

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 971 of 2024

(Arising out of the Order dated 19.04.2024 passed by the National Company Law Tribunal, Mumbai Bench- I in M.A. 423 of 2020 in Company Petition (IB) No. 1058/MB/ 2017.

1. Mr. Kishore K. Avarsekar

S/o Kishore Avarseka & Business

Having Address At 1252, Pushpanjali, Apartments,
Old Prabhadevi Road, Prabhadevi, Mumbai - 400 025.

...Appellant No. 1

2. Mr. Abhijeet K. Avarsekar

S/o Kishore Avarseka & Business

Having Address At 1252, Pushpanjali, Apartments,
Old Prabhadevi Road, Prabhadevi, Mumbai - 400 025

...Appellant No. 2

Versus

Alok Saksena

(Liquidator Of Unity Infraprojects Limited)

IP Registration No. IBB/IPA-001/ IP-P00056/
2017-18/10134

C/O- Desai Saksena & Associates

Laxmi Building, Sir P.M. Road Fort -400001 Mumbai

...Respondent

Present

For Appellants:

**Mr. Anant Merathia, Mr. Anuj Tiwari,
Ms. Shalini Basu, Ms. Kaanchi Ahuja &
Mr. Vaibhav Vats, Adv.**

For Respondent:

**Mr. Divyanshu Rai, Ms. Sugandha Batra,
Ms. Tasuna, Mr. Vishal Sharma, Mr. Shubh
Gautam & Mr. Vansh Bhatnagar, Adv.**

J U D G E M E N T

(11.12.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellants i.e., Mr. Kishore K. Avarsekar and Mr. Abhijeet K. Avarsekar, who are the promoters and suspended directors of the Corporate Debtor i.e., Unity infra projects limited, under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**') against the Impugned Order dated 19.04.2024 passed by the National Company Law Tribunal, Mumbai Bench-I ("**Adjudicating Authority**") in M.A. 423 of 2020 in C.P.(IB) No. 1058/MB/2017.

Alok Saksena, who is the Liquidator of Unity Infraprojects Limited, is the Respondent herein.

2. It is contended by the Appellants that they are the promoters and suspended directors of the Corporate Debtor, namely, Unity Infra Projects Limited, and are aggrieved by the aforesaid Impugned Order, which erroneously directs them to contribute a sum of Rs. 231.64 Crores to the assets of the Corporate Debtor, together with interest at 12% per annum.

3. The Appellants submitted that Section 66 of the Code requires the attribution of specific knowledge and active participation to an individual before any order thereunder can be sustained. In the instant case, neither the application bearing MA 423 of 2020 nor the Impugned Order dated 19.04.2024 records any

such attribution vis-à-vis the Appellants. It is the case of the Appellant that this glaring omission renders the Impugned Order not merely non-compliant with the foundational requisites of Section 66 of the Code but also in violation of the principles of natural justice, as it was rendered sans any opportunity to the Appellants to address pleadings imputing a role to them. Furthermore, it is submitted by the Appellants that MA 423 of 2020 was couched in vague language, deliberately sidestepping the precise elements mandated under Section 66 of the Code.

4. The Appellants submitted that it is a well-settled canon of jurisprudence that no person may be coerced into reimbursing, compensating, or contributing to the estate of the Corporate Debtor without solid substantiation of fraudulent conduct attributable to such person. The Appellants, bereft of any such targeted imputations, cannot be saddled with vicarious liability merely by virtue of their association with the Corporate Debtor.

5. The Appellants strenuously urge that the Legislature, in enacting Section 66 of the Code, has intentionally erected a stringent threshold of proof, as discernible from a juxtaposed analysis with Section 339 of the Companies Act, 2013. Whereas the latter provision invokes liability upon mere appearance of complicity, Section 66 circumscribes its ambit to those individuals who were verifiably and knowingly parties to the impugned transaction. Therefore, mere designation as a director, manager, or officer suffices not to engraft liability; rather, the pleading and establishment of a delineated role in the malfeasance is

an indispensable prerequisite for invoking Section 66. The Legislature's judicious choice of the term "found" in Section 66 of the Code contrasted with the permissive "appears" in Section 339 of the Companies Act, 2013 crystallizes that, absent concrete delineations of wrongdoing, no fetters of liability may be imposed upon the Appellants.

6. The Appellants averred that the Impugned Order has imprecisely alluded to disbursements effectuated to Magnum Infra Projects Limited ("Magnum") through Letters of Credit ("LCs"), whilst wholly disregarding the fact that most of the money remitted by the Corporate Debtor to Magnum was repaid to the lending banks in discharge of their loan obligations.

7. The Appellants further contended that the Adjudicating Authority has overlooked the commercial complexion of these LC transactions, wherein banks customarily levy discounting charges or fees approximating 8-9% of the sanctioned LC quantum, a practice symbolic of standard banking norms, which works out to Rs.115 crores.

8. The Appellants submitted that the Impugned Order is based on an obvious mistake about the facts, positing a disbursement of Rs. 1643.33 Crores to Magnum via LCs, whereas the evidentiary matrix discloses utilization of LCs to the tune of merely Rs. 1317.18 Crores for such payments, and a direct remittance of Rs. 326.14 Crores unencumbered by any LC. Following standard banking practices, the issuing bank would have deducted around Rs. 115 crores as fees when releasing the funds to Magnum. This left an actual pay-out of about Rs.

1,200 crores through the LC. On top of that error, the Adjudicating Authority overlooked Magnum's admitted repayment of Rs. 1,412 crores to the company, as noted in the Forensic Audit Report, a figure that exceeds the total LC amount disbursed, including those bank charges.

9. The Appellants submitted that without affecting the company's right to fully recover the money from Magnum, the appellants claimed that neither the company nor they played any part in Magnum holding back various amounts, which were supposedly due to bank charges (totalling Rs. 115 crores) and transportation costs.

10. The Appellants also argued that the challenged order relies solely on alleged problems with "transport documents," which shows it completely ignores several key defences: First, the letter of credit limits was released not by one bank but by a group of banks, making it unlikely they all failed to get basic supporting documents before handing over the funds. Second, the forensic audit report used only a very small sample of data, which is clearly not enough to draw conclusions about the full transaction. Third, the report itself openly admits that its findings are based on circumstantial evidence and partially concluded in the absence of adequate supporting documents.

11. The Appellants claimed that neither the forensic auditor nor the resolution professional explained why they selected that small sample without first reviewing the overall details and scale of the transaction. If the court's interpretation holds, then every case of rejected materials would automatically be

treated as a round-trip scheme—a claim that's clearly contradicted by the fact that money received from Magnum was properly sent back to the creditor banks, with not even a single rupee diverted to any other purpose, let alone to the appellants.

12. The Appellants argued that there's no solid evidence or specific examples in the records about any supposed problems with the "transport details," which prevents them from properly defending themselves. Even none of the claims mention the Appellants' involvement in the deal.

13. The Appellants claimed that the Impugned order's requirement for them to pay money into the company's assets is flawed because it lacks any specific claim about what role they played. Importantly, the Forensic Audit Report which is the main basis for both the application MA 423 of 2020 and the challenged Impugned order, doesn't mention the specific roles or instances of the Appellants.

14. The Appellants submitted that the Forensic Audit Report admits on its own that its analysis is only preliminary and based on indirect evidence. The Appellant highlighted that this built-in uncertainty means the report doesn't meet the proof of standard needed to force individuals to make personal payments under Section 66 of the Code.

15. The Appellants further argued that both the Forensic Auditor and Respondent wrongly overlooked the independent legal nature of LC transactions, which necessarily involve banks acting under current laws and guidelines. The complete silence in the Report and in Respondent's arguments about any wrongdoing or delay by the banks clearly shows that these transactions followed

all required laws and standard business practices. The Appellants argued that it makes no sense to base liability on mere guesses from an admittedly incomplete report, especially without any mention of bank errors in a process that heavily relies on banks.

16. The Appellants submitted that in response to Respondent's application, the Appellants properly filed a counter-affidavit. Unfortunately, the Forensic Audit Report is flawed because it relies too heavily on incomplete information and missing evidence, with many parts of the Report lacking the data the auditors themselves requested. As a result, most of its supposed findings turn into mere speculation without any solid factual support.

17. The Appellants stated that the Forensic Auditor asked the Corporate Debtor for various important documents, including reports submitted to banks, bank statements, loan approval letters, and other financial records. After the CIRP began, control of the Corporate Debtor and all these documents passed to the Respondent, who failed to provide them to the Auditor. Despite this gap, the Auditor blamed the Appellants for not responding to requests for comments on the Report, even though the Appellants had sent their comments by email on 04.09.2019, a response that was simply ignored. This shows a biased approach in how the audit was conducted and the Report was prepared.

18. The Appellants further argued that important details, such as the terms of the LCs/bank guarantees and information about the recipients, were either not obtained or not checked and without these essential elements, the Auditor's and

Respondent's claims of fraud or fund diversion by the Appellants have no basis. The Appellants pleaded that the banks and lenders who claim to be harmed did not provide crucial documents to the Auditor, which raises serious doubts about the strength of Respondent's application and suggests the full truth might come out from those withheld documents.

19. The Appellants submitted that in the Executive Summary of the Forensic Audit Report, under the section on "related party transactions," the auditors have pointed out several entities as having "indirect relations" with the Corporate Debtor and called them "interested entities." However, the term "related party" is clearly defined in Section 5(24) of the Code, and "related party transactions" are defined in Section 188 of the Companies Act, 2013. Notably, "interested entities" has no legal basis in either law, and the Report itself does not even explain what it means. This seems like an attempt to create a false idea of fraud out of nothing to fit a story.

20. The Appellants argued that many of the entities listed by the auditors clearly do not qualify as "related parties" under the law, which highlights how the auditors invented the term "interested entities" as a way to unfairly criticize the transactions without any legal support. This one-sided view focusing only on payments made while ignoring money received is clearly unfair. For example, the Report mentions payments of Rs. 1636.81 Crores to Magnum through LCs, balanced by unexplained receipts of Rs.1411.69 Crores from Magnum, resulting in a net difference of Rs. 225 Crores, along with missing purchase records in the

books. Even though the Report recognizes this back-and-forth, Respondent's application in the insolvency case demands Rs. 1946.15 Crores from the Appellants, an unreasonable exaggeration.

21. The Appellants submitted that the auditors' conclusion that loans were being round-tripped through "interested entities," based on missing records in the Corporate Debtor's books for Magnum payments, falls apart under closer look: issuing an LC requires submitting basic supporting documents to the banks, which should have been requested. Also, the auditors only reviewed limited records, making their conclusions nothing more than guesses.

22. The Appellants stated that after the CIRP started, control over the Corporate Debtor's records including those related to Magnum went to Respondent. Any missing transport documents, if they exist, would be held by the banks or Respondent. Importantly, purchase orders and other Magnum-related documents were provided to Respondent after the CIRP began, which clears the Appellants of any blame for diverting funds or creating circular transactions. Therefore, the auditors' criticisms based on small procedural gaps, limited review of documents, and the shift in control after the CIRP cannot support claims of wrongdoing. Any missing evidence can be traced back to the banks' records or Respondent's management.

23. The Appellants submitted that in the "end use of funds" section of the Forensic Audit Report, the auditors describe cases where term loans from banks or financial institutions were apparently adjusted in customer accounts using

journal entries. However, this claim lacks specific examples of how the funds moved and was not followed up with any questions to the Corporate Debtor. The Appellants explained that these term loans were set aside for specific projects with conditions from the lenders, and journal entries are a standard and legal way to record accounts, providing no basis for Respondent's application.

24. The Appellants argued that Respondent, relying on this clearly preliminary and incomplete Forensic Audit Report, filed MA 423 of 2020, a filing that lacks any basic mention of the Appellants' role. In response, the Appellants filed counter-affidavits and additional affidavits challenging the emptiness and weakness of the application.

25. The Appellants submitted that despite these strong objections, the Adjudicating Authority dismissed the Appellants' arguments without proper review, partially allowing MA 423 of 2020 through the Impugned Order dated 19.04.2024. The Impugned order requires the Appellants to pay Rs. 231.64 Crores plus 12% interest per year, a decision flawed by its clear failure to consider the Appellants' points and one that calls for reversal on appeal.

26. Concluding their arguments, the Appellants requested this Appellate Tribunal to allow the present appeal and set aside the Impugned Order.

27. Per contra, the Respondent denied all the averments made by the Appellants as misleading and baseless.

28. The Respondent submitted that this Appellate Tribunal issued notice on 15.05.2024, noting the Appellants' submissions regarding the alleged error in

classifying the Magnum transactions as fraudulent, the repayment of Rs. 1454.62 crores out of Rs. 1643.33 crores, and the Forensic Audit Report's disclaimer on fund diversion/siphoning in the absence of complete documentation. The Respondent asserted that these contentions were raised before the Adjudicating Authority, who fully considered, as evidenced by the Impugned Order's analysis of the Forensic Audit Report and the parties' submissions.

29. The Respondent further contended that the Impugned Order explicitly acknowledged the Appellants' reply dated 10.12.2021, which claimed absence of Section 66(1) ingredients, vagueness in the application, and the need for opportunity to defend against omnibus allegations, while emphasizing that a forensic auditor's perceptions cannot substitute judicial wisdom. Despite this, after affording due opportunity, the Adjudicating Authority analysed the fraudulent transactions and concluded loss to the Corporate Debtor, thereby adequately dealing with the Appellants' pleas.

30. The Respondent submitted that the Appellants' reliance on the Forensic Audit Report's disclaimer is misconceived, as the fraudulent nature of Magnum transactions is evident from available documents, including the absence of underlying purchases or supporting evidence. The Letters of Credit (LCs) were opened on fictitious purchase documents not accounted in the Corporate Debtor's books, with only Rs. 6.52 crores recorded as purchases against Rs. 1643.33 crores disbursed, rendering the transactions ex facie fraudulent.

31. The Respondent contended that the Appellants' repeated assertion of full repayment to the Corporate Debtor and banks is misleading, as Magnum repaid only Rs. 1454.62 crores against Rs. 1643.33 crores paid plus Rs. 42.93 crores interest, resulting in a clear loss from these circular transactions. The Appellants failed to disclose transaction details with Magnum, further casting doubt on their veracity.

32. The Respondent submitted that the Appellants mislead this Appellate Tribunal by claiming Rs. 115 crores deduction as bank discounting charges upon fund release to Magnum, inconsistently stating elsewhere that Magnum retained this amount. Pertinently, such charges pertain solely to Magnum and its banks, bearing no relation to the Corporate Debtor.

33. The Respondent submitted the following brief factual background: The CIRP commenced in June 2017 via C.P. (IB) No. 1058 of 2017, admitted on 20.06.2017 with Mr. Arun Kapoor as Interim Resolution Professional. He engaged M/s. MGRS & Associates on 29.06.2017 for due diligence, yielding a report dated 25.07.2017 excluding forensic audit, as it fell outside the approved scope. The Respondent further submitted that he was appointed Resolution Professional on 01.09.2017. Bids to revive the Corporate Debtor were rejected by creditors, leading to M.A. No. 227 of 2018 filed on 20.03.2018 under Section 33(1) for liquidation. On 05.10.2018, the Respondent appointed BDO India LLP as Forensic Auditor.

34. The Respondent contended that the Forensic Audit Report dated 25.09.2019 flagged transactions with interested parties totalling Rs. 1946.15 crores as fraudulent, including Rs. 1643.33 crores issued to Magnum without supporting purchase documents, against only Rs. 6.52 crores recorded in the Corporate Debtor's books.

35. The Respondent submitted that the Appellants, promoters of the Corporate Debtor since 1997 and its Managing Directors, cannot feign ignorance of these transactions. Appellant No. 1's reply dated 30.11.2021 claiming a "memory test" is untenable, as Managing Directors would know of disbursements amounting to 72% of funds to interested parties, supported by documentary proof.

36. The Respondent further contended that the Appellants were former directors of Innowave IT alongside Rakesh Mehta, a director of Magnum (with Nikesh Tontai), whose FORM-32 email (nikesht@unityinfra.com) evidences connection to the Corporate Debtor.

37. The Respondent submitted that the Appellants managed day-to-day affairs since 2009 per MCA records and cannot deny knowledge of flagged transactions. The Respondent contended that during the forensic audit, the Auditor sought explanations via email dated 09.07.2019, conducted thorough inspection of financials, and prepared the Report only after affording representation to the Appellants.

38. The Respondent submitted that during M.A. No. 423 of 2020's pendency, parties agreed to document inspection on 22.12.2020. The Appellants' post-

inspection email dated 23.12.2020 claiming inability to inspect auditor-examined documents is untenable, as the Report's "Work Steps Performed" section lists reviewed data/documents, and no further requests were raised.

39. The Respondent contended that the Appellants, aware of the audit via representation opportunity, raised inspection pleas only post-filing of M.A. No. 423 of 2020 as an afterthought. All relevant documents were provided to the Auditor; additionally, the Respondent verified books, confirming fraudulent trading, leading to the application under Section 66.

40. The Respondent submitted that even in this appeal, the Appellants failed to produce material contradicting the Forensic Audit Report or Section 66 averments. The Respondent contended that Section 66 empowers the Adjudicating Authority, on Resolution Professional's application, to order contributions from persons knowingly party to business carried with intent to defraud creditors or fraudulently, as reproduced in the Report.

41. The Respondent further submitted that the Hon'ble Supreme Court in *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. (2021) 3 SCC 475* affirmed such recovery orders as contributions to Corporate Debtor assets. As Managing Directors running day-to-day affairs, the Appellants are liable for prima facie fraudulent transactions.

42. 25. The Respondent submits that as the Managing Directors involved in day-to-day affairs, the Appellants cannot disclaim role; M.A. No. 423 of 2020 followed examination revealing only Rs. 6.52 crores purchases recorded against

Rs. 1643.33 crores to Magnum without documents, with Rs. 1454.62 crores returned circularly sans interest, leaving Rs. 225 crores deficit plus bogus purchases, yielding Rs. 231.64 crores liability per the Adjudicating Authority, corroborated by the Forensic Audit Report labelling Magnum an interested party and evidencing intent to defraud via round-tripping reducing assets (72% of interested party funds).

43. The Respondent further contended that the "each penny repaid" claim misleads as Magnum did not fully repay, leaving Rs. 225 crores deficit (Rs. 231.64 crores post-bogus adjustment); no documents evidence commercial nature, and Rs. 115 crores discounting charges are irrelevant to Corporate Debtor, being between Magnum and banks. The Appellants failed to provide underlying documents. The Respondent contended that no collusion explanation for Rs. 225 crores owed, nor transaction details; contradictory Rs. 115 crores claim (deducted vs. retained) require strict proof, unsupported by documents; reiterated, charges are Magnum-bank matter.

44. The Respondent further submitted that the Impugned Order rightly held eight LC sample cases that lacked transport documentation, with repeated truck numbers unverified on E-Vahan Portal; LCs for purported goods purchases were fraudulent, unaccounted beyond Rs. 6.52 crores vs. Rs. 1643.33 crores; reliance on disclaimer misconceived for Magnum (fraud apparent from documents); financial statements confirm fraudulent trading absent supporting evidence.

45. The Respondent contended that there exists no presumption of legitimacy merely by virtue of the issuance of Letters of Credit by banks, as fraudulent transactions may nonetheless be effectuated through valid LCs; the Forensic Auditor duly compiled and scrutinized documents sourced from both the Corporate Debtor and the relevant banks, ensuring a comprehensive inspection; furthermore, as Managing Directors overseeing the day-to-day operations of the Corporate Debtor since 2009, the Appellants possessed unequivocal knowledge of the transactions flagged in the Forensic Audit Report.

46. The Respondent submitted that the Forensic Audit Report has been prepared based on review of the Corporate Debtor's audited financial statements, alongside comprehensive scrutiny of ledgers pertaining to sales, purchases, major expenses, and borrowings, complemented by thorough fund tracing from banks and financial institutions. The Respondent emphasized that, an opportunity of representation was duly extended to the Appellants prior to the Report's finalization, but the Appellants could not explain the transactions.

47. The Respondent submitted that the Appellants' case is founded on vague assertions, and that the allegations of fraud raised notwithstanding the clear findings of the Report remain wholly unsubstantiated. The Respondent further contended that the Appellants have failed to demonstrate any bona fides in their conduct, and that the glaring discrepancies evident on record fully justify and underpin the Impugned Order.

48. The Respondent further submitted that the Innowave IT linkage through Rakesh Mehta, the directorships in Magnum, and the use of the unityinfra.com email domain by Nikesh Tontai collectively establish the relevant connections; moreover, Section 66 does not require the parties to be related where the transactions are undertaken with a fraudulent purpose.

49. The Respondent contended, as the amount of Rs. 1946.15 crores were sought in respect of multiple entities, namely Unity Axellia, Mahindra Brothers, and Pandhe Infracons and not merely Magnum, and the Impugned Order was partly allowed only after considering these entities as well.

50. The Respondent submitted that the vague assertion regarding bank verification is unsupported by any documentary evidence, and no presumption of fraud can arise merely from the issuance of LCs. The Respondent further contended that all available documents were provided to the Auditor, whereas the Appellants failed to furnish any documents to the Respondent.

51. The Respondent submitted that the Magnum transactions forming the basis of the Impugned Order are clearly ascertainable from the financial statements and books of account, which reveal round-tripping. The Respondent contended that submitting the Report is based on adequate analysis and is corroborated by the books of account, while the Appellants' affidavits suppress the Respondent's rejoinder and submissions and fail to contradict the Report or the application with any documentary material.

52. The Respondent submitted that as Managing Directors, the Appellants were duty-bound to safeguard the interests of all stakeholders, and their conduct carried out with fraudulent intent squarely fulfils the ingredients of Section 66 of the Code. The Respondent further contended that as M.A. No. 423 of 2020 clearly demonstrated the Appellants' complicity as Managing Directors, and their reply failed to deny their role or knowledge, instead feigning ignorance through what they termed a "memory test."

53. The Respondent further submitted that both M.A. No. 423 of 2020 and the Impugned Order comprehensively address the fraudulent Magnum transactions and the unpaid amounts; the Appellants executed these transactions fraudulently, as evident from the books of account. The Impugned Order also records that the Letters of Credit were mere accommodation entries used to inflate borrowings without effecting a complete refund of amounts to Magnum. The Respondent submitted that no principle of natural justice was violated, since the Appellants filed replies and participated in hearings. The Respondent contended that the application specifically set out detailed allegations against the Managing Directors, who failed to rebut them or produce any supporting material, and the allegations were not directed towards "any individual" but towards those in charge of operations.

54. The Respondent submitted that the Appellants' reliance on an analogy with Section 339 is misplaced and that the ingredients of Section 66 of the Code are fully met in view of the fraudulent intent. The Respondent further contended

that the claim that “every penny was repaid” is false, since an amount of Rs. 231.64 crores remain outstanding from Magnum, and the Appellants have provided no “commercial” material to support their assertions. The Respondent submitted that the payment of Rs. 1643.33 crores through fraudulent and non-existent transactions itself establishes fraud.

55. The Respondent contended that the alleged Rs. 115 crores as bank charges, at the best, pertain to the dealings between Magnum and the bank. The Respondent further submitted that the Impugned Order is not based solely on discrepancies in transport records. The Respondent contended that the vague assertion of bank verification is unsupported by documents, and no presumption of fraud can arise merely from the issuance of Letters of Credit. Further, LCs were issued for goods without supporting documents, only Rs. 6.52 crores were recorded against Rs. 1643.33 crores claimed, eight sample instances were relied upon, and the Appellants have not contradicted the Report.

56. The Respondent submitted that the disclaimer by Forensic Auditor relied upon by the Appellants does not apply to the Magnum transactions and that fraud is clearly established from the documents and books of account, which reflect only Rs. 6.52 crores against Rs. 1643.33 crores (erroneously noted as Rs. 1943.33 crores), rendering the transactions ex facie fraudulent. The Respondent contended that the Appellants’ rejection of the findings is wholly unsubstantiated and unsupported by any records.

57. The Respondent contended that the Impugned Order is factually sound and lawful in every respect. The Impugned Order has duly considered the facts of the application as well as the observations contained in the Report after examining the books of account. The Respondent further reiterated that the disclaimer relied upon by the Appellants is inapplicable and that fraud is evident from the books, which reflect only Rs. 6.52 crores as against Rs. 1643.33 crores, an ex facie fraudulent gap.

58. Concluding his arguments, the Respondent requested this Appellate Tribunal to dismiss the present appeal with exemplary cost.

Findings

59. We note that the Respondent, Mr. Alok Saxena, is the Liquidator of the Corporate Debtor, having been appointed as Resolution Professional vide order dated 01.09.2017 passed by the Adjudicating Authority in the aforementioned Company Petition filed by the Corporate Debtor itself under Section 10 of the Code. The Corporate Insolvency Resolution Process (CIRP) was initiated vide order dated 20.06.2017, with Mr. Arun Kapoor initially appointed as Interim Resolution Professional. In the absence of any approved resolution plan by the CoC, Respondent filed MA 227 of 2018 seeking liquidation of the Corporate Debtor.

60. We observe that M/s MGRS & Associates was engaged by the erstwhile IRP for due diligence of the Corporate Debtor, submitting their report on

25.07.2017. Subsequently, at the direction of the CoC, the Respondent appointed BDO India LLP on 05.10.2018 to conduct a forensic audit, culminating in the Forensic Audit Report ("FAR") dated 25.09.2019.

61. We have already noted the facts while recording the submissions of the parties. We take into consideration that Forensic Auditor submitted their report on 25th September 2019, which flagged certain transactions carried out with entities as interested party and an amount equivalent to Rs. 1946.15 Crores being fraudulent transactions. One, of the alleged interested party is Magnum, to whom a sum amounting to Rs. 1643.33 Crores were issued by Corporate Debtor from various banks without any supporting purchase document and only recording a minuscule purchase of Rs.6.52 crores in the books of accounts of the Corporate Debtor. The main contentions of the Appellant is regarding directions given by the Adjudicating Authority in the Impugned Order dated 19.04.2024 where the Appellant have been asked to contribute jointly or severally to pay a sum of Rs. 231.64 Crores within 30 days along with interest @ 12% p.a compounded annually, if paid beyond 30 days.

62. We note that the Company Petition (IB) No. 1058/MB/ 2017 was moved by the Corporate Debtor itself under Section 10 of the Code and the same was allowed by the Adjudicating Authority. It is significant to note that the Appellants were themselves the Former Managing Directors of the Corporate Debtor.

63. We have noted that during the course of CIRP, the due diligence was carried out by the Resolution Professional and Forensic Auditor, i.e. BDO India LLP, was appointed to give detailed report. After examination of Forensic Audit Report, the Resolution Professional moved an application before the Adjudicating Authority under Section 66 (1) and 68 of the Code requesting the Adjudicating Authority to pass necessary orders under Section 66(1) of the Code directing Respondent to make contribution for fraudulent transactions and pass an appropriate orders under Section 68 of the Code against the Appellants for committing act of fraudulent siphoning off and removing the property of the Corporate Debtor.

64. We take into consideration the fact that the Unity Infra Project Ltd. (Corporate Debtor) was in the business of real estate and during the course of operation of the Corporate Debtor, the Corporate Debtor undertook certain transactions with Magnum Infra Projects Ltd. All parties were identified as interested parties by the Forensic Auditor. At this stage, we also take into consideration that the Forensic Auditor has used the generic word ‘interested party’ instead of specific term, i.e. related party. We further take into consideration that the Appellants have taken objections about treating interested party as related party on the ground that there is no concept of the word ‘interested party’ in the Code. On this point, it can be mentioned that Section 66 of the Code is not dependent on usage of the term ‘related party’. At best, it may give more evidence about the intent of the persons involved to defraud.

65. The Appellants have also challenged the very basis of obligation made by the Resolution Professional seeking contribution from the Appellants since the Forensic Auditor themselves have used disclaimer while giving the Forensic Audit Report. The Appellants also took objection that suitable records were not available with the Forensic Auditor, as such the Forensic Audit Report is incomplete as it was based on facts which were not verifiable from the records.

66. The Appellants strongly argued that the Forensic Audit Report or the MA 423 of 2020 did not give any specific information regarding knowledge and involvement of the Appellants and the Appellants, therefore, cannot be compelled to contribute to the Corporate Debtor without any specific allegations.

67. It is further the case of the Appellants that to pass the order in such cases there should be very high standard of proof under Section 66 of the Code and merely on the allegations the Adjudicating Authority ought not to have passed the Impugned Order.

68. We also take into consideration the plea made by the Appellants that all transactions were made that the Magnum Infra Projects Ltd. were done as normal course of business and significantly the entire/majority of the money was refunded by Magnum Infra Projects Ltd. As regard, non-availability of documentation, it is the case of the Appellants that since, transactions were done long back and in ordinary course of business, the Appellants, having no records, could not be put to “memory test” by the Adjudicating Authority.

69. Further, the Appellants have also brought out that the Adjudicating Authority relied on limited sample size and further ignored the fact that all payment to Magnum Infra Projects Ltd. was made through the banking channel by means of LC's or direct payments, and it cannot be expected that so many banks will commit error, and therefore, the Impugned Order is illegal and perverse.

70. We have taken into consideration several judgements brought to our notice by the Appellants, on the issues like onus of proving fraud is on the one alleging it, higher degree of proof is required to establish fraud, Forensic Auditors Report alone cannot be applied in deciding a fraudulent application, Test for applicability of 66(1) of the Code. Further, the Appellants also cited judgements to buttress the point that any order passed by a court or tribunal should be a reasoned and speaking order. The Appellants also referred to the judgements on the plea that the allegations against the Director must be specific and supported by evidence and finally stated that no vicarious liability for directors. The relevant judicial precedents have been duly considered. However, in the interest of maintaining brevity and avoiding unnecessary prolixity, it is not considered appropriate to discuss each of these judgments in detail.

71. Having noted the contentions of the Appellants, we shall deal with the issues raised by the Appellants.

72. On the other hand, it is the case of the Respondent that it was clear case of fraud committed by the Appellants since, they were the Promoters & the

Managing Directors of the Corporate Debtor and were clearly in knowledge and control of operations of the Corporate Debtor.

73. The Respondent further pointed out that the very fact that Section 10 of the Code was moved by the Corporate Debtor just to enrich themselves at the cost of other creditors and based on the fraudulent transactions by which hundreds of crores of rupees were siphoned off. We also take into consideration that the Respondent brought out that they have done due diligence through independent entities including detailed Forensic Report submitted by BDO India LLP which pointed out several irregularities. The Respondent strongly defended that Impugned Order which is stated to be well reasoned and speaking order that a specific direction to the Appellant to pay Rs. 231.64 Crores plus 12% interest compounded interest.

74. The Respondent countered all arguments of the Appellants including disclaimers used by the Forensic Auditors, which according to Respondent is commonly used in such reports, since, in case of frauds, it is seldom that all records are available.

75. The Respondent further argued that in most of the cases including the present case, the Promoters & Managing Directors never co-operate and did not give any documents as such the Forensic Auditors submitted report based on documents available or obtained by bank etc. which has happened in the present case.

76. The Respondent also alleged that there is clear case of round tripping, which has caused havoc on the Corporate Debtor and it was purely intended to be done to defraud creditors.

77. The Respondent further differentiated between Section 66(1) vis-à-vis Section 66(2) of the Code and pleaded that applicability of Section 66(1) of the Code is justified against the Promoters and Suspended Directors even if no direct benefit arises to said directors.

78. The Respondent also denied the plea taken by the Appellant regarding alleged deemed charging of interest or discount by banks on issue of LCs to the extend of rupees assumed figure of Rs. 115 Crores (assume by the Appellant without any documentary evidence).

79. The Respondent then also brought to our notice that merely because the payment was made by the LCs mechanism, through banks, cannot be said that no fraud could have taken place. The Respondent argued that the fraud was committed by the Appellants themselves and not by the Banks by making fabrication of documents vis-à-vis LCs issued by banks

80. The Respondent further argued that even part of the money as received from Magnum Infra Projects Ltd. however, the fact remains that Rs. 231.64 Cores was a loss that was caused to the Corporate Debtor, since the money never came back in the books of the Corporate Debtor.

81. We also take into consideration the relevant part of the Forensic Audit Report which brings out that the Corporate Debtor made the payment of Rs.

1643.32 Crores to Magnum Infra Projects Ltd. i.e., Rs. 1317.18 Crores through LCs and Rs. 326.14 Crore through direct payment. This table also give bank wise detail for such payment through LCs. The table reads as under: -

8.1 IDENTIFICATION OF INTERESTED ENTITIES (4/4)

- ▶ Other than the 6 entities detailed in the previous slides, we have identified five other interested entities (details are appended in Annexure 1)
- ▶ Party-wise details of payments made have been appended below:

(INR in Crores)

Name of Entity	Direct Payment	Payment through LC	Total Amount Paid	%
Magnum Infraprojects Ltd.	326.14	1,317.18	1,643.32	72%
Mahalasa Constructions Pvt. Ltd.	214.49	0	214.49	9%
Mahendra Brothers	78.38	54.39	132.77	6%
Girna Infraprojects Pvt. Ltd.	78.92	25.45	104.37	5%
Konnect Urban Infrastructure Pvt. Ltd.	70.12	0	70.12	3%
Innowave IT Infrastructures Ltd.	8.5	2	10.50	0%
Others (Refer Annexure 1)	93.23	12.39	105.62	5%
Total	869.8	1,411.38	2,281.19	100%

8.1 IDENTIFICATION OF INTERESTED ENTITIES (4/4)

- ▶ Below is a bank wise break up of the LCs opened with the potential interested entities

(INR in Crores)

Name of the Bank	Magnum Infraprojects	Mahendra Brothers	Girna Infraprojects	Pawar Patkar Construction	Innowave IT	Total
State Bank Of India	302.95	6.22	-	-	-	309.17
Axis Bank Ltd.	280.43	-	-	-	2	282.43
Db's Bank Ltd.	117.88	15.63	2.01	6.68	-	142.2
Icici Bank Ltd.	255.71	2	2	-	-	259.71
Abhyudaya Co-Op. Bank Ltd.	-	23.89	16.85	-	-	40.74
Central Bank Of India	106.73	-	-	-	-	106.73
Uco Bank	93.87	-	-	-	-	93.87
Indusind Bank	93.87	0.75	1.3	1.97	-	97.89
Indian Bank	36.99	-	-	-	-	36.99
Standard Chartered Bank	11.08	-	-	0.25	-	11.33
ING Vysya Bank Ltd	14.61	1.41	0.75	0.94	-	17.71
Corporation Bank	3.04	0.49	-	-	-	3.53
Others	-	4	2.54	2.54	-	9.08
Total	1,317.16	54.39	25.45	12.38	2.00	1,411.38

82. We note that in the absence of purchase documents, transportation receipts, or related proofs, the Corporate Debtor's records raise red flags for fraudulent or avoidance transactions, even if significant amounts were received back by the CD from suppliers, like Magnum in the present case, (possibly indicating refunds,

advances, or round-tripped funds). Such gaps suggest non-genuine trades, as legitimate purchases require verifiable evidence like invoices, delivery proofs, and payment trails. To mitigate, CDs should have maintained comprehensive records ensuring eligibility and performance proofs.

83. We take up the issue regarding round tripping that was brought to our notice by both the parties, during pleadings. We are conscious that the round tripping process creates an adverse impact on the Corporate Debtor which has been alleged by the Respondent. We take into consideration the fact that round tripping refers to the process of routing funds through intermediary entities or offshore channels to disguise their origin, often for purposes like money laundering, inflating revenues, or evading taxes. It typically involves investments where funds are cycled back to the Corporate Debtor. This process can manifest in scenarios like sham loans or transactions where funds are diverted and returned via paper entries especially in insolvency cases where apparent financial debts are revealed as mere round-tripped amounts without real economic substance. The adverse impact on the Corporate Debtor is significant since Round tripping often leads to fund diversion, triggering avoidance proceedings under the Code, allowing resolution professionals to claw back such transactions. Moreover, it undermines creditor recovery by inflating apparent debts or assets, complicating the CIRP. Overall, round tripping accelerates insolvency risks by masking underlying financial distress and defrauding stakeholders.

84. We note that in the present case, Rs. 1643.33 Crores were given to Magnum by the Corporate Debtor via various LCs through several banks, as well as through Direct Payments, without documentations. It is very significant to note that the documents reflect only purchase transaction of Rs. 6.52 Crores against huge amount of outflow to Magnum to the extent of Rs. 1643.33 Crores, which is nothing else except round tripping. By no commercial or financial standard, this can be treated a transaction done in the ordinary course of business. During hearing, we put the pointed to the Appellants to justify, even at this stage, of such transactions. However, no satisfactory answer could be furnished by the Appellants.

85. The Appellants' reliance on the disclaimer in the Forensic Audit Report is misconceived. As far as transactions with Magnum, the fraudulent nature is apparent from the available documents. The Appellants contend that the transactions with Magnum were in the nature of commercial transactions. However, there are no underlying purchases or supporting documents evidencing the transactions. It has been brought out on record that the Letter of Credit (LC) were opened on the basis of fictitious documents of purchases. The said fictitious purchases were not accounted in the books of accounts of Corporate Debtor. The Appellants failed to bring on record any supporting document for transactions with Magnum. The financial statements of the relevant year show that purchases of a miniscule amount of Rs. 6.52 Crores were made from Magnum. Thus, the transactions are ex-facie not convincing.

86. As regard the plea taken by the Appellants the recorded disclaimers used in Forensic Audit Report, we note that Disclaimers in forensic audit reports serve as to limit the auditor's liability. Further, disclaimers also specify limited scope of the investigation, and clarify assumptions or restrictions on the report's use. Such disclaimers are common due to the investigative nature of forensic audits, which focus on detecting fraud since full records are rarely available, as in the present case.

87. It is also a fact that in many other cases, the Suspended Director do not fully co-operate and support and furnish the desired document. We note that in the present case also, similar things happened and for the same reason, the Forensic Auditor carves out such disclaimers in the report.

88. During pleading before us, the Appellants contended that the amount was returned to the Corporate Debtor and the banks. However, we find that this submission is not factually correct as although a sum of Rs. 1454.62 crores were paid back by Magnum, the total amount paid to Magnum was Rs. 1643.33 crores and interest payable were Rs. 42.93 crores. Thus, there was a clear loss to the Corporate Debtor on account of these alleged circular transactions carried out by the Appellants. We had put pointed queries to the Appellants during hearing before us that whether they can link and establish all required documents to substantiate their claims even now. The Appellants however failed to disclose any details and nature of transactions carried out with Magnum, which creates further doubt on the veracity of these transactions.

89. We will now examine another issue raised by the Appellants that since, there was no specific instance highlighted against the Appellants to be responsible for in the alleged frauds under Section 66 of the Code and further, no direct benefits have been proved against the Appellants, the Impugned Order is perverse. In this connection, we note that Section 66(1) of the Code, addresses fraudulent trading, holding persons liable if the business of the CD was carried on with intent to defraud creditors or for any fraudulent purpose during the relevant period. This provision targets directors, promoters, and others involved in management, including suspended directors during CIRP. Importantly, direct personal benefits to the promoters or suspended directors is not a prerequisite for liability under Section 66(1) of the Code. The focus is on the harm to creditors and the fraudulent nature of the company's actions, not individual gains. Judicial precedents emphasize that if ex-directors facilitated asset transfers or operations knowing of likely defaults, then such directors/promoters can be held accountable, even without personal enrichment. The remedies under Section 66 of the Code are against those contributing to wrongful trading, prioritizing creditor protection over personal benefit proofs. Thus, promoters and suspended directors remain accountable, if intent is established through circumstantial evidence like fund diversions, regardless of direct benefits.

The Appellants were Managing Directors of the Corporate Debtor, thereby they had a duty to ensure the interests of the stakeholders are secured and to ensure that the business of the Corporate Debtor is not carried with an intention to

defraud the creditors. Thus, Appellants failed to protect the interest of the stakeholders and thereby, the ingredients of Section 66 of the Code are fulfilled.

90. The Appellants as Managing Director carried out these transactions fraudulently as apparent from the financial books of the Corporate Debtor. The Impugned Order further states, “*Section 66 deals with the carrying on a business for any fraudulent purpose. The facts culled on in the Report, which have not been recruited by the Respondents in their Reply clearly demonstrate that transaction of LC was merely a accommodation transactions and not for the purpose of any business of Corporate Debtor and such transactions resulted into inflated borrowings in the form of LC maturity amounts not fully refunded back by Magnum.*”

91. In the present case, the Forensic Audit Report, MA 423 of 2020 filed by the Resolution Professional and the Impugned Order by the Adjudicating Authority clearly establish responsibility of the Corporate Debtor.

92. Thus, we do not find any error in the Impugned Order on this ground whereby the Adjudicating Authority has asked the Appellant to refund Rs. 231.64 Crores.

93. For the CD issuing large-value LCs, precautions are crucial to avoid fraud, insolvency triggers, or liabilities. CD is required to conduct thorough due diligence on beneficiaries and suppliers to verify legitimacy and prevent sham transactions. LC terms need to be strictly aligned with underlying contracts, specifying clear documents like bills of lading to avoid discrepancies. In the

present case, we note that payment of Rs. 1643.33 Crores (both LC payment & direct payment), were issued to Magnum without any suitable documentation. It was clearly the responsibility of the CD and its management (the appellants herein being Suspended Managing Directors of the CD) to ensure that for the LCs issued through banks, all financial safeguards do exist and all documents are complete. In the present case, we have noted that there is almost complete absence of documents and transportation documents to establish such claims of alleged percentage to Magnum of Rs. 1643.33 crores were done in normal course of business as only Rs. 6.52 crores of goods are stated to have been received by the CD.

94. During pleadings, it has been brought to notice that the appellants have been in the business of construction and development for decades and promoted the Corporate Debtor in 1997. The Appellants were the Managing Directors of the Corporate Debtor and Appellant No.1 in his reply dated 30.11.2021, to M.A. No. 423 of 2020 before the Adjudicating Authority has said to have been stated that he has been exposed to 'memory test' and cannot recollect any single transaction when no specific transaction wise details were provided to them. This seems unconvincing since the Appellants, being Managing Directors of the Corporate Debtor, would be aware of an amount worth such quantum of more than thousands of crores of Rupees, and was required to establish transactions based on the documentary proof provided. The sum paid to Magnum amounting to Rs. 1643.33 Crores, comes to 72% of the sum provided to interested/related

parties, by Corporate Debtor. Even if we take that Magnum is an independent entity and not interested/related party, still non-documentation cannot prove such documentations to be genuine.

95. The Appellants Mr. Kishore Krishnarao Avarsekar And Abhijit Kishore Avarsekar were Managing Directors and managing the day-to-day affairs of Corporate Debtor since 2009 as per MCA Records and cannot claim that they were not aware of the said transactions, since they were running the day-to-day affairs and the transactions flagged by the Forensic Auditor were well within their knowledge. During the process of the forensic audit, the Forensic Auditor, sought explanation from Appellants by way of email dated 09 July 2019, with respect to fraudulent transactions. The Forensic Auditor had carried out detailed examination of the Corporate Debtor with relevant financials and Forensic Audit Report was prepared only after giving opportunity of representation to the Appellants. The Appellants, however, in their email dated 23.12.2020, raised one plea that they could not inspect the “documents that were actually examined by the auditor/s while preparing the report”. Such submissions are untenable as it has been noticed that in any event, after the said inspection, the Appellants did not raise any requests for any further inspection of documents.

96. The Appellants were aware of the inspection being carried out by the Forensic Auditor since, opportunity of representation was duly given to them. It has been brought out that it is only when the application under Section 66 of the Code was filed, the Appellants, started raising the plea of inspection of

documents. In any event, all relevant documents were provided to the Forensic Auditor. In addition to the said report, the Respondent verified the books of the corporate debtor and concluded that the Appellants carried out fraudulent trading. Accordingly, the Respondent filed MA. No. 423 of 2020 under Section 66 of the Code before the Adjudicating Authority.

97. We note that even in the present appeal before us, the Appellants have not brought any document/record/evidence on record which were relevant in contradicting the Forensic Audit Report, or the averments made in the application under Section 66 of the Code.

98. We are aware that the Section 66 of the Code, empowers the Adjudicating Authority to pass an order for recovery from fraudulent transactions as contribution to the assets of the Corporate Debtor. The relevant portion of Section 66 is reproduced below:

“(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.”

(Emphasis Supplied)

99. The Hon'ble Supreme Court in *Phoenix Arc Private Limited v. Spade Financial Services Limited* (2021) 3 SCC 475, has held that for recovering from fraudulent transactions, the Adjudicating Authority can pass an order for recovery as contribution to the assets of Corporate Debtor. The Appellants were managing directors of Corporate Debtor and they were running day to day affairs, therefore liable for the transactions which are held by the Adjudicating Authority prima facie fraudulent in nature, in the Impugned Order. The Respondent filed the M.A. No. 423 of 2020 after examining that only a miniscule purchase of Rs.6.52 crores were reflected in the book of accounts of the Corporate Debtor, while a sum of Rs. 1643.33 crores were issued by Corporate Debtor to Magnum without any supporting purchase document. An amount of Rs. 1454.62 crores had been received back from Magnum in circular transaction. No interest was levied and repaid on such sum being accommodated by Magnum, thus even after adjustment, a sum of Rs. 225 Crores was still recoverable from Magnum, and after considering that the purchases were not genuine, the Adjudicating Authority has arrived at liability of Appellants at Rs. 231.64 Crores. This observation is also corroborated by the Forensic Audit Report, which identified certain transactions carried out by Corporate Debtor and Magnum. Thus, it is clear that there was an intention to defraud the creditors by carrying out round-tripping transactions with Magnum to reduce the assets of the Corporate Debtor. The sum paid to Magnum amounted to 72% of the amount provided by Corporate Debtor, to various entities.

Thus, it is untenable to state that Appellants, despite being Managing Directors had no role in carrying out such fraudulent transactions.

100. The Appellants' statement that "each and every penny" which was received by the Corporate Debtor from Magnum, was repaid to respective bank does not seem correct as Magnum itself has not paid the entire money to Corporate Debtor. As stated above, there was a deficit of Rs. 225 Crores which was never received and after considering the non-genuine purchases of Rs. 6.52 crores, there is a total deficit of Rs. 231.64 Crores in the hands of Corporate Debtor. Further, Appellants failed to produce any document to show the true commercial nature of the transaction.

101. As regard, the issue raised by the Appellant regarding alleged deemed charging of interest or discounting by banks on LC which Appellant have assumed a figure of Rs. 115 Crores, we shall examine the same. In this connection, we note that Banks charge interest or apply discounting on Letters of Credit (LCs) as part of trade finance services, primarily to cover the risk and cost of advancing funds. Discounting involves the bank purchasing bills or documents under an LC, advancing payment to the supplier minus a discount fee (interest equivalent), depending on the bank and transaction type. For usance LCs (deferred payment), interest is charged for the credit period, often at commercial rates aligned with RBI guidelines. In LC-backed bill discounting allows suppliers to receive immediate funds, with the bank recovering from the buyer's bank on maturity, minus charges. For inland/domestic LCs, banks discount bills under

LCs deducting interest for the usance period. The process is non-recourse in many cases, meaning the bank absorbs default risk.

The contention that Rs. 115 Crores would have been charges as discounting charges and deducted by bank terms in misleading as the Appellants have provided contradictory statement, as in para 7 (vii) (e) Appellants mention that Rs.115 Crores would have been deducted by bank and in para 7 (vii) (f) Appellants mention that Rs.115 Crores has been retained by Magnum. The Appellants have merely stated the retention of amount due to bank charges etc. without providing any supporting document. The contention that Rs. 115 Crores would have been charges as discounting charged and deducted by bank is not convincing as the said charges has nothing to do with Corporate Debtor and bank charges / discounting charges is between Magnum and its bank.

102. As regard, allegation by the Appellant that Low Sample Size was taken by the Respondent, we note that the Impugned Order has rightly held that, *“in all 8 sample cases pertaining to LC Documentation; there was no transport documentation to evidence actual movements of the goods and in some cases, even truck number was used for multiple trips in a day and even truck numbers was not found on E-Vahan Portal.”* The letter of credit was purportedly issued for purchase of goods. The supporting purchase documents were questionable, and the said purchases were never accounted in the book of accounts of Corporate Debtor. Since there was no genuine purchase, all the transport documents are also prima-facie fraudulent in nature. The books of accounts of Corporate Debtor only

reflected a sum of Rs.6.52 crores worth of purchase instead of Rs.1643.33 crores paid to Magnum. The Adjudicating Authority relied not on one but eight sample cases. In any event, the Appellants did not place anything on record to contradict the findings of the Forensic Audit Report.

103. We may add that there is no presumption that merely because a letter of credit is issued by a bank, the transactions can never be fraudulent. Even otherwise, a fraudulent transaction can be carried out by a valid letter of credit issued by a bank. The Forensic Auditor had carried out their audit after compiling documents from the Corporate Debtor as well as relevant Banks.

104. There is no violation of principles of natural justice as the Appellants filed their replies and were duly heard by the Adjudicating Authority. The Respondent's application has specific averments against the Appellants who were Managing Directors of the Corporate Debtor. It is the Appellants who failed to rebut the allegations or place on record any material to contradict the findings of the Forensic Audit Report and the averments in the application. The Appellants are not "any individual" but were Managing Directors of the Corporate Debtors who had foreseen the day to day operations of Corporate Debtor.

105. Thus, we are not impressed with the arguments of the Appellants that such huge payment to Magnum either through LC or through direct payment, were done in ordinary course of business since no documentations could be brought out to establish that these transactions were genuine. Further, the Appellants

could not substantiate any purchase documents or transportation receipt or related document to prove the same.

106. Based on above detailed analysis, we do not find any error in the Impugned Order. The Appeal is devoid of any merit and stand rejected. No cost. I.A., if any, are closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim