



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI- HON'BLE MEMBER (J)  
CORAM: SHRI. CHARAN SINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 09.08.2023, At 02:30 PM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/296/2021 in CP (IB) No.484/7/HDB/2019</b>
<b>NAME OF THE COMPANY</b>	<b>Sunpower Solar Technick Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Shriram City Union Finance Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Sunpower Solar Technick Pvt Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA (IBC)/296/2021**

This application is allowed, vide separate orders.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH - II**

IA No. 296/2021  
in  
CP(IB) No. 484/7/HDB/2019  
(u/s. 66 r/w/ 60(5) of IB Code, 2016 r/w Rules 11  
of the NCLT Rules, 2016)

**In the matter of:**

**P. Sriram, Resolution Professional( R.P.)**  
For Corporate Debtor (CD) Sunpower Solar  
Technick Pvt. Ltd.,

...Applicant

Vs.

**Mr. Kasturi Satyan**  
**(Suspended Director of Corporate Debtor)**  
**And Others**

... Respondents

**Date of order: 09/08/2023**

**CORAM:**

**Justice Mrs. Telaprolu Rajani, Hon'ble Member (Judicial)**

**Shri Charan Singh, Hon'ble Member (Technical).**

**Counsels present:**

**For the Applicants** : Mr.G.P. Yash Vardhan

**For the Respondent** : -

**[PER: BENCH]**

**ORDER**

1. The present application is being filed by the Applicant, the Resolution Professional (RP) of Sunpower Solar Technick Private



Limited under the provisions of section 66 with other provisions, applicable if any, of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking reliefs/directions as under:

A. to pass appropriate order(s) and direction(s) under section 66 of the Code to make necessary contributions to the assets of the Corporate Debtor within stipulated timelines, against the Respondent No. 1 to 3.

B. To pass appropriate order(s) and direction(s) under section 66 of the Code against the Respondent Nos. 4 to 9 to make necessary contributions to the assets of the Corporate Debtor within stipulated timelines, by repaying the entire amounts outstanding in the books of the Corporate Debtor totalling to Rs. 87,86,58,101/- plus applicable interest at the rate of 18% per annum.

C. To pass such orders as the Hon'ble Tribunal may deem fit under section 67 of the Code.

D. To direct the Central Government to order for investigation into the affairs of the Corporate Debtor as contemplated u/s 210(2) of Companies Act, 2013.

2. The facts in brief as mentioned in this Application are as under:

i) Based on the Company Petition by the Financial Creditor namely Sriram City Union Finance Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (referred as "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (referred as "IB Rules") before the Hon'ble National Company Law Tribunal, Hyderabad Bench, (referred as "NCLT"), the Bench vide the Order dated 13 November 2019 ordered Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor to be completed within 180 days from the date of the order.

ii) The Tribunal appointed the Applicant as an Interim Resolution Professional (IRP) and directed the IRP to take charge of the Management of the Corporate



Debtor immediately. The IRP has been appointed as RP by the committee of creditors in their first CoC meeting.

iii) Pursuant to the said order dated 13th November 2019 received on 18th November 2019, the IRP (Applicant) made the Public Announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 20th November 2019 i.e. within 3 days from the date of receipt of the Order passed by the Hon'ble Tribunal seeking claims in the manner prescribed under the Code.

iv) As directed by the Tribunal in its order dated 13th November 2019, the Applicant, to comply with the provisions of Section 13, 15, 17 and 18 of the Code, made necessary intimations to the statutory authorities, suspended Directors who are the Promoters, Banks of the corporate debtor intimating the appointment of IRP and the commencement of CIRP pursuant to Section 7 of the Code against the Corporate Debtor and further sought their assistance and cooperation for discharging the functions of the Applicant as IRP under Section 20 of the Code.

v) The notice issued to the 1<sup>st</sup> Respondent herein Sri.Kasturi Satyan was returned undelivered with the postal remark "LEFT". However, the 1st Respondent met the IRP, the applicant herein at his office and gave his present address and informed that the 1st Respondent shall ensure that all the financial statements and annual returns, overdue, shall be filed with the Registrar of Companies immediately. The IRP personally served the copy of the letter sent and returned along with the documents required. During the meeting, the applicant herein explained the process and requested the 1st Respondent to furnish the information as called for in the letter dated 18th November 2019.

vi) The applicant herein also made a personal verification of the Registered Office of the Corporate Debtor on 9th December 2019 and found that there is no name board of the company displayed in the said premises and the premises was bearing the name board of a company by name M/s.PPS Enviro Power Private



Limited. As per the records of the Registrar of Companies available in MCA portal, Registered office of the company M/s.PPS Enviro Power Private Limited is also situated in the same premises. The Applicant has been informed by the 1st Respondent herein that the said address is being only used as Registered office and there were no records, office, employees in the said address and also stated that the premises belongs to the group company of the corporate debtors and presently the said company is also into CIRP.

vii) Since the Applicant had not received any response from the respondents, the IRP personally contacted the first respondent, who assured to send the details. However, the 1st respondent failed to share any details nor had reverted to the Applicant.

viii) As the Applicant got vexed by the non-cooperation of the respondent in furnishing relevant financial data of Corporate Debtor, had filed 1.A.23/2020 under Sec.19(2) of the Code before the this Adjudicating Authority. The Adjudicating Authority had passed an order dated 05-02-2020 directing the Respondents to cooperate with the applicant, but, the Respondents failed to cooperate with the Applicant.

ix) Despite continuous interactions by RP, several books and records relevant for the purpose of the review have not been provided by the Suspended Directors/1& 2nd Respondents. The 1st respondent has mentioned that the data of the Company has been lost due to internal issues. The reason for the loss of books and records due to internal issues has not been explained and there is no mention of the loss of books and records in the audited financial statements of the Company. Except for the financial statements, none of the documents/ records pertaining to the corporate debtor has been provided and the respondents had deliberately avoided in providing the details.

x) That, the Applicant despite the difficulties posed by the Respondents by not furnishing relevant data, reviewed the available financial statements provided by



the statutory auditors along with the Bank statements procured by the RP directly from Banks and came across certain questionable transactions, which in the opinion of the Applicant were carried out with an intent to defraud the creditors of the Corporate Debtor or for any other fraudulent purpose and thereby fall with the ambit of the provisions of Sec.66 of the Code.

xi) Since the applicant herein, has formed an opinion pursuant to regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that the corporate debtor has been subjected to transaction covered under sections 66 of IBC, 2016, he brought this to the notice of CoC and CoC concluded that a forensic audit would help in unearthing the financial irregularities committed by the Corporate Debtor. Accordingly, SPR & Co, Chartered Accountants were appointed for conducting a forensic review of the activities of the Corporate Debtor. The forensic report by SPR & Co, Chartered Accountants is annexed herewith as Annexure- 1

xii) Forensic auditors, based on their review, have opined that the financial statements of the Corporate Debtor do not reflect a true and fair state of affairs and CD seems to be a dormant company and has been used to route funds to other entities, including for unrelated purposes. It was also stated that, based on their discussions and review of financial statements, the Balance Sheet comprises largely of book entries and could not be reconciled with the actual movements viz., receipts and payments through the bank. accounts of the corporate debtor.

xiii) The following are the specific findings from the forensic audit report which establish the fact that the Corporate Debtor was carrying on the business with intent to defraud creditors of the corporate debtor & for fraudulent purpose:

i) Forensic auditors on review of the financial statements of the Corporate Debtor have indicated the following key aspects in relation to the functioning of the Corporate Debtor in page Nos: 7 & 8 of their report attached as Annexure 1 which is extracted hereunder:



- a. We are unable to trace the registered office of the Company. In fact the registered office as per the MCA records has also been updated as "Hyderabad" only.
- b. The suspended directors have not provided any books and records of the Company and the review has been conducted with reference to the bank statements of the Company as directly obtained from the bankers of the Company.
- c. The Income Tax Authorities have issued an order on concealment of income by the Company and a tax demand of Rs 74.00 crores has been issued in respect of one assessment year 2014-15. No proper books and records appear to have been furnished to the IT authorities also. Refer page Nos.25 & 26 of the report in Annexure 1.
- d. There is a CBI FIR filed against the promoters of the Company in relation to the affairs of Connect Wind India Private Limited, an investee company of the Corporate debtor based on a complaint preferred by the State Bank of India.
- e. The financial statements as provided to us were not complete in regard to many aspects as required by law which have been discussed in detail in the later segments of this report (para 24 in page 12 of report). There is a total Share Capital and share premium of more than Rs 80.00 crores Stated to have been brought in by the promoters. However, no cash has been received for such shares issued to the extent reviewed by us and allotment of shares for consideration other than cash has not been reflected in the financial statements of the entity.
- f. The Company did not have any tangible business operations for many years. The Company seems to have been used as a vehicle to route funds to other connected entities.
- g. The financial statements of the entity are not aligned to the actual flow of bank funds and appear to have been prepared only based on some book entries not backed by actual fund flows.
- h. Almost all the bank transactions, as reviewed by them indicate only routing of funds to other entities.
- ii) The financial statements as at March 31, 2018 reflect the CD has issued debentures during 2012-13 to the tune of Rs.39.00 crores. No details of the person subscribed for such debenture has been provided. However on a perusal of the Income Tax Assessment Order for the Assessment Year 2014-15, it shows that loans in the nature of debentures have been obtained from the following persons as furnished to the IT authorities:



Particulars	Rs. In Crores
Navalaksh Transline	3.00
TS Wind Farm	8.00
Trishe Renewable Energy Private Limited	17.40
Total	28.40

iii) All the above, three parties have denied such payment as evidenced from the Income Tax order. As there are no details in respect of the fund inflow in respect of debenture liability as well as the Debenture Subscription Agreement provided it appears that the amount in relation to the debentures was not received at all and that the transaction seems reflective of books entries.

iv) The financial Statements as at March 31, 2018 indicate Other Current Liabilities to the extent of Rs 27.17 Crores, for which no information and no books, records or vouchers have been provided. The movements in current liabilities across the years could not be traced to bank statements also. Hence it appears that these liabilities are again mere book entries not backed by actual and genuine business transactions

v) The CD has also provided guarantees in respect of loans availed by M/s Karomi Energy Limited, UK and the financial creditors M/s Union Bank of India UK Limited and M/s Punjab National Bank International Limited, London. However details pertaining to such guarantees have not been disclosed in the financial statements (31.3.2018), neither the Statutory auditors has any information in this regard though the 1st respondent had duly signed all the guarantee documents with the said financial creditors.

vi) Further, it appears that no approval or intimation of issue of such Guarantee, has been made to Reserve Bank of India for extension of Guarantees as required under FEMA, 1999. Union Bank of India UK Limited has filed a claim of Rs.66.53 Crores & Punjab National Bank International Limited, London had filed a claim of Rs.59.69 Crores. The amounts borrowed by Karomi Energy Limited UK, have been diverted to other group company Karomi Energy Inc., Delaware. There were no details available with regard to Investments by Karomi Energy Limited UK as the status of the same remains as Dissolved due to non filing of statutory returns.

vii) As per financial statement as at 31.3.2017 & 31.3.2018 the following investments were shown:

Investee company	Nature of Investment	Amount of Investment	Amount of Investment
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		(Rs. in Lacs) (31.3.2017)	(Rs. In Lacs) (31.3.2018)
PPS Enviro Power Private Limited (under CIRP Process)	Equity	9095.49	9095.49
Connect Wind (India) Pvt Ltd.,	Equity	1625.00	0.00
Enterprise Business Solutions Pvt Ltd.,	Equity	769.99	0.00
Enterprise Business Solutions Pvt Ltd.,		950.00	0.00
Karomi Energy Limited, UK	Equity	2265.44	2265.44
Investments in Gold	Gold	250.00	0.00

viii) The substantial investments as shown in the financial statements on 31.3.2017 were shown as nil in 31.3.2018. The basis of disposal/ write down of such investments was not reflected in the financial statements. No consideration seems to have been received by the CD. No details are available as to the basis of the investments, the cost incurred, the purpose of the investments and secretarial records pertaining to the same.

ix) It is pertinent to notice that Rs. 14.00 crores received from the financial creditor Shriram City Union Finance Limited on 10th March, 2016 (who is the petitioner has initiated the CIR Process] have been transferred to related entities and relatives for the purposes other than the purpose for which loans have been given.

#### **Diversions of funds to Related Parties:**

x) It is further submitted that, as per the report funds were diverted to related party entities, which do not seem to have any business operations and the entire amount represents a diversion of funds for fraudulent purposes. Following are the related parties to whom funds were diverted

Party Name	Receipts	Payments	Balance(Credit)
Clean Switch India Pvt. Ltd.	11,63,65,000	19,22,25,277	(7,58,60,277)



PPS Enviro Power Pvt. Ltd.	3,82,20,000	9,46,78,843	(5,64,58843)
Connect Wind (India) Pvt. Ltd.	2,40,00,000	5,30,12,000	(2,90,12,000)
Parshanya Power Solutions Pvt	14,00,000	43,00,057	(29,00,57)
Karomi Energy Ltd.	-	18,59,87,485	(18,59,87,485)
		Total	(35,15,03,663)

Connected entity	Particulars and Remarks
PPS Enviro- Equity	PPS Enviro Power Private Limited's Corporate Identification Number is (CIN) U40106TG2002PTC048720.Its Email address is <a href="mailto:sankarin@yahoo.co.in">sankarin@yahoo.co.in</a> and its registered office address is 97/A, Road No.18, Phase-1, IDA, Jeedimetla, 1-lyderabad 500055.
Connect Wind Equity	<p>The net outstanding is in the region of Rs.5.64 Crs. Presently undergoing Corporate Insolvency Process under IBC. The last Balance Sheet was filed on 31 March 2015</p> <p>This represents a diversion of funds under Sec 66 of the Code as the basis of the transfer has not been explained and no benefit seems to have been received by the Company for the set amount payable by the recipient</p> <p>Connect Wind (India) Private Limited's Corporate Identification Number is (CIN) U40108TN2010PTC077643.Its Email address is <a href="mailto:sankarin@yahoo.co.in">sankarin@yahoo.co.in</a> and its registered office address is No. 165LakeViewRoad, WetlMambalam, Chennai600 033.The last Balance Sheet was filed on 31 March2016</p> <p>The outstanding is Rs 2.90 Crores as per the bank statements.</p> <p>This represents a diversion of funds under 66 of the Code as the basis of the transfer has not been explained and no benefit seems to have been</p>



	<p>received by the Company for the net amount payable by the recipient.</p>
Clean Switch India Equity	<p>Clean Switch India Private Limited's Corporate identification number is (CIN) U40300TG2013PTC085734. Its Email address is <a href="mailto:sankarin@yahoo.co.in">sankarin@yahoo.co.in</a> and its Registered office address is D 97/A, Second Floor, Road No.18, Phase -1,IDA,Jeedimetla, Hyderabad Telangana 500055.</p> <p>The last Balance Sheet was filed on 31 March 2018</p> <p>The outstanding is Rs 7.58 Crores as per the bank statements.</p> <p>This represents a diversion of funds under Sec 66 of the Code as the basis of the transfer has not been explained and no benefit seems to have been received by the Company for the net amount payable by the recipient</p>
Parshanya Power Solutions Private Limited	<p>Parshanya Power Solutions Private Limited is incorporated on 27 August 2018. It is classified as Non-govt company and is registered at Registrar of Companies, Chennai. Its authorized share capital is Rs. 1,000,000 and its paid up capital is Rs. 100,000.</p> <p>The Directors of Parshanya Power Solutions Private Limited are Srividya Kasturi and Ramya Appadurai.</p> <p>Srividya Kasturi is relative of Shri.Kasthruai Satyan.</p> <p>The Corporate Identification Number is U40100TN2018PTC124207. Its Email <a href="mailto:address is companysecretarymadurai@gmail.com">address is companysecretarymadurai@gmail.com</a> and its Registered Address is 102/36, Defence. Officers Colony, Ekkattuthangal, Chennai 600 032. "the Present status of Parshanya Power Solutions Private limited with MCA is "Active".</p> <p>It is involved in Production, collection and distribution of electricity.</p>



	The outstanding is Rs 29 lakhs as per the bank statements. This represents a diversion of funds under Sec.66 or the Code as the basis of the transfer has not been explained and no benefit seems to have been received by the Company for the net amount payable by the recipient.
Karomi Energy Limited, UK - Equity	This was a Company registered in UK. The ed, UK- Company identification number is 07407903. The incorporation date was 14 Oct 2010 and the dissolution date is 04 Sep 2018. The address of the Company as per Public Domain Information is C/o Karomi Energy Limited, 1 Doughty Street. London WHIN2PH United Kingdom.
Lands & building	The Company has been dissolved through Compulsory Strike off on 4th September 2018, The last financial statements available on the public domain indicates that such statements up to 31 March 2016 were filed on 31 Jul 2017. The statement indicate Net assets of GBP 3.97 million. Although 100% of the share capital is held by the Corporate Debtor, no funds have been received by the Company after March 31, 2016. The entire outstanding is Rs 18.59 Crores as per the bank statements. This represents a diversion of funds under Sec 66 of the Code as the basis of the transfer has not been explained and no benefit seems to have been received by the Company for the net amount payable by the recipient.

xi. The financial statements for the period ending March 31, 2018 indicate the following fixed assets of the Company amounting to Rs 30.09 lakhs on a net block basis. These pertain to land and buildings of the Company

Particulars	Value (INR lakhs)
Land	18.03
Building	11.16
Total	30.09

The Land and other relevant documents pertaining to the land including details as to location or address of the land, purchase documents of the land, consideration paid, have not been handed over. If disposed, no



records relating to disposal of the land and application of proceeds have also been furnished. Thus the very transaction pertaining to the land and building shown in the books are doubtful and the directors of the company are required to account for the same.

### **Inventory**

xii. The financial statements for the period ending March 31, 2018 indicated an inventory of Rs 38.84 lakhs. The directors of the company have not provided any records pertaining to the nature of such inventory, purchases issues and closing balance RP nor have the proceeds been accounted for tendered. Thus the very transactions pertaining to the inventory are doubtful and the directors of the company are required to account for the same.

### **Cash & Bank balances:**

xiii. The Balance Sheet of the Company also reflects Cash and Bank balances of Rs 7.35 lakhs as at March 31, 2018. The cash book and the bank book of the Company have not been handed over by the directors of the company. A sum of Rs.25,000 being cash balance as on 31.3.2018 is not available and is not handed over to the applicant.

### **Gold purchase:**

xiv. . A review of the bank statements indicated that gold had been purchased from the funds of the Company for an amount of Rs. 4,23,96,100/-, the details of which were mentioned at page 16 of the Application in a tabular form.

It is pertinent to note most of these purchases have been made after announcement of currency demonetization of Rs.500 notes and Rs. 1000 notes. However no gold is available as at the date of commencement of the Insolvency Proceedings of the Company. No records have been provided of the purchases and sales / issues of the same, out of which, two issues emerge, one diversion of Bands of the Company to unrelated transactions and two, non availability of date of purchase of such gold, which has been procured using the funds of the Company. Gold was disclosed only to the extent of Rs 250 Crores in the financial statements for the period ending March 31, 2017 and Rs Nil after that and the impact is Rs 4.23 Crores of Gold which is unavailable as of date.

### **Security Deposit**

The financial statements as at March 31, 2018 indicate a security deposit of INR 5.50 lakhs. Upon enquiry, the auditor informed that it is a Tender



Deposit. No documents have been made available substantiating the same. The name of the payee is not available and has also not been furnished to initiate recovery of the same. The details of the same have not been handed over to the Resolution Professional and are missing as of date and the impact is Rs 5.50 lakhs. The deposits is neither handed over to the RP nor have the proceeds been accounted for / tendered.

**xvi. PAYMENTS MADE NOT CONNECTED TO THE BUSIENSS:**

**a. Cosmo Granites and Cold point:**

A review of the financial statements indicated the payments of Rs. 18,00,000/- not connected to the business of the Corporate Debtor and no explanations were provided. No consideration received from the same. No details of the remitters and payees have been furnished by the Suspended Director These have neither been capitalized nor treated as expenses in the books of the Company. These transactions represent diversion of funds of the Company.

**b. Mahalakshmi and Sons**

An amount of Rs. 3.00 crores has been paid to Mahalakshmi and Sons in two tranche of Rs. 1.50 crores on 10<sup>th</sup> November 2016 through Axis Bank vide instrument Nos. 108008 & 108009. This is not for the purpose of the business of the company and needs to be recovered. The details of this party has not been provided and Rs. 3 crores of funds off the Company was diverted and represent transactions identified as fraudulent.

**c. Amson Power Private Limited**

A review of the bank statements indicated a payment of Rs. 6.28 crores to Amson Power private Limited, the details of which were mentioned at pages 18 & 19 of the Application. These amounts have not been treated as expenses in the books of the company during March to August, 2016 and the payments were unrelated to the business of the CD which is more of a dormant company only used to route funds and these transactions were fraudulent diversion of funds of the company.

**d. Lending for Film related companies:**

A review of the bank statements also indicated that there are several payments to entities engaged in Media/film or movie products business representing diversion of funds of the company. There were no receipts shown in the bank statements of the CD. The details of payments made to parties, were mentioned at pages 19 & 20 in a tabular form worth Rs. 3,05,00,058/- and the same were not treated as expenses in the books of account. There was no proof whether the said amount was returned or not.



The statutory auditors of the company had confirmed that an amount of Rs. 5.8 crores was paid to Ondraga entertainment and this payment was unrelated to business of the CD.

**e. Payments made to directors and their relatives:**

A review of the bank statements indicated that payments were also made to promoter directors as well as persons connected to them. The summary and the detailed list of transactions was mentioned in a tabulated form at pages 20, 21 & 22 of the application. In one case an amount of Rs. 13.50 lakhs was paid to Venkateswara Hospitals which does not appear to be a business expenses.

**f. Diversion of funds by payment shown to have been made to individuals for unspecified purpose.**

A review of the bank statements indicated payments to various individuals as mentioned in the table which is at pages 22 & 23 of the Application. As no business was carried on, these payments represent diversion of funds of the company for unspecified purposes and the total value of the payments aggregate to Rs. 64.30 lakhs.

xvii) In view of the above submissions, the applicant submits that it is clearly established that the fraudulent and unexplained transactions with its related and party ground companies and other unrelated entities were carried out by the CD with the intent to defraud its creditors and thus the same fall within the ambit of the provisions of the section 66 of the Code.

xviii) Further, it is submitted that the basis of the review of the transaction and forensic review report and other documents annexed to the application and the records of the CD, it is clear that the Respondents were the persons who were knowingly parties to the carrying out of the fraudulent transactions analysed as above which were carried out with the intention to defraud the lenders of the CD and hence the Respondents are liable to make contributions to the assets of the CD in terms of section 66(1) & (2) of the Code.

xix) As particulars, including the address of the parties mentioned in various transactions other than the respondents are not available at present due to non cooperation of the suspended directors, the applicant begs the leave of this Tribunal to include



particulars of those persons and make them respondents when the applicant is able to get complete details of the said persons and it is submitted for this reason they have not been added as respondents.

xx) The summary of diversions/sums not accounted for is Rs. 87,86,58,101/-, the details of which were tabulated at pages 26 & 27 of this Application.

3. In view of the above submissions, the applicant prays this Hon'ble Tribunal to allow the application as prayed for.

4. No Counter was filed by the Respondents.

5. The applicant filed written submissions, which are the reiteration of the contents made in the Application.

6. Heard the Ld. Counsel for the applicant and perused the record as well as the written submissions of the applicant. As can be seen from the Application and the written submissions, the RP made his best efforts to get the cooperation of the Respondents with regard to the obtaining of financials of the CD, but, failed. The 1<sup>st</sup> Respondent informed the RP that Company data has been lost due to internal issues without further explaining that as to why the books and records were lost. The said fact is not recorded in the audited financial statements of the company. The only material available with the RP was financial statements pertaining to the CD on reviewing of the available financial statements provided by the statutory auditors along with the bank statements procured by the RP directly from the Banks and found that there were questionable transactions which were carried out with an intent to defraud the creditors. He also formed an opinion that Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 with regard to the transactions covered under section 66 of IBC and the CoC was also appraised and the CoC concluded that the forensic audit was required in unearthing the financial irregularities committed by the CD. Cas



were appointed. The forensic auditors came to know that the financial statements of the CD do not reflect a true and fair state of affairs of the Cd. They also opined that the CD seems to be a dormant company, which has been used to route funds through other entities including for unrelated works. The Auditors report also disclosed that the balance sheet comprises largely book entries and could not be reconciled with the actual movements viz, receipts and payments through the Bank accounts of the CD. Specific findings were given by forensic auditors which would establish that the CD was carrying on the business with an intent to defraud creditor of the CD for fraudulent purposes.

6.1 Specific findings are incorporated in the Audit Report that the financial statements as on March 31,2018 reflected that the CD has issued debentures in the year 2012-13 to the tune of Rs. 39 crores and no details were found with regard to the person who subscribed for such debenture. Income Tax Assessment Order was perused and it came to light that the loans in the nature of debentures have been obtained from three entities and without enquiring with the three entities, it is stated that they have denied such payment and there was no information with regard to the fund flow in respect of debenture liability as well as debenture subscription agreement, which would lead to a conclusion that it was not received at all.

6.2 The financial statements as on March 31, 2018 indicate other current liabilities to the extent of Rs. 27.17 crores, which does not have supporting books, records or vouchers. The movements in current liabilities across the years could not also be traced to the bank statements, which would lead to a conclusion that those liabilities are mere book entries not backed by actual and genuine business transactions. There are certain guarantees provided by the CD in respect of loans availed by M/s Karomi Energy Limited, UK and the financial creditors M/s Union Bank of India UK Limited and M/s Punjab National Bank International Ltd., London, but, the details of the said creditors were also not disclosed in the financial statements as on 31/03/2018. The Statutory auditors did not have any information in this regard and there was no information or approval about the



issue of such guarantee given to the Reserve Bank of India for extension of guarantees as required under FEMA, 1999.

6.3 A claim of Rs. 66.53 Crores was filed by the Union Bank of India UK Limited and a claim of Rs. 59.69 crores was filed by the Punjab National Bank International Limited, London. The amounts borrowed by Karomi Energy Limited, UK have been diverted to other group company Karomi Energy Inc., Delaware. There are no details available with regard to investments by Karomi Energy Limited UK as the company status reflected that it was dissolved due to non-filing of statutory returns.

6.4 Some diversion of funds to the related parties were also noticed, which were found to be of fraudulent purposes. The details of related parties and the transactions were tabulated in the petition. The documents pertaining to the land purchase, which were reflected in the financial statements in the year of 31/03/2018 were not handed over and there is no record showing whether the said land was disposed of or not. The financial statements ending by 31<sup>st</sup> March, 2018 indicated the inventory of Rs. 38.84 lakhs, for which, no records were provided. A Cash and Bank balance of Rs. 7.35 lakhs has also reflected in the balance sheet but the cash book and the bank book were not handed over. Security deposit of Rs. 5.5 lakhs is also reflected in the said financial statements, which was made out as a tender deposit, but, no documents were available for substantiating the same. Payments of Rs. 18.00 lakhs, which were not connected to the business of the CD and the same did not contain details of remitters and payees, which were not capitalized nor treated as expenses in the books of the company that it was in favour of Cosmo Granites. To Mahalakshi and Sons an amount of Rs. 3.00 crores has been paid in two tranche of Rs. 1.50 crores without there being any evidence of the purpose. A payment of Rs. 6.28 crores was paid to Amson power Private Ltd., which was not treated as expenses in the books of the company.

6.5 Lending for film related companies was also done which was about Rs. 3.00 crores were not treated as expenses in the books and there was no evidence with



regard to what happened to the said amount. The Auditors, however, confirmed that an amount of Rs. 5.8 crores was paid to Ondraga Entertainment, which was not related to the business of the CD. There are payments made to directors and relatives.

7. Hence, from the above and from the audited transactions, it can be noted that there were several transactions the manner in which they took place indicate that they are fraudulent transactions and therefore, by considering the totality of the facts and circumstances of the case we deem it fit and proper to order for an enquiry by the Central Government. Hence, we direct the Central Government to order for an investigation in to the affairs of the CD as contemplated u/s 210(2) of the Companies Act, 2013.

7.1 We also direct the Respondent Nos. 1 to 3 to make necessary contributions to the assets of the CD within a period of three months. We also direct the Respondent Nos. 4 to 9 to make necessary contributions to the assets of the CD within three months by repaying the entire amounts outstanding in the books of the CD totalling to Rs. 87,86,58,101/- with interest @ 18% per annum. Accordingly, the I.A. is allowed.

8. In the Result, I.A. No. 296 of 2021 in CP(IB) No. 484/7/HDB/2019 is allowed and disposed of accordingly.

Sd/-

**CHARAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI**  
**MEMBER (JUDICIAL)**