

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 567 of 2024

(Arising against the impugned order dated 11.01.2024 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench-II in I.A. No. 5545/ND/2021 in CP No. (IB) – 794(ND)/2018)

IN THE MATTER OF:

Mr. Gopal Kalra

Add:- 222, Nilgiri Apartment,
Alaknanda,
New Delhi -110019.

...Appellant

Versus

Mr. Akhilesh Kumar Gupta

Liquidator For
Easytech Global Private Limited
IBBI/IPA-001/ IP-P00780/2017-2018/ 11353
LGF, A-16/9, Vasant Vihar,
New Delhi-110057.

...Respondent

Present:

For Appellant: Mr. Rahul Kumar, Advocate.

**For Respondent: Mr. Varun Sharma, Ms. Vanshika Gupta &
Ms. Vaishnavi Gupta, Advocates.
Mr. Akhilesh Kumar Gupta, (Liquidator in-person).**

J U D G M E N T
(3rd July, 2025)

INDEVAR PANDEY, MEMBER (T)

The present appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code") is preferred by **Mr. Gopal Kalra/Appellant** against the impugned Order dated 11.01.2024 passed in I.A. No. 5545/ND/2021 in CP No. (IB) – 794(ND)/2018 passed by the National Company Law Tribunal, New

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Delhi Bench II (“Adjudicating Authority”) deciding on fraudulent transactions being carried out by the Appellant.

Brief facts of the case

2. Brief facts of the case are given below:

- i. M/s Easytech Global Private Limited (hereinafter referred to as the "**Corporate Debtor**") is a company incorporated in India on June 06, 2014 under the relevant provisions of Companies Act, 2013 having its Corporate Identification Number as CIN U51505DL2014PTC267884 and registered address as E-92, 2nd Floor, Masjid Moth, Greater Kailash-III, New Delhi- 110048. The Appellant- Mr. Gopal Kalra is the erstwhile Director of the CD.
- ii. Vide Order dated October 04, 2018, the Hon'ble National Law Company Tribunal admitted the captioned company petition filed by M/ s Insynergy Supply Chain Solutions Private Limited/ Operational Creditor against the Corporate Debtor under Section 9 of the Code. As the Corporate Insolvency could not be resolved, Adjudicating Authority vide order dated April 03, 2019, allowed the application for liquidation of the Corporate Debtor under Section 33(2) of the Code. Mr. Akhilesh Kumar Gupta was appointed as Liquidator and is the **Respondent** in this appeal.
- iii. A forensic audit of the Corporate Debtor was conducted based on the decision of the Committee of Creditors (CoC). M/s Ravi Ranjan and

Company, Chartered Accountants were appointed as a Forensic Auditor to carry the forensic audit of the Corporate Debtor. The Auditor concluded the forensic audit of the Corporate Debtor for the period between 10.10.2016 to 15.10.2018 and submitted the final report on 12.09.2019.

- iv. The scope of the forensic audit was to review the financial transactions of the CD for the review period to understand the nature of transactions, trend, transactions of substantial amounts and contracting transactions, to review changes in unsecured loans, the sale/mortgage/transfer/alienation of the assets/properties of the CD.
- v. After a detailed review and analysis of the records of CD for the review period and field visits, the forensic auditors recorded their findings and made detailed observations on various transactions.
- vi. The forensic auditor in its detailed report stated that several unjustified unexplained and suspicious LED bulb trading transactions between the CD and the fake customers/ vendors were available on record which resulted in a loss of Rs. 4,66,55,553/- to the CD. As per the observations made by the forensic auditors, most of the entities/ parties with whom the aforesaid suspicious transactions were undertaken by the Appellant, as shown in the books of accounts, do not match and raised serious suspicion of illegal moving of money from the Corporate Debtor.

- vii. Based on the findings of the forensic auditor the Respondent/ Liquidator of CD filed the IA No. 5545/ND/2021. The Adjudicating Authority after detailed examination of documents on record and hearing both the parties held that the Respondents in the IA entered into fraudulent transactions and the Sh. Gopal Kalra/ Respondent No.1 (Appellant herein) is liable to contribute an amount of Rs. 3.18 crores to the assets/CIRP account of CD. The Adjudicating Authority also issued similar orders in respect of Respondent No. 2 and Respondent No.3 who are not a party in the present case.
- viii. Aggrieved by the order passed by Adjudicating Authority in the IA No. 5545/ND/2021 this appeal has been filed by Sh. Gopal Kalra/ Appellant.

Submission of the Appellant

3. Ld. Counsel for the Appellant submits that the present Appeal is limited in scope in so far as whether transactions relating to LED Bulbs by the Corporate Debtor are fraudulent in nature or not.

4. Ld. Counsel submits that the forensic audit report that has been relied upon by the Liquidator specifically states that the transaction has caused a “notional loss” to the corporate debtor.

5. Ld. Counsel states that during the course of arguments, the submission of the Respondent was that the transactions in question are fraudulent on

account of variance in debit notes and credit noted as mentioned in the forensic audit report.

6. It is his submission that the difference in the Credit and Debit note is on account of the fact that the goods were purchased at a different rate and sold at a higher rate and the difference was to be the profit of the Corporate Debtor which profit is evident from the fact that the transactions overall have resulted in a net cash inflow for the Corporate Debtor, which was already reeling with losses. Therefore, this was an attempt to revive the Corporate Debtor which bore fruit for FY 14-15 and 15-16 and only in 16-17 those certain losses occurred.

7. Ld. Counsel further submits that the Corporate Debtor overall has had no cash loss, further strengthens the argument of the Appellant that in the absence of any cash loss or allegation of siphoning off, the transactions in question cannot be categorized as fraudulent. That the transaction in question may be poor business decision in hindsight but cannot be categorized as fraud.

8. Ld. Counsel further submits that as far as Section 66 (2)(b) of the Code is concerned, the said provision is not applicable in the present case, as there is no material on record to show that the Appellant himself had not done sufficient due diligence to ensure no potential loss occurs to the creditors. In fact, the corporate debtor had been reeling under losses and it was on account of the present transactions that some money had made inflows into the

corporate debtor thereby enriching the creditors and not taking anything away from them.

9. Ld. Counsel places reliance upon the Judgement of this Appellate Tribunal in '*Regen Powertech Pvt. Ltd. Vs. Wind Construction Pvt. Ltd. in Company Appeal (AT)(Ins) No.349 of 2022*'. The relevant paras 33-35 are extracted below:

"33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'.

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the 'Company' would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling 'Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder a 'Creditor', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'."

10. It is the submission of Ld. Counsel that money from the bank was not used for these transactions as goods were taken on credit with the condition of payment being that, when goods get sold payment would be made, therefore it could not cause any loss to banks or even the Corporate Debtor. However,

it is undisputed that some cash inflow in terms of profit was earned for the corporate debtor, a fact mentioned in the forensic audit report.

11. Summing up Ld. Counsel submits that in view of the above, it cannot be said that the transactions in question are fraudulent in nature or that proper diligence has not been done by the Appellant to minimize potential losses to the creditor. He therefore prays for allowing the appeal.

Submission of the Respondent

12. Ld. Counsel for the Respondent stated that vide order dated January 11, 2024 the Ld. Adjudicating Authority allowed IA 5545 of 2021 filed by the Ld. Liquidator in CP IB No. 794 (ND) of 2018 while concluding that the present Appellant entered into fraudulent transactions with fictitious and non-existent entities for LED business thereby causing substantial loss and directed the Appellant to contribute a sum of Rs. 3,18,00,000/- to the assets of the Corporate Debtor.

13. Ld. Counsel invited attention to the observations of the Forensic Auditor regarding the LED business conducted by the Appellant with the following entities:

- Satyam Traders

"During the field investigation of Satyam Traders, Shop No. 1, Tyagi Market, Ghuna, Ghaziabad, investigation team did not find shop with name of M/s Satyam Traders at the given address. A small cycle shop is running from aforementioned address with name of Rehman Cycle works. As per the

detailed discussion with Rehman Cycle works, he revealed he is the ultimate beneficiary and owner of the Shop for the last 12 years and there is no other business activity was conducted by anyone apart from cycle works.

- Garg Sales Corporation

"During the field investigation of Garg Sales Corporation, Shop No. 1, Nandgram Road, Subhash Nagar, Ghazaibad, it was found that: (1) Rashmi Electricals is running business on this address since 2004. (2) The owner of shop revealed that this shop is only utilized by them with name & style as M/s Rashmi electrical since its incorporation not by Garg Sales Corporation."

- B.S. Enterprise

"while conducting the field investigation of Plot No. 305, Shinani Village Sihani Road, Ghaziabad, audit revealed that: (1) The plot no. 305 is being used for godown and it was shut-off on the day of investigation. (2) As per the detailed discussion with the nearby people of the plot no. 305, it was revealed that the said plot is being utilized by the Jaggannath electrical as godown for Led television. There is no such plot 305 with the name of B S Enterprises"

- SP Trading & Co.

"Form above field investigation it was observed that address of business as mentioned on balance confirmation and tally doesn't confirm that those companies are running business at same place"

14. Ld. Counsel submitted that the Appellant has very conveniently ignored the necessity of justifying the fraudulent transactions highlighted by the Forensic Auditor in its Forensic Audit Report, the Respondent in its response to the Appeal and the Ld. Adjudicating Authority in the Impugned Order. He submits that there is no explanation provided by the Appellant throughout the contents of appeal or its rejoinder on the suspicious sale / purchase LED Bulb transactions, highlighted by the Forensic Auditor or the Respondent; undertaken by him with the aforementioned entities. It is pertinent to mention that during the submissions before this Appellate Tribunal, the Appellant admitted the existence of these transactions with the mentioned fictitious entities and failed to provide any justifiable explanation regarding the same.

15. Ld. Counsel states that Part 4.4 of the Forensic audit report can be referred to understand the financial loss which the Appellant has caused/ made to incur to the Corporate Debtor as a result of conducting transactions of sales/ purchases with fraudulent and fictitious entities.

- As per para 4.4(i), the Appellant has recorded gross purchases of LED Bulbs of Rs. 9.33 Crores against which gross sales of Rs. 9.88 Crores has been recorded.

4.4 Suspicious Led Bulbs Trading Transactions

i. Details of trading activities related to Led Bulb recorded in Books of Accounts along with total trading activities in PY 2016-17 are given below:

Table 1: Details of trading activities during FY 16-17 (figures in INR Cr.)

Nature Transactions	Trading Purchases	Trading Sales
LED bulb	9.33	9.88
Total	18.28	21.41
Percentage	51%	46%
Total	9.33	9.88

- As per para 4.4 (ii), Out of above purchases of INR 9.33 Crores, the Appellant has issued Debit notes of INR 6.28 Crores to these so-called suppliers, thereby resulting in NET purchases of Led Bulbs to INR 3.04 Crores (9.33-6.28) during financial year 2016-17. The Appellant has also paid INR 3.43 crores to these fictitious suppliers on account of above purchases and opening payables of INR 0.76 crores.
- ii. *Entities from whom the purchase transactions (51% of the trading purchases -Led bulb i.e., INR 9.33 Crores out of total purchase INR 18.28 Crores) were undertaken in FY 2016-17 are mentioned below:*

Entity Name	Opening Balance	Purchases	Amount paid as per bank books	Debit note	Other Adjust	Closing balance
Jaggannath Techno Engineers Pvt Ltd.	0.00	1.52	1.52	0.00	0.00	0.00
K K Enterprises	0.26	1.63	0.89	0.88	0.12	0.00
Satyam Traders	0.34	1.43	0.05	1.60	0.12	0.00
Vidhata Sales Corp	0.16	4.74	0.97	3.8	0.12	0.00
Total	0.76	9.32	3.43	6.28	0.36	0.00

- As per para 4.4(iii), Out of total sales of INR 9.88 crores, the Appellant has issued credit notes of INR 10.06 crores to these fictitious customers, thereby resulting Net Sales of Led Bulbs to NIL (9.88-10.06) during FY 2016-17. The Appellant has shown receipt of

INR 4.89 crores from these fictitious customers against opening recoverable of INR 5.41 crores. Thus, against Net purchases of INR 3.04 crores (recorded and paid by CD), no sales have been made in FY 2016-17 and no stock of Led bulbs was available with the Corporate Debtor.

iii. Entitles to whom sales transactions of Led Bulb (46% of the trading sales i.e., 9.88 Crores out of the total sales INR 21.41 Crores) were undertaken in FY 2016-17 are mentioned below:

Entity Name	Opening Balance	Sales	Amount received as per bank books	Credit Note	Other Adjustment	Closing Balance
B S Enterprises	2.30	2.82	1.97	3.03	0.12	0.00
Garg Sales Corporation	1.12	3.58	1.78	2.80	0.12	0.00
S P Trading Co	1.99	3.36	1.00	4.23	0.12	0.00
Summer Impex	0.00	0.10	0.14	0.00	0.00	0.40
Total	5.41	9.86	4.89	10.06	0.36	0.4

16. It can be clearly seen from the above tables that the Appellant has just passed book accounting entries for recording sales and purchases of Led Bulbs with fictitious suppliers/ customers and later adjusting the outstanding amounts by issuing credit notes against such illegitimate reversed sale transactions of the LED Bulbs and by issuing wrongful debit notes against illegitimate reversed purchase transactions of LED Bulbs using fake and forged vendor bills for causing wrongful loss to the Corporate Debtor. The loss caused and recorded in the books of accounts by Appellant can be summarised as below:

a) Opening amount recoverable from Customers (table iii supra)	5.41 Crores
Less amount recovered from Customers (table iii supra)	4.89 Crores
Short fall in recoveries from these fictitious Customers	0.52 Crores
b) Opening amount Payable to Suppliers (table ii supra)	0.76 Crores
Less Amount actually paid to these suppliers (table ii supra)	3.43 Crores
Amount Excess paid to such fictitious suppliers	2.67 Crores
Actual Loss Caused to CD due to above banking transactions (a+b)	3.19 Crores

iv. After adjustment of debit notes and credit notes, during 'Review Period' a notional loss of Rs 3.19 Crore seems to have got generated on account of the LED Turnover, which is depicted as below:

Party Name	Purchase	Sales
B S Enterprises		(2,118,170.00)
Garg Sales Corporation		7,820,703.00
Jaggannath Technoengineers Pvt. Ltd.	15,275,000.00	
K K Enterprises	6,358,938.00	
S P Trading Co		(8,671,835.00)
Satyam Traders	(1,729,356.50)	
Summer Impex		1,005,000.00
Vidhata Sales Corp	9,374,818.00	
Total	29,279,399.50	(1,964,302.00)
Opening Stock		552,600.00
Closing Stock		-
Profit		(31,796,301.50)

17. Ld. Counsel submitted that, had these transactions with fictitious suppliers/customers not taken place, an amount of INR 3.19 crores would have been available to financial and other creditors of the Corporate Debtor which has been siphoned off by way of these transactions.

18. Ld. Counsel further submits that an analysis of audited financial statements of the Corporate Debtor for the FY 2016- 2017 & 2017-2018 will

also reveal significant discrepancies in sales and purchase returns. Sales returns totaled to Rs. 10.34 crore, but purchase returns were only Rs. 6.43 crore, indicating that nearly Rs. 3.91 crore worth of goods returned by customers were not credited back by suppliers. This discrepancy directly contradicts the Appellant's claim that all unsold or returned goods were duly returned to suppliers. Such irregularity clearly evidences the siphoning of funds by the Appellant, carried out with the fraudulent intention to cause wrongful loss to the Corporate Debtor and to secure wrongful personal gain. This conduct is emblematic of deliberate mismanagement aimed at defrauding the creditors.

19. Ld. Counsel invited attention to the Section 66(2)(b) of the Code, and stated that the Appellant failed to exercise the due diligence required to minimize potential loss to the Corporate Debtor. Instead, the Appellant continued business dealings with fictitious and non-existent entities, while manipulating of the books of accounts with the intent to mislead financial creditors, enabling the Appellant to unlawfully continue availing loan facilities, thereby exacerbating the Corporate Debtor's losses.

20. Ld. Counsel submits that the Appellant, through deliberate and wilful misconduct, engaged in business transactions with entities that were fictitious and non-existent, as conclusively established by the Forensic Audit and on-ground verification conducted by the Forensic Auditor. He submitted that the Appellant's conduct was not incidental or inadvertent, but rather part of a calculated and conscious design to project an inflated financial position

of the Corporate Debtor. The Respondent firmly believes and submits for the kind consideration of this Appellate Tribunal, that the primary objective behind such fictitious transactions was to create a false portrayal of a thriving and revenue-generating LED business. This was done by artificially recording bogus sales in the books of accounts, thereby fabricating turnover and revenue figures. The Appellant's intention, it is submitted, was to deceitfully induce and mislead financial creditors into believing in the commercial viability and profitability of the Corporate Debtor. Such manipulation of financial records was clearly aimed at securing, continuing, or enhancing credit facilities from banks and financial institutions under fraudulent pretenses. The Respondent submits that such actions were undertaken by the Appellant with the sole purpose of defrauding creditors by presenting a misleading picture of the Corporate Debtor's business operations and financial health. Even the Auditor in the forensic audit report has observed that the stock audit report does not highlight any stock/receivables specifically relating to the LED business & the turnover of LED Bulbs does not appear to be genuine.

21. Ld. Counsel states that the Appellant during the course of proceedings before this Appellate Tribunal also raised a baseless defence that the transaction as admitted by the Appellant only caused a notional loss to the Corporate Debtor and not any actual loss. This defence of the Appellant holds no water in view of its own books of accounts as it can no longer be a notional loss if the transactions have actually taken place, as duly admitted by the Appellant while making his final submissions.

22. Ld. Counsel further submitted that the Appellant himself claims that the Corporate Debtor was involved in the business of LED bulbs. Appellant also agrees that there were sale and purchase transactions for the LED bulbs. It is also evident from the Forensic Auditor's report that all the entities with which the Corporate Debtor transacted for LED bulbs were fictitious and non-existent. Therefore, if the Corporate Debtor itself agrees that there were transactions for sale and purchase of LED bulbs, it cannot be a notional but an actual loss.

23. Ld. Counsel has cited this Appellate Tribunal's Judgement in '*Jagdish Kumar Parulkar Vs. Vinod Agarwal [Comp. App. (AT) (Ins) No. 483 of 2022]*' wherein para 6 and para 35 it held that:

Para 6 "It is further submitted that the suspended directors had entered into fraudulent sale of stocks with fictitious debtors and misrepresented the stock statement which attracts Section 66 of IBC. The TA after reviewing the Balance sheet and Stock statements found that on 27.03.2017, the total stock was Rs. 10.21 cr and debtors were Rs. 48.11 lakhs. Subsequent stock statement dated 26.05.2017 showed that the total stock was Rs.2.59 cr and debtors became 7.52 cr. Thus, the suspended management had sold stock worth Rs.6 cr in 2 months from 01.04.2017 to 26.05.2017 during which period there was an increase of debtors by Rs.5 cr. It was contended that stocks were sold by the suspended directors outside the books of accounts and the sale proceeds were not routed through the Corporate Debtor's accounts. The Appellant/Resolution Professional

has therefore claimed that the Corporate Debtor has submitted that this amounted to be fictitious sale of stocks being booked by the suspended director while the actual stock was sold off and the amounts received from such transactions were siphoned off by the suspended management in some other account of the suspended directors. Alternatively, the stock statement was inflated to mislead the lenders to obtain their sanction. Challenging the impugned order, it is submitted that the Adjudicating Authority had overlooked this fraudulent manipulation of the stock statement by relying on selective reading of a bank inspection report.

Para 35 "The last set of suspicious transactions is that of the suspended directors having entered into fraudulent sale of stocks with fictitious debtors. The TA after reviewing the stock statements found that on 27.03.2017 the total stock was Rs. 10.21 cr and debtors were Rs. 48.11 lakhs. The position changed on 26.05.2017 when total stock came down to Rs.2.59 cr and debtors rose to Rs.7.52 cr. Thus, it can be inferred that the suspended management had sold stock worth Rs.6 cr in 2 months and during this period there was an increase of debtors by Rs.5 cr. The Learned Counsel for the Appellant stated that the Resolution Professional sent demand letters to the debtors whose names appeared in the stock statement of 26.05.2017 but the debtors responded that no amount is pending to the Corporate Debtor. It has therefore been contended by the Appellant that stocks were sold by the suspended directors outside the books of accounts and the sale proceeds were not routed through the Corporate Debtor's account. The Resolution Professional has therefore claimed that this clever maneuvering of sales and purchase transactions amounted to

be fictitious and fraudulent sale of stocks being booked by the suspended director and that the actual stocks were sold off and the amounts received from such transactions were siphoned off by the suspended management in some other account of the suspended directors.....Prima-facie, we are of the view that there is sufficient and adequate reason to subscribe to the contention of the Appellant that the Respondents had wrongfully diverted funds of the Corporate Debtor which in turn had aggravated the financial health of the Corporate Debtor and tantamount to fraudulent trade practice."

24. Ld. Counsel further cites this Appellate Tribunal's judgement in '*Shri Baiju Trading and Investment Private Limited vs. Arihant Nenawati & Ors.*' [Comp. App. (AT) (Ins) No. 699 of 2021] wherein it was held in para 36 that:

Para 36. "Section 66 of the I & B Code, 2016, therefore, clearly provides that if it is found that any business of the 'Corporate Debtor' has been carried on with an intent to defraud the creditors of the 'Corporate Debtor' or for any fraudulent purpose, the 'Adjudicating Authority' may on the application of the Resolution Professional pass an order to make liable to such contribution to the assets of the 'Corporate Debtor' as may deemed fit."

25. Summing up, Ld. Counsel for the Respondent submits the Impugned Order be upheld and the present appeal be dismissed with cost in view of the facts and submissions made by the Respondent, the finding of the Auditor in the audit report and the detailed explanation and reasons provided by the Ld. Adjudicating Authority.

Analysis and Findings

26. We have gone through the records of the case and the written submission of both the parties. We have heard the Ld. Counsels of both the parties in great detail. Based on these we frame following 2 issues for decision in this case:

- I. Whether the transactions undertaken by the Appellant in the LED Bulb business during FY 2016-17 constituted fraudulent trading under Section 66(1) of the Code?
- II. Whether direction to the Appellant to contribute Rs. 3.18 crores to the Corporate Debtor's assets is legally sustainable?

We examine each of these issues in subsequent paragraphs.

Issue I: Whether the transactions undertaken by the Appellant in the LED Bulb business during FY 2016-17 constituted fraudulent trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016?

27. This issue forms the crux of the present appeal. The finding on whether the transactions undertaken by the Appellant, Mr. Gopal Kalra, were fraudulent within the meaning of Section 66(1) of the Code would also directly determine the validity of the direction issued by the Adjudicating Authority, requiring him to contribute Rs.3.18 crores to the assets of the Corporate Debtor. If the transactions are held to be bona fide or commercially justifiable, albeit unsuccessful, then no such contribution would be warranted. However, if the transactions are found to be tainted with fraud or fictitious in nature,

the direction for restitution must stand. The entire appeal hinges on the adjudication of this issue.

28. The Appellant has asserted that the transactions in question, pertaining to the trading of LED bulbs, were undertaken during the course of regular business in a bona fide attempt to revive the Corporate Debtor. He states that although the Corporate Debtor was facing losses, the LED bulb business was introduced as a measure to generate revenue. He claims that while there may have been differences in the amounts recorded via debit and credit notes, these reflect pricing adjustments and returns, not fraud.

29. The Appellant emphasizes that the Forensic Audit Report itself uses the phrase "notional loss," and contends that there was no actual cash loss to the Corporate Debtor. Moreover, he submits that no personal gain accrued to him and that the transactions led to a net inflow of funds. He argues that at most, the decisions may be seen as poor business judgment, but do not meet the threshold of fraudulent intent required under Section 66(1). He also relies on judicial observations in '*Regen Powertech Pvt. Ltd. vs. Wind Construction Pvt. Ltd.*' (supra), to argue that fraudulent trading requires a high degree of proof and that a bona fide director cannot be penalized merely for commercial failure.

30. The Respondent (Liquidator) disputes these contentions and submits that the transactions were fictitious in their entirety. He relies heavily on the Forensic Audit Report and the findings of the field investigation, which revealed that the entities with whom the Appellant allegedly transacted, both on the purchase and sales side, were either non-existent at their stated

addresses or engaged in unrelated and minor retail businesses such as a bicycle repair shop.

31. The Respondent contends that these transactions were a part of a deliberate scheme to project inflated revenues by creating bogus purchase and sales entries in the books of account. The issuance of backdated debit and credit notes served to nullify the apparent gains and reflect zero net turnover, despite real payments being made to such fictitious vendors. The Respondent argues that this conduct was not merely negligent or unwise, but deliberate and fraudulent, carried out with the intent to mislead creditors and misappropriate funds.

32. To determine whether these transactions amount to fraudulent trading, we must apply the ingredients of Section 66(1) of the IBC, which authorizes the Adjudicating Authority to direct any person who was knowingly a party to carrying on business with intent to defraud creditors or for any fraudulent purpose, to contribute to the assets of the Corporate Debtor. This requires us to examine:

- i. Whether there was an intent to defraud; and
- ii. Whether the Appellant was a knowing party to such conduct.

33. Upon a detailed review of the Forensic Audit Report dated 12.09.2019, the following facts emerge:

- (i) The field investigations conducted by the forensic team revealed several entities were non-existent i.e., the alleged vendors and customers were fictitious. These include:

- Satyam Traders: The premises housed a bicycle repair shop operated by an unrelated person who confirmed no such trading business was ever conducted there.
- Garg Sales Corporation: The location was found to be occupied by “Rashmi Electricals” since 2004.
- SP Trading Co. and B.S. Enterprise were similarly found to be non-existent at the declared business locations. The investigation thus confirmed that the entities involved in the LED transactions were fabricated and did not conduct any real business.

34. The Forensic Audit also found Suspicious Financial Entries. Purchases worth Rs.9.33 crores and sales worth Rs.9.88 crores were shown in the books. At the same time, Debit notes amounting to Rs.6.28 crores and credit notes amounting to Rs.10.06 crores were issued, effectively erasing both purchase and sales transactions from a financial impact perspective. However, despite this accounting cancellation, actual payments totaling Rs.3.43 crores were made to these fictitious vendors, and a shortfall of Rs.0.52 crores remained unrecovered from fictitious customers.

35. The Forensic Audit also shows Real Financial Loss to the Corporate Debtor. Contrary to the Appellant’s claim of a “notional loss,” we find that the transactions resulted in a tangible and quantifiable cash outflow from the Corporate Debtor’s account. The total loss attributable to these fraudulent transactions stands at Rs.3.18 crores consisting of excessive payments to fake suppliers and recoveries not made from fake customers.

36. The issuance of debit and credit notes, in a backdated fashion, to negate the effect of purported purchases and sales indicates that the purpose of the

entire structure was never to conduct genuine trade, but to falsely represent high volumes of business activity. No stock of LED bulbs was found, no invoices could be traced to actual delivery of goods, and no plausible business rationale was offered for dealing exclusively with untraceable parties.

37. We are mindful that every business loss cannot be labeled as fraud. However, as held by the Hon'ble Supreme Court in '*Anuj Jain, IRP for Jaypee Infratech Ltd. vs. Axis Bank Ltd. and Ors.* [Civil Appeal No. 8512-8527 of 2019 dated 26.02.2020], fraud under IBC is a matter of inference based on the pattern and substance of transactions. Courts are not required to have direct proof of criminal intent; circumstantial evidence, when sufficiently compelling, can justify a finding of fraudulent trading.

38. In our assessment, the Appellant's arguments fail to rebut the key findings of the forensic audit. Mere assertions of commercial intent or revival strategy cannot stand against proven evidence that no genuine trade occurred. The fact that the Appellant paid out significant sums to entities later proven to be fictitious and then erased these transactions from the books using adjusting entries cannot be attributed to negligence or error it reflects willful deception.

39. The reliance placed by Appellant on *Regen Powertech (Supra)* is also misplaced. That case involved directors acting under a bona fide belief that losses could be reversed. Here, there is no indication of such belief. Instead, what we see is a carefully orchestrated structure of sham transactions intended to misrepresent financial health. We also note that under general corporate jurisprudence, directors are expected to exercise fiduciary

responsibility and ensure transparency in financial disclosures. The deliberate use of fictitious parties, false addresses, and manipulated accounting entries represents a gross violation of those principles.

40. After thoroughly evaluating the facts on record, the forensic findings, the submissions of both parties, and applicable legal principles, we find that the LED bulb trading transactions undertaken by the Appellant were (i) Entered into with fictitious and non-existent parties; (ii) Executed with the intent to inflate turnover and siphon off funds; (iii) Structured using fabricated debit/credit notes and reversed entries to mislead stakeholders; and (iv) Resulted in a real cash loss of Rs.3.18 crores to the Corporate Debtor.

41. We therefore hold that the business of the Corporate Debtor was carried on, at least in part, with intent to defraud creditors and for a fraudulent purpose, as contemplated under Section 66(1) of the IBC. The Appellant, being a knowing and active participant in such transactions, is liable under the said provision.

Issue II: Whether direction to the Appellant to contribute Rs.3.18 crores to the Corporate Debtor's assets is legally sustainable?

42. This issue deals with the validity of the direction passed by the Adjudicating Authority in exercise of powers under Section 66(1) of the IBC, whereby the Appellant was held liable to contribute Rs.3.18 crores to the assets of the Corporate Debtor. The legal sustainability of this direction is pivotal because, while fraudulent conduct may be established in principle, the remedy awarded must still be grounded in evidence, proportional to the

misconduct, and compliant with the boundaries of judicial discretion under the Code.

43. The Appellant has challenged the order dated 11.01.2024 on the grounds that the direction to contribute Rs.3.18 crores is not based on any actual loss suffered by the Corporate Debtor, but is a reflection of “notional” or hypothetical losses as mentioned in the Forensic Audit Report. He asserts that no funds were misappropriated and that the transactions, though unsuccessful, were commercially intended to benefit the Corporate Debtor. According to him, no personal gain accrued to him from the said transactions, and the direction to contribute the aforementioned amount is both disproportionate and unjustified.

44. The Appellant further argues that Section 66 of the Code must be interpreted strictly, and that a mere finding of irregularity does not automatically translate into financial liability. In his view, the Adjudicating Authority erred in equating accounting discrepancies with recoverable loss, and failed to demonstrate any actual enrichment or unjust gain on the part of the Appellant.

45. Per-contra, the Respondent contends that the impugned order is legally tenable and based on well-substantiated documentary and forensic evidence. He argues that the Rs.3.18 crores represent actual financial loss suffered by the Corporate Debtor as a result of transactions with fictitious entities—loss that is not speculative but demonstrated through bank transfers, ledger reconciliations, and untraceable recipients. The Respondent submits that this amount was not computed arbitrarily but was the result of meticulous

auditing, which traced both the inflow and outflow of funds and adjusted for credit and debit notes fabricated to cancel out the transactions on paper.

46. Respondent also pointed out that the Adjudicating Authority had the discretion under Section 66(1) to determine the appropriate amount that must be restored to the Corporate Debtor's assets, and that such discretion was exercised judiciously and with full application of mind. The Respondent relies on the detailed reasoning recorded by the Authority, particularly with respect to the fake entities and pattern of falsified trading entries.

47. We begin by examining the powers of the Adjudicating Authority under Section 66(1) of the IBC. The provision empowers the Adjudicating Authority to direct a person who knowingly carried on the business of the Corporate Debtor with intent to defraud creditors or for a fraudulent purpose, to make a **contribution to the assets** of the Corporate Debtor, as it may deem fit.

48. This discretionary power is not unbridled; it must be exercised based on - Sufficient evidence of fraudulent conduct; An identifiable financial loss traceable to such conduct; and a judicially rational and proportionate basis for quantifying the liability.

49. The issue here is whether the amount of Rs 3.18 Cr determined on a rational basis. We have seen that the Forensic Audit Report and supporting ledgers clearly outlined the methodology through which this figure was derived. The total figure comprises of the following components:

- i. **Rs. 2.67 crores** — This represents excess payments made to fictitious suppliers beyond the legitimate payable balances. As per the ledger and

audit findings, while the opening balance due to these suppliers stood at Rs.0.76 crores, actual payments of Rs.3.43 crores were made, creating an excess outflow of Rs.2.67 crores to non-existent vendors.

- ii. **Rs. 0.52 crores** — This figure accounts for the shortfall in recoveries from customers who were also found to be fictitious. Against opening recoverable of Rs.5.41 crores, only Rs.4.89 crores were recovered, leaving Rs.0.52 crores unrecovered due to these sham transactions.

50. Thus, the computation of Rs.3.18 crores is arithmetically precise and is not based on assumptions. These funds exited the company's books and were never returned—whether as goods, cash, or receivables; leaving the Corporate Debtor, and consequently its creditors, in a worse position. We find that the loss is actual and not “notional,” contrary to the claim made by the Appellant.

51. We have perused the impugned order dated 11.01.2024 in detail. The Adjudicating Authority noted the Appellant's failure to rebut the existence of fictitious parties or offer any documentation of genuine trade; and analysed how the loss was engineered through artificial entries and adjustments using credit/debit notes. The Authority was also mindful of its jurisdiction and did not make any extraneous observations. It confined its direction to what was necessary for restitution of the corporate debtor's estate. The approach was consistent with the guiding principle under insolvency jurisprudence: maximizing the value of the assets for the benefit of all stakeholders.

52. In our view, the Adjudicating Authority did not exceed its jurisdiction or base its findings on conjecture. It performed a detailed factual and legal evaluation, applied the statutory provision correctly, and arrived at a well-reasoned outcome. Further, we find that the quantum of Rs.3.18 crores is neither excessive nor punitive. It is exactly equal to the demonstrated loss and aims at restoring the Corporate Debtor's estate—not punishing the Appellant. Section 66(1) is remedial in nature and is meant to reinstate the corporate debtor's financial position by undoing fraudulent depletion of assets. The order, in this light, is proportionate, reasoned, and lawful.

53. In view of the findings above, we find no infirmity in the impugned order. The appeal is dismissed. Pending I.As are closed. There is no order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

SA/Pragya (LRA)