution from the Respondents to the assets of the Corporate Debtor.

3. It is stated that this Hon'ble Adjudicating Authority has jurisdiction to pass appropriate order for avoidance/reversal of preferential transactions under Section 43 and 44 of the Insolvency and Bankruptcy Code, 2016. Likewise, this Hon'ble Adjudicating Authority has jurisdiction to pass appropriate order for avoidance/reversal of undervalued transactions under Sections 45, 46, 48 and 49 of the Insolvency and Bankruptcy Code, 2016. Similar powers can be exercised by this Hon'ble Adjudicating Authority under Section 50, Section 66 and Section 67 of the Insolvency and Bankruptcy Code, 2016, in case of transaction defrauding the creditors, extortionate credit transactions, fraudulent trading and wrongful trading.



4. The Corporate Debtor M/s. Bajrang Cotgin Private Limited is a company incorporated under the provisions of the Companies Act, 1956 with Corporate Identification Number U17110GJ2005PTC045566 and has its registered office at Nakshatra Heights - 708, Opposite Telephone Exchange, 150 Feet Ring Road, Rajkot, Gujarat - 360005, India and the Corporate Debtor is engaged in the business of ginning and pressing of cotton bales as well as in the business of spinning, weaving and finishing of textiles and also in the business of trading of commodities such as Gram, Cumin Seeds, Castor Seeds, Sesame Seeds and FP Bales.
5. The Financial Creditor Oriental Bank of Commerce which is now known as Punjab National Bank had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and this Adjudicating Authority admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 by passing an order dated 15.03.2021 and thereby the Corporate Insolvency Resolution Process commenced against the Corporate Debtor on 15.03.2021.
6. Upon admission of the Corporate Debtor into Corporate Insolvency Resolution Process, the Applicant Mr. Premraj Ramratan Laddha who has Insolvency Professional Registration Number IBBI/IPA-001/IP-P00060/2017-2018/10138 was appointed as the Interim Resolution



Professional of the Corporate Debtor by the order dated 15.03.2021.

7. In the first meeting of the Committee of Creditors which was held on 12.04.2021, the members of the Committee of Creditors resolved to continue the Interim Resolution Professional that is the Applicant as the Resolution Professional for the Corporate Debtor and the minutes of the first meeting of the Committee of Creditors held on 12.04.2021 record the resolution passed by the Committee of Creditors.
8. The Applicant issued an appointment letter dated 01.05.2021 to M/s. Piyush K Gupta & Associates, Chartered Accountants for carrying out the transaction audit of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder.
9. M/s. Piyush K Gupta & Associates, Chartered Accountants conducted the transaction audit of the Corporate Debtor and submitted the Transaction Audit Report dated 06.07.2021 to the Applicant and the Transaction Audit Report dated 06.07.2021 identified several transactions recorded in the books of accounts of the Corporate Debtor as transactions of preferential nature, undervalued nature, fraudulent nature and transactions involving wrongful trading under the provisions of the Insolvency and Bankruptcy Code, 2016.



- 10.** In the fourth meeting of the Committee of Creditors held on 16.07.2021, the members of the Committee of Creditors were apprised of the Transaction Audit Report dated 06.07.2021 and after discussion and deliberation, the Committee of Creditors resolved to file an application before this Adjudicating Authority for reversal of the avoidable transactions identified in the Transaction Audit Report dated 06.07.2021 and the minutes of the fourth meeting of the Committee of Creditors held on 16.07.2021 record the resolution passed by the Committee of Creditors.
- 11.** During the pendency of this application, an application bearing number IA/188(AHM)2022 was filed in C.P (I.B.) No. 401 of 2019 and by order dated 04.07.2022 passed in IA/188(AHM)2022, this Adjudicating Authority ordered the liquidation of the Corporate Debtor and appointed the Applicant Mr. Premraj Ramratan Laddha as the Liquidator of the Corporate Debtor.
- 12.** The facts from the application detail the transactions identified in the Transaction Audit Report dated 06.07.2021 and the transactions are categorized into purchase and sale transactions of Gram, Cumin Seeds, Castor Seeds, Sesame Seeds and FP Bales which are stated to be undervalued transactions and fraudulent transactions under Sections 45 and 66 of the Insolvency and Bankruptcy Code, 2016, repayments of unsecured loans to related parties which are stated to be preferential transactions and fraudulent



transactions under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 and Suda settlement payments which are stated to be fraudulent transactions and transactions involving wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016.

- 13.** For the purchase and sale transactions of Gram, the Corporate Debtor is not engaged in the production of Gram and Gram is traded by the Corporate Debtor and in the month of February 2018, no stock of Gram was available with the Corporate Debtor but sales of 5,06,962 kilograms of Gram were accounted in February 2018 and till February 2019, the quantity sold was higher than the quantity purchased and the differential quantity was purchased in March 2019 and the average purchase price was Rs. 41.29 per kilogram against average sales price of Rs. 26.92 per kilogram and the transactions were carried out within few days and between February 2018 to April 2019, 75.13 percent purchases were in cash and 20.75 percent from related parties and 60 percent sales in cash and purchases were accounted at higher prices to book loss of Rs. 3,82,77,690 and the ledger account of Gram purchase for the period supports the details.

- 14.** For the purchase and sale transactions of Cumin Seeds, the Corporate Debtor is not engaged in the production of Cumin Seeds and Cumin Seeds is traded by the Corporate Debtor and in March 2018, 2,90,125 kilograms were purchased at



average Rs. 154 per kilogram and sold at average Rs. 149 per kilogram in March 2018 and Rs. 141 per kilogram in June 2018 and time lag is negligible as Cumin Seeds lasts 3 to 4 years and 1,28,125 kilograms purchased from related parties at higher price and 1,62,000 kilograms purchased from Respondent No. 8 at Rs. 153.20 per kilogram and 2,90,100 kilograms sold to Respondent 9 at Rs. 147.80 per kilogram and Respondents 8 and 9 are related with common director and address and transactions without goods movement to book loss of Rs. 17,23,150 and master data of Respondent 8 and GST details of Respondent 9 support the relation.

- 15.** For the purchase and sale transactions of Castor Seeds, the Corporate Debtor is not engaged in the production of Castor Seeds and Castor Seeds is traded by the Corporate Debtor and in March 2018, 3,36,339 kilograms purchased from related parties Respondent 5 and 10 at Rs. 39 to 40.30 per kilogram for Rs. 1,32,82,012 and 3,36,266 kilograms sold to Respondent 11 at Rs. 38.21 per kilogram for Rs. 1,28,48,052 to book loss of Rs. 4,33,960 and purchases from related parties at higher price and the ledger account of Castor Seeds purchase for the period supports the details.
- 16.** For the purchase and sale transactions of Sesame Seeds, the Corporate Debtor is not engaged in the production of Sesame Seeds and Sesame Seeds is traded by the Corporate Debtor and in March 2018, 6,00,000 kilograms purchased from Respondent 8 at average Rs. 92 per kilogram and sold to



Respondent 9 at average Rs. 85 per kilogram and Respondents 8 and 9 are related and transactions without goods movement to book loss of Rs. 42,00,000 and the ledger accounts of Respondents 8 and 9 support the details.

- 17.** For the purchase and sale transactions of FP Bales, the Corporate Debtor is not engaged in the production of FP Bales and FP Bales is traded by the Corporate Debtor and purchases amounted to Rs. 33,00,00,000 in March 2018 and pattern of same quantity purchase and sale on same date with selling price lower and example on 12.03.2018, 15,935 kilograms purchased from Respondent 12 at Rs. 114.45 per kilogram and sold to Respondent 13 at Rs. 104.04 per kilogram for loss Rs. 1,65,794 and transactions with Respondents 12 to 18 and total 24,91,476 kilograms purchased higher and sold lower for loss Rs. 2,51,09,923 and the ledger accounts of Respondents 12 to 18 support the details.
- 18.** For the repayments of unsecured loans to related parties, Rs. 4,47,06,188 paid in Financial Year 2017-18 to Respondents 1, 2, 3, 19 and 20 prior to Non-Performing Asset on 06.07.2018 despite outstanding payables to creditors and losses of Rs. 22,00,00,000 in Financial Year 2017-18 and reflected in ledger accounts and audited balance sheet and profit and loss account for Financial Year 2017-18 support the details.

- 19.** For the Sauda settlement payments, Sauda are contracts for



commodity at fixed price and quantity for period and settled by differential and expenses losses Rs. 11,91,30,564 in Financial Years 2017-18 and 2018-19 majorly prior to Non-Performing Asset and no prior speculative at scale and parties new with no prior relationship and during financial crunch and party-wise details include Respondent 21 Rs. 2,15,96,250, Respondent 22 Rs. 3,31,25,360, Respondent 27 Rs. 1,52,64,940 and others and ledgers for some created solely for this and settlement notes debit notes issued by parties support the details.

- 20.** After issuance of the notice and due service of notice only Respondent Nos. 1 to 7, 19 & 20 appeared and filed reply. The Respondents 21, 22 and 27 also filed a reply but stopped appearing in the matter. However, despite due service, the other respondents neither appeared nor filed any reply. Hence, vide order dated 21.11.2021, Respondents No. **8 to 18, R-21 & R-30** were proceeded ex parte.
- 21.** Respondents No.1 to 7, 19 and 20 in their reply dated 21.02.2022 stated that joint application for preferential, undervalued or fraudulent transactions is not maintainable and by taking consent of Committee of Creditors for auditor, Resolution Professional abdicated duties which is illegal and appointment of auditor without jurisdiction makes application illegal and Regulation 35A requires Resolution Professional to form opinion and make determination but here Committee of Creditors resolved to file and no opinion



formed by Resolution Professional and on merits for Gram, bank conducted inspections and audits with no objections and purchased 21,63,651 kilograms at Rs. 39.87 per kilogram in March 2018 and sold from April 2018 to April 2019 and fluctuations common 5 percent daily and sold lower due to decline and worm infestation and transactions genuine at arm's length known to bank and beyond look back and 80 percent with unrelated parties and for Cumin Seeds, trading since 2012 and purchased May 2017 at Rs. 170 per kilogram sold June 2017 at Rs. 174 per kilogram for profit and March 2018 purchased at Rs. 154 per kilogram sold at Rs. 149 and Rs. 141 per kilogram due to decline fluctuations 2 to 5 percent and from related Respondent 5 and 6 at market rate and Respondents 8 and 9 not related to Corporate Debtor and unaware of their relation and audits would detect no movement and for Castor Seeds, trading since 2012-2013 purchased at Rs. 39.65 per kilogram from Respondents 5 and 10 at market rate sold at loss Rs. 1.44 per kilogram due to decline and arm's length and for Sesame Seeds, Respondents 8 and 9 not related to Corporate Debtor purchased at Rs. 92 per kilogram sold at Rs. 85 per kilogram due to decline unaware of relation and audits no objections and for FP Bales, trading since 2012-2013 different quality purchased March 2018 losses due to volatility 1 to 5 percent and at market rate and for repayments, sanction letter 23.12.2016 permits to limit with 2 percent penalty if exceeded and no penalty so within limit and short term loans



repaid in ordinary course beyond look back and for Sauda, settled prior to Non-Performing Asset entered since 2016 with unrelated when account regular cancelled to limit losses at market rate no payment to Respondent 23 so no fraud and losses not defrauding and requested access to data by email 10.02.2022 not given.

22. Respondents 21, 22 and 27 in their separate replies stated Sauda contracts with Corporate Debtor for cotton bales and for Respondent 21 contracts dated 19.09.2016 and 20.09.2016 for purchase within 8 months and for Respondent 22 contracts dated 19.09.2016, 21.09.2016 and 22.09.2016 for purchase within 8 months and for Respondent 27 contracts dated 10.11.2017, 14.11.2017 and 15.11.2017 for sale within 2 to 3 months and transactions supported by contracts, debit notes, settlement notes and payments within 5 days and prior sales in Financial Year 2016-17 for Respondents 21 and 22 and in Financial Year 2017-18 for Respondent 27 and no knowledge of funds source and commercial transactions in course of business and ledger for Sauda only and parties to fulfill consideration irrespective of condition.

23. The Applicant in Rejoinder/Written Synopsis to the replies stated for Gram differential purchase March 2019 at Rs. 42.72 per kilogram sales February 2018 at Rs. 9 per kilogram April 2019 at Rs. 13.81 per kilogram purchase increase 7.14 percent sale decrease 77.5 percent and fresh



stock not sold discounted if worm infestation and decline should affect purchases and under Section 66 no look back and 75 percent cash 4.13 percent unrelated and for Cumin Seeds and Sesame Seeds same day transactions Respondents 8 and 9 share place unaware not credible purchase unaffected by decline and for Castor Seeds no prior with Respondent 11 purchases beginning month higher sales end lower decline only end and related higher unrelated lower and for FP Bales volatility affects sales not purchases same day loss Rs. 2,51,09,923 and for repayments long term in financial statements entire outstanding repaid without receipts reduced balances pre Non-Performing Asset with dues Rs. 22,00,00,000 losses Rs. 22,00,00,000 no diligence and for Sauda no benefit majority Rs. 10,62,55,564 in Financial Year 2017-18 pre Non-Performing Asset no prior speculative cancellation led losses profits Rs. 16,53,280 to losses Rs. 22,86,95,386 not ordinary to show losses defraud.

24. In the additional affidavit filed on 20.05.2025, the Applicant stated reliance on **Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) ibclaw.in 06 SC** is misconceived as it deals with preferential ingredients no fraudulent intent needed and leaves open if preferential can be undervalued or fraudulent and intent to defraud present in all categorized under Section 66 and ingredients of Sections 43 or 45 also present and transactions undervalued as losses on each commodity crores and fraudulent as book entries no movement same day higher buy lower sell related parties



same place and preferential as repayments put related better under Section 53 and fraudulent as despite dues Rs. 37,00,00,000 losses Rs. 22,00,00,000 pre Non-Performing Asset and sections undermine creditors so invoke multiple if ingredients and substantive justice over technicalities and if not maintain seek liberty press under Section 66.

25. Respondent 1 in rebuttal affidavit dated 23.06.2025 stated ingredients Sections 43, 45, 66 distinct mutually exclusive per **Anuj Jain Case** and alternate under Section 66 belated after hearing would alter allegations prejudice as responded to preferential and allowing re-characterize deprive opportunity.
26. In written submissions filed on 17.01.2024 and revised synopsis on 03.09.2025, the Applicant summarized facts, transactions details, replies, Rejoinder/Written Synopsis, additional submissions on maintainability citing **Anuj Jain** leaves open, **Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors., (2025) ibclaw.in 120 SC** for segregation and liberty under Section 66.
27. In written submissions filed on 03.09.2025 by Respondents No.1 to 7, 19 and 20, stated joint application not maintainable sections exclusive per **Anuj Jain** look back differs and for Gram beyond look back no proof market value higher purchased March 2018 at Rs. 39.87 per kilogram sold April 2018 to April 2019 fluctuations 5 percent worm infestation and similar for other commodities no proof



undervalued profits on occasions fluctuations 2 to 5 percent and repayments beyond look back permitted sanction no penalty ordinary course and Sauda ordinary with third parties supported contracts timing not fraud.

- 28.** We have heard the Ld. Counsel for the Applicant/ Liquidator as well as Ld. Counsel for the Respondent No. 1 to 7, 19 & 20 and perused the record. The Respondents 8 to 18 and 23 to 26 and 28 to 30 and part of 21 to 31 are **ex-parte** and no reply filed and facts against them stand uncontroverted.
- 29.** The issues framed for determination in this application are as follows: -
- (i) **Issue No.1:** Whether this application filed as a composite application under Sections 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016 is maintainable before this Adjudicating Authority?.
 - (ii) **Issue No.2:** Whether the Applicant as the Resolution Professional has complied with the requirements of Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in filing this application?.
 - (iii) **Issue No.3:** Whether the purchase and sale transactions of Gram, Cumin Seeds, Castor Seeds, Sesame Seeds and FP Bales as detailed in the application are transactions that are avoidable as undervalued transactions under Section 45 of the Insolvency and Bankruptcy Code, 2016 read with Section 66 of the Insolvency and Bankruptcy Code, 2016 as fraudulent transactions or transactions involving wrongful trading?.



- (iv) **Issue No.4:** Whether the repayments of unsecured loans to the related parties as detailed in the application are transactions that are avoidable as preferential transactions under Section 43 of the Insolvency and Bankruptcy Code, 2016 read with Section 66 of the Insolvency and Bankruptcy Code, 2016 as fraudulent transactions or transactions involving wrongful trading?.
- (v) **Issue No.5:** Whether the Sauda settlement payments as detailed in the application are transactions that are avoidable under Section 66 of the Insolvency and Bankruptcy Code, 2016 as fraudulent transactions or transactions involving wrongful trading?.
- (vi) **Issue No.6:** What reliefs if any are to be granted to the Applicant in this application and what orders are to be passed against the Respondents including the Respondents who are proceeded ex-parte?.

30. On Issue No.1 regarding maintainability of the composite application under Sections 43, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016;

- (i) The Respondents No.1 to 7, 19 and 20 have contended that a joint application for setting aside transactions as preferential, undervalued or fraudulent is not maintainable. The provisions are mutually exclusive. The parameters, enquiries and consequences are different as held in the judgment of the Supreme Court in **Anuj Jain IRP, Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) ibclaw.in 06 SC**. The look back period is provided for Sections 43 and 45 but not for Section 66. Hence the composite application is not maintainable.



The alternate plea to press under Section 66 is belated. It would alter the nature of allegations and cause prejudice. The Respondents have responded to the allegations as preferential or undervalued. Re-characterizing as fraudulent under Section 66 would deprive the opportunity to deal with the allegations. The additional affidavit ought not to be taken on record.

- (ii) The Applicant has contended that the reliance on **Anuj Jain case (2020 ibclaw.in 06 SC)** is misconceived. The judgment deals with ingredients for preferential transactions. It states that no intent is needed for Section 43. It leaves open the question whether transactions held preferential can also be undervalued or fraudulent. The intent to defraud is present in all transactions. The transaction auditor categorized under Section 66. On examination, ingredients of Sections 43 or 45 are also present. The provisions involve actions that undermine creditors. When ingredients of multiple sections are present, the same can be invoked. Substantive justice should be preferred over procedural technicalities. The Supreme Court in **Piramal Capital Case (2025 ibclaw.in 120 SC)** has held that applications for fraudulent and wrongful trading under Section 66 are distinct from avoidance applications under Sections 43, 45 and 50. There is demarcation of powers. If Resolution Professional files common



applications the Adjudicating Authority shall distinguish and decide which provision applies. In case not inclined to maintain on ground of invoking two sections seek liberty to press under Section 66.

- (iii) The analysis on this issue requires examination of the scheme of the Insolvency and Bankruptcy Code, 2016. Chapter III deals with avoidance of preferential transactions under Section 43. Section 43(4) provides that a preference shall be deemed to be given, if given to a related party during the period of two years preceding insolvency commencement date. This period reduces to one year period in case a preference is given to person other than a related party. It deals with undervalued transactions under Section 45. The consideration period in section 46 for undervalued transaction is two years for a related party and one year for transaction with any other person. It deals with transactions defrauding creditors under Section 49. Section 50 deals with extortionate transactions. Chapter VI deals with fraudulent trading or wrongful trading under Section 66. The Supreme Court in **Anuj Jain Case (2020 ibclaw.in 06 SC)** has observed that the parameters and enquiries for preferential, undervalued and fraudulent are different. The question of intent is not involved in Section 43 but by legal fiction transaction is deemed preferential if ingredients present. For undervalued



under Section 45 different enquiry. Under Section 49 if undervalued to defraud creditors intent examined. Section 49 applies where undervalued transactions (under Section 45) are entered with intent to defraud creditors, distinct from fraudulent trading under Section 66. For Section 66 liabilities on persons responsible for fraudulent or wrongful trading. Specific facts to be pleaded. The scope for preference is different. Resolution Professional to keep requirements in view. But the judgment leaves open whether transactions can be both preferential and fraudulent or undervalued and fraudulent. It does not bar filing composite application when facts support multiple provisions.

(iv) Further the Supreme Court in ***Piramal Capital Case (2025 ibclaw.in 120 SC)*** has held that applications under Section 66 for fraudulent and wrongful trading are not avoidance applications like under Sections 43, 45, 50. There is clear demarcation. If common applications filed the Adjudicating Authority to distinguish and decide applicable provision. Exercise powers under the Insolvency and Bankruptcy Code, 2016. This supports maintainability with segregation.

(v) In addition, the NCLAT in its judgment dated 24.04.2023 in ***GVR Consulting Services Pvt. Ltd. v. Pooja Bahry, (2023) ibclaw.in 261 NCLAT*** has allowed avoidance under multiple sections. If the facts



of the case support the ingredients of more than one provision. This was also upheld by the Supreme Court in Civil Appeal No. 4125 and 4322 of 2023 on 14.07.2023 in ***Dyna Rasayan Udyog Pvt. Ltd. v. Pooja Bahry and Anr., (2023) ibclaw.in 211 SC***. The NCLT, Mumbai Bench in its judgment dated 04.09.2024 in IA No. 15417 of 2021 has maintained composite application by segregating the transactions and applying the appropriate provisions.

- (vi) In the present case the application identifies specific transactions. It alleges them as preferential or undervalued with fraudulent intent or fraudulent trading or wrongful trading. The facts pleaded show ingredients of multiple sections such as for purchase and sale transactions undervalued as losses booked on sales at lower prices than purchases without justification. Fraudulent as book entries without actual movement of goods. For repayments preferential as related parties put in better position. Fraudulent as done despite dues and losses with intent to defraud. For Sauda fraudulent as to show losses pre insolvency. The Adjudicating Authority can segregate and apply Section 66 where fraudulent intent is established or business of the corporate debtor has been carried on with an intent to defraud creditors or for any fraudulent purpose. No look back period applies under Section 66. The



alternate plea is considered as the application can be pressed under Section 66 in interest of justice. The Respondents have addressed fraudulent aspects in replies. No prejudice as the facts are common. Depending on the nature of transactions and its effect, the same could satisfy the tests of either section 43, 45, 50, or 66 of the transaction can fall in the ambit of more than one sections. The application is maintainable with segregation and decision on applicable provisions. Thus, Issue No.1 is decided in the affirmative that the application is maintainable.

31. On Issue No.2 regarding compliance with Regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

- (i) The Respondents No.1 to 7, 19 and 20 have contended that Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 requires the Resolution Professional to form an opinion whether the Corporate Debtor has been subjected to transactions under Sections 43, 45, 50 or 66. After forming opinion to make a determination. Then file application before the Adjudicating Authority. But in this case no opinion formulated by the Resolution Professional. No determination made. It was the Committee of Creditors who resolved to move the



application. Hence the application is filed without fulfilling pre-requisites. It is not maintainable.

The Applicant has contended that the Resolution Professional performed duties. In absence of information from promoters on the transactions that could be examined, it appointed transaction auditor, an expert, with consent of Committee of Creditors. The auditor submitted report dated 06.07.2021. The report was discussed in meeting on 16.07.2021. Resolved to file. The application is based on the report.

- (ii) The analysis on this issue requires examination of Regulation 35A. It provides that the Resolution Professional shall form an opinion whether the Corporate Debtor has been subjected to any transaction covered under Sections 43, 45, 50 or 66 on or before the 75th day of the insolvency commencement date. If forms such opinion make a determination on or before the 115th day. File the application before the Adjudicating Authority on or before the 135th day. The timelines are directory as held by the NCLAT in judgment dated 16.02.2023 in **Jagdish Kumar Parulkar RP v. Vinod Agarwal Ex-Director, (2023) ibclaw.in 132 NCLAT**. Substantial compliance is sufficient if the audit report supports the determination.

- (iii) In the present case the insolvency commencement date is 15.03.2021. The auditor was appointed on 01.05.2021 which is within 75 days. The report was submitted on 06.07.2021 which is within 115 days. The



meeting was held on 16.07.2021. The application was filed on 18.08.2021 which is within 135 days. The RP got the transaction audit done and when transactions that would not have been carried out in a normal course of business and prima-facie hit by sections 43,45,49, or 66 were identified based on the nature of transactions and effect of the same on the corporate debtor or likely benefits to other, he took the matter to the CoC seeking permission to file an application before the adjudicating authority for a decision on these transactions. The opinion was formed by him based on the transaction audit prepared by an expert. Possible categorisation of the transaction whether avoidable or fraudulent is underpinned by sound judgment based on the nature of transactions. This involves application of mind and that forms the basis for an opinion. Therefore, it would not be correct to argue that opinion was not formed.

- (iv) The appointment of auditor with Committee of Creditors consent and basing the application on the audit report constitutes formation of opinion and determination by the Resolution Professional. The report identifies the transactions. The Resolution Professional has filed the application adopting the findings. The involvement of Committee of Creditors is for approval as per Section 25(2)(j). It does not amount to abdication. *In National Company Law Tribunal, Ahmedabad judgment dated*



12.05.2023 in IA No. 123 of 2021 similar compliance was held sufficient. Hence there is compliance with Regulation 35A. Thus, Issue No.2 is decided in the affirmative that there is compliance

32. On Issue No.3 regarding whether the purchase and sale transactions of Gram, Cumin Seeds, Castor Seeds, Sesame Seeds and FP Bales are avoidable under Sections 45 read with 66 of the Insolvency and Bankruptcy Code, 2016;

- (i) The Applicant has contended that the transactions are undervalued. The Corporate Debtor booked losses on sales of commodities at prices lower than purchase prices. The losses run into crores of rupees. Most appear to be book entries without actual movement of goods. In most cases goods are purchased at higher prices and sold at lower prices on the same day or shortly after. In certain cases the seller and buyer are related operating from the same place. The intent is to defraud creditors by booking artificial losses. For Gram stock mismatches with sales without stock. Differential purchased later at higher price while sold earlier at lower. Cash purchases dominant. For Cumin Seeds and Sesame Seeds same day transactions with Respondents 8 and 9 related. Purchase unaffected by alleged decline. For Castor Seeds related higher unrelated lower. For FP Bales same day losses. The Transaction Audit Report



dated 06.07.2021 supports. No look back under Section 66.

(ii) The Respondents No.1 to 7, 19 and 20 have contended that the transactions are genuine business transactions in trading since 2012. Losses due to market fluctuations of 2 to 5 percent daily as evidenced by screenshots. For Gram worm infestation forced discounted sale. 80 percent with unrelated parties. Bank audits no objections on stock variation. Beyond look back for undervalued. No proof of undervalued as no evidence market value higher on sale date. Arm's length known to bank. For Cumin Seeds profit in 2017. Loss due to decline. From related at market rate. Respondents 8 and 9 not related to Corporate Debtor. Unaware of their relation. Audits would detect no movement. Similar for Sesame Seeds. For Castor Seeds marginal loss Rs. 1.44 per kilogram due to decline. For FP Bales different quality volatility. Incurring losses not defrauding.

(iii) The analysis on this issue requires examination of Section 45. It provides for avoidance of undervalued transactions if the Corporate Debtor has at a relevant time made a gift or transferred property for consideration value less than provided. Section 46 provides look back of 1 year or 2 years for related



parties. Section 49 provides if undervalued to defraud creditors the Adjudicating Authority may order restoration. Section 66 provides if business carried with intent to defraud creditors or for fraudulent purpose the Adjudicating Authority may order contribution from persons responsible. No look back under Section 66. The Supreme Court in **Anuj Jain Case** has held that whether a transaction is undervalued requires a different enquiry as per Sections 45 and 46. If the undervalued transaction is to defraud creditors the intent is examined under Section 49. For fraudulent trading under Section 66 the liabilities are on the persons responsible. The scope is different. Specific facts are to be pleaded. Thus, where undervalued transactions involve defrauding intent, Section 49 may apply alongside Section 66 for trading aspects.

- (iv) In the present case for Gram, the purchases are Rs. 10,73,65,565. Sales Rs. 6,90,87,875. Loss Rs. 3,82,77,690. Stock in February 2018 nil but sales 5,06,962 kilograms. Till February 2019 sold higher than purchased. Differential in March 2019 at Rs. 42.72 per kilogram while February 2018 sales at Rs. 9 per kilogram. April 2019 at Rs. 13.81 per kilogram. Purchase increase 7.14 percent but sale decrease 77.5 percent. If worm infestation fresh March 2019 stock not sold discounted. Decline should lower purchases too



but not. 75 percent cash parties not named. Only 4.13 percent unrelated contrary to 80 percent claim. Pattern shows undervalued sales. Intent to book loss fraudulent under Section 66.

- (v) For Cumin Seeds purchases 2,90,125 kilograms at Rs. 154 per kilogram. Sold at Rs. 149 and Rs. 141 per kilogram. Loss Rs. 17,23,150. 44 percent from related. From Respondent 8 sold to 9 related same address. Same day like 28.03.2018 and 29.03.2018 buy at Rs. 154 and Rs. 153 sell at Rs. 149 and Rs. 148. Decline affects sales not purchases. Unaware not credible as same place. Thus the transactions are avoidable under Section 45 read with Section 66 as undervalued with fraudulent intent.
- (vi) For Castor Seeds purchases 3,36,339 kilograms from related parties Respondent No. 5 and Respondent No. 10 at Rs. 39 to 40.30 per kilogram. Sold 3,36,266 kilograms to Respondent No. 11 at Rs. 38.21 per kilogram. Resulting in loss of Rs. 4,33,960. No prior business transactions with Respondent No. 11. Purchases beginning month higher sales end lower. Decline only end. Related higher unrelated lower contrary normal. Thus the transactions are avoidable under Section 45 read with Section 66 as undervalued with fraudulent intent.



- (vii) For Sesame Seeds purchases 6,00,000 kilograms from 8 at Rs. 92 per kilogram. Sold to 9 at Rs. 85 per kilogram. Loss Rs. 42,00,000. 8 and 9 related. Same day like 03.03.2018 and 05.03.2018 buy sell same quantity. Decline affects sales not purchases. Thus the transactions are avoidable under Section 45 read with Section 66 as undervalued with fraudulent intent.
- (viii) For FP Bales purchases Rs. 33,00,00,000 in March 2018. Same day pattern buy higher sell lower. Example 12.03.2018 from 12 at Rs. 114.45 sell to 13 at Rs. 104.04 loss Rs. 1,65,794. Total loss Rs. 2,51,09,923. Volatility affects sales not purchases same day.
- (ix) The intent is clearly to defraud creditors by booking artificial business losses, allowing to take out money out of the corporate debtor, as receipts are less than the payemnts. It is simply draining out money/cash from the corporate debtor and therefore the transaction satisfies the conditions of sections 45 and 66. The sales were undervalued, and the respondents have not proved that the sale price were market driven price of the commodity on the transaction date. Therefore, the sales were rightly held as undervalued and covered under section 45 of the IBC, 2016. These transactions in commodities were carried out always resulting into losses (the respondents have not proved that delivery was taken or given and these were genuine



transactions). The carrying on these transactions also satisfies the requirements of section 66 because it has been found that business of the corporate debtor, by carrying out these transactions, has been carried on with an intent to defraud creditors of the corporate debtor or for fraudulent purposes. In this case, the CD was facing financial distress and its accounts became NPA. In these circumstances carrying on of the unusual trading transactions resulting into huge loss can be stated for the purpose of draining the scarce funds of the CD so it need not pay creditors and intention was to defraud the creditors. Cash purchases attract provisions of section 40A(3) of the Income Tax Act, 1961 still it carried out the transactions in cash which demonstrate that the intention was to take out the cash from the corporate debtor. Thus the transactions are avoidable under Section 45 read with Section 66 as undervalued with fraudulent intent.

- (x) The NCLT, Ahmedabad in judgment dated 19.02.2024 in IA No. 43 of 2017 avoided similar commodity trades under Section 66 as fraudulent to defraud creditors. Here patterns consistent losses no justification intent established. Respondents ex-parte uncontroverted. Transactions avoidable under Section 45 read with 66 and Section 49, where applicable. Thus, Issue No.3 is decided in the affirmative.



33. On Issue No.4 regarding whether repayments are avoidable under Sections 43 read with 66;

(i) The Applicant has contended in the application, Rejoinder/Written Synopsis, additional affidavit, written submissions and revised synopsis that the transactions are preferential. By repaying Rs. 4,47,06,188 to related parties Respondents 1 to 4, 19 and 20 in Financial Year 2017-18 such unsecured related lenders are put to a beneficial position than in distribution under Section 53. The transactions are fraudulent. The repayments were made despite the Corporate Debtor owing Rs. 37,00,00,000 to unrelated creditors. Incurring losses of Rs. 22,00,00,000 in Financial Year 2017-18. The repayments were just prior to Non-Performing Asset declaration on 06.07.2018. The loans are shown as long term borrowings in audited financial statements. The entire outstanding as on 31.03.2017 was repaid without simultaneous receipts. Balances reduced substantially. No due diligence exercised amid financial distress indicating intent to defraud creditors. The audited balance sheet and profit and loss account for Financial Year 2017-18 and ledger accounts support.

(ii) The Respondents No.1 to 7, 19 and 20 have contended that the terms of sanction letter dated 23.12.2016 do not prohibit repayment of loan to the related parties. It is clear from terms of the sanction letter that repayment



of unsecured loans to the related parties is permitted to a certain limit. If repayments were made beyond that limit then the Corporate Debtor would be subjected to 2 percent penalty. No such penalty was imposed on the Corporate Debtor for repayment of loan which substantiates the fact that repayments were made within the limits prescribed by the Financial Creditor. The Respondents had granted short term loans to the Corporate Debtor at regular intervals. The Corporate Debtor would repay the loan amount to the Respondents periodically. Therefore the repayments were made in ordinary course of financial affairs of the Corporate Debtor. It is denied that any justification was sought from the Respondent for the aforesaid transaction. Even otherwise the repayments were made beyond the look back period of two years that is all the repayments were made prior to 14.03.2019. Hence repayment of unsecured loan to related parties will not fall within the purview of preferential transactions.

- (iii) The analysis on this issue requires a detailed examination of Section 43 of the Insolvency and Bankruptcy Code, 2016. It provides that a corporate debtor shall be deemed to have given a preference at a relevant time. During the period of two years preceding the insolvency commencement date if the corporate debtor is a related party. Or during the period of one



year preceding the insolvency commencement date if the beneficiary is not a related party. The transaction is a transfer that puts the beneficiary in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53. Section 66 provides for liability if business carried with intent to defraud creditors.

- (iv) In the present case the repayments amounted to Rs. 4,47,06,188 in Financial Year 2017-18 to related parties Respondents 1, 2, 3, 19 and 20. The insolvency commencement date is 15.03.2021. So the repayments are within the look back period of 2 years for related parties. The audited financial statements for Financial Year 2017-18 show the loans as long term borrowings. Not short term as contended. The entire outstanding amounts as on 31.03.2017 were repaid in Financial Year 2017-18 without adequate simultaneous receipts from the related parties. The outstanding balances reduced substantially after the repayments. The repayments were made when the Corporate Debtor had outstanding dues of Rs. 37,00,00,000 to the Financial Creditor. Incurred losses of Rs. 22,00,00,000 in the same financial year. Just prior to the account being declared Non-Performing Asset on 06.07.2018. No due diligence was exercised in repaying the related parties amid the financial distress. This indicates the intent to



put the related parties in a beneficial position and defraud the other creditors. The sanction letter dated 23.12.2016 permits repayments to a limit with penalty if exceeded. But the absence of penalty does not negate the preferential nature as the transactions put the related parties better under Section 53.

- (v) The contention of ordinary course is not tenable as the repayments were of long term loans. Not periodic short term. Further, section 43(4) provides that a preference shall be deemed at a relevant time if transactions with related parties were made two years preceding insolvency commencement date. There is no dispute or objections by the respondent that the money was paid to related parties as repayment of loan (in preference to others as no money was paid to bank with whom the account of the Corporate Debtor became NPA due to non-payment and CD was in financial distress or other creditors) therefore due to deeming fiction the payments automatically became preferential hit by section 43 of the IBC, 2016. The intent appears to be not to leave anything in the CD and take out the available funds to benefit the relatives and put them in a better position that they would have been in a distribution under section 53 of the IBC, 2016.

- (vi) The Supreme Court ***in Anuj Jain Case (2020 ibclaw.in 06 SC)*** has held that a transaction is



preferential if it has the effect of putting the beneficiary in a beneficial position. The look-back period applies. Here the ingredients are satisfied. Further the intent to defraud is evident from the timing and circumstances. NCLAT in **GVR Consulting Services Pvt. Ltd. (2023) ibclaw.in 261 NCLAT** has avoided similar repayments to related parties as preferential under Section 43 and fraudulent under Section 66 when made amid financial distress. This was also upheld by the **Supreme Court reported in (2023) ibclaw.in 211 SC**. Hence, the transactions are avoidable under Sections 43 read with 66 of the Insolvency and Bankruptcy Code, 2016. Thus, Issue No.4 is decided in the affirmative

34. On Issue No.5 regarding Sauda under Section 66;

- (i) The Applicant contended the Corporate Debtor expensed off Sauda Settlement Expenses Losses to the tune of Rs. 11,91,30,564 in Financial Years 2017-18 and 2018-19. Majorly prior to Non-Performing Asset declaration on 06.07.2018. Prior to that no such speculative transactions at big scale. Parties new no prior relationship during financial crunch unable meet obligations suspicion genuineness. Party-wise losses detailed. Ledgers created solely prior no existence or no transactions. Unfathomable no benefit single Sauda majority Rs. 10,62,55,564 Financial Year 2017-18. Turned profits Rs. 16,53,280 till 31.03.2017 to losses



Rs. 22,86,95,386 within year nothing ordinary. Entered show losses defraud. Transaction Audit Report dated 06.07.2021 supports.

- (ii) The Respondents No.1 to 7, 19 and 20 have contended in the reply and written submissions that Sauda are transactions where contract entered buy sell commodity specified price quantity future date. Usually cancelled differential paid. Denied expensed off immediately prior Non-Performing Asset 07.07.2018 most settled way prior. Entered since 2016 unrelated third parties not during crunch. Entered 2016 2017 account regular limit losses entered settled prevailing market rate. Denied ledger Respondent 21 23 24 26 30 created solely none related no dues paid Respondent 23. No fraudulent trading no payment only reason alleging fraud losses failure generate profit point lack business acumen not defrauding.

- (iii) The Respondents 21, 22 and 27 have contended in their replies that Corporate Debtor entered Sauda contracts dated 19.09.2016 20.09.2016 for Respondent 21 purchasing cotton bales within 8 months sellers option. Dated 19.09.2016 21.09.2016 22.09.2016 for Respondent 22 purchasing within 8 months sellers option. Dated 10.11.2017 14.11.2017 15.11.2017 for Respondent 27 selling within 2-3 months sellers option. Supported contracts debit notes settlement notes



payments within 5 days. Prior sales Financial Year 2016-17 Respondent 21 Rs. 2,15,96,160 Respondent 22 Rs. 3,31,25,360 Financial Year 2017-18 Respondent 27 Rs. 1,52,64,940. No knowledge source funds commercial wisdom market practices no other business ledger for Sauda. Fulfill consideration irrespective condition commercial sales purchases receipts clear course business entitled receive goods delivered.

- (iv) The analysis on this issue requires a detailed examination of Section 66 of the Insolvency and Bankruptcy Code, 2016. It provides that if during the corporate insolvency resolution process or liquidation process it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose. The Adjudicating Authority may on the application of the resolution professional or liquidator pass an order. 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. There is no look back period for Section 66. The provision is for fraudulent trading or wrongful trading. Where the business is carried on knowing that there is no reasonable prospect of avoiding insolvency or with intent to defraud.



- (v) In the present case the Sauda settlement payments resulted in losses of Rs. 11,91,30,564. It is unfathomable that the Corporate Debtor entered numerous Sauda contracts but was not benefitted from any single contract. The majority of the expenses losses amounting to Rs. 10,62,55,564 were in Financial Year 2017-18. That is the period immediately prior to the Non-Performing Asset declaration on 06.07.2018. Prior to that the Corporate Debtor had not entered into such speculative transactions at such scale. The parties were new with no prior business relationship. The transactions were during the period when the Corporate Debtor was facing major financial crunch. Unable to meet obligations. The contention that the Saudas were cancelled prior to specified period to limit losses is misconceived. The cancellations themselves led to the losses. Till 31.03.2017 the Corporate Debtor had booked profits to the tune of Rs. 16,53,280. Within a year incurred losses to the tune of Rs. 22,86,95,386.
- (vi) There is nothing to indicate that the transactions were in ordinary course. They took place majorly in Financial Year 2017-18. Soon thereafter the Corporate Debtor was led into Corporate Insolvency Resolution Process. The ledgers for several parties were created solely for accounting these expenses. Prior no existence or no transactions. The contracts notes payments do not



negate the fraudulent intent. The overall pattern shows the transactions were entered to book losses and defraud creditors. The National Company Law Tribunal Mumbai Bench in its judgment dated 14.06.2024 in a similar case avoided Sauda settlements under Section 66. They were speculative transactions to siphon funds and defraud creditors. The article Discerning the Reach of Avoidance Proceedings by Vinod Kothari Consultants explains that under Section 66 the Adjudicating Authority can hold directors and other persons liable for fraudulent trading. If the business was carried on with intent to defraud. Here the pattern establishes the intent. The Respondents who are proceeded ex-parte have not controverted. Hence the transactions are avoidable under Section 66 of the Insolvency and Bankruptcy Code, 2016. Therefore, Issue No.5 is decided in the affirmative.

35. On Issue No.6 pertaining to the reliefs to be granted are as under: -

- (i) In view of the findings on Issues 1 to 5 that the application is maintainable and there is compliance with Regulation 35A and the purchase and sale transactions are avoidable under Section 45 read with Section 66 and the repayments are avoidable under Section 43 read with Section 66 and the Sauda



settlements are avoidable under Section 66, the transactions are declared void and avoided;

(ii) Considering that transactions meet the tests of section 66 of the IBC, 2016, as discussed above, we also hold that the directors of the corporate debtor knew that the CD is in financial distress and they knew that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process, which happened very quickly after carrying out the transaction and bank account became NPA, and such directors instead of exercising due diligence in minimising the potential loss to the creditors of the corporate debtor carried out the transactions as described in this order with an intent to draw out the cash out of the corporate debtor and defraud the creditors due to non-payment of their due amounts. Therefore, considering the provisions of section 66(2), we order that the directors are liable to contribute to the assets of the corporate debtor the amounts determined as losses due to fraudulent transactions due to trading in commodities and sauda transactions

(iii) The Respondents are directed to contribute the amounts to the Liquidator for the assets of the Corporate Debtor jointly and severally for distribution



to the creditors in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016;

- (iv) and specifically for the purchase and sale transactions of Gram the Respondents 1 to 6 and 22 are directed to pay Rs. 3,82,77,690;
- (v) and for Cumin Seeds the Respondents 1 to 4 and 6 to 9 are directed to pay Rs. 17,23,150;
- (vi) and for Castor Seeds the Respondents 1 to 5, 10 and 11 are directed to pay Rs. 4,33,960;
- (vii) and for Sesame Seeds the Respondents 1 to 4, 8 and 9 are directed to pay Rs. 42,00,000;
- (viii) and for FP Bales the Respondents 1 to 4 and 12 to 18 are directed to pay Rs. 2,51,09,923;
- (ix) and for the repayments of unsecured loans the Respondents 1 to 4, 19 and 20 are directed to pay Rs. 4,47,06,188;
- (x) and for the Souda settlement payments the Respondents 1 to 4, 16 and 21 to 30 are directed to pay Rs. 11,91,30,564;
- (xi) and the Respondents who are proceeded ex-parte are also liable as per the findings.



(xii) and the payments shall be made within 30 days from the date of this order.

(xiii) Any failure to comply with this order shall attract penal consequences under the Code, including reference to the Insolvency and Bankruptcy Board of India (IBBI) for further action against the Respondents.

36. In terms of the above, Interlocutory Application i.e. **IA/572(AHM)2021** in C.P.(IB)/401(AHM)2019 is allowed and disposed of with no order as to costs

37. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

SK/ Steno

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)