

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**

**(Appellate Jurisdiction)**

**Comp. (AT) (CH) (Ins) No. 357 / 2022 & IA/814/2022**

**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)**

**(Arising out of the Impugned Order dated 01.07.2022 in**

**IA(IBC)/591(CHE)/2021 in IBA/1424/2019**

**passed by the 'Adjudicating Authority' (National Company Law Tribunal', Division Bench – II, Chennai)**

**In the Matter of:**

Mrs. Renuka Devi Rangaswamy,  
Resolution Professional of  
M/s. Regen Infrastructure and Services Private Limited  
No.9, Arthi Illam, 3<sup>rd</sup> Street,  
Jothi Nagar,  
Uppillipalayam (Post),  
Coimbatore – 641 015.

... Appellant

v.

1. M/s. Regen Powertech Private Limited,  
Having its Registered Office at  
Sivanandam, 1<sup>st</sup> Floor,  
New No.1, Pulla Avenue,  
Shenoy Nagar,  
Chennai – 600 030.  
Rep. by its Resolution Professional  
Mr. Ebenezar Inbaraj
  
2. Mr. Madhusudhan Khemka,  
Suspended Director of  
M/s. Regen Infrastructure and Services Pvt. Ltd.,  
Y-202, Anna Nagar,  
Chennai – 600 040.

3. Mr. Sundaresh Ramanathan,  
Suspended Director of  
M/s. Regen Infrastructure and Services Pvt. Ltd.,  
3A-3B, Sarangapani Street,  
Thiyagaraya Nagar,  
Chennai – 600 017.

... Respondents

**Present :**

For Appellant : Mr. B. Dhanaraj, Advocate

**JUDGMENT**  
**(Virtual Mode)**

**Justice M. Venugopal, Member (Judicial):**

**Background:**

The ‘Appellant’ / ‘Resolution Professional’ / ‘Applicant’, has preferred the instant Comp. App. (AT) (CH) (Ins) No.357/2022, before this ‘Tribunal’, as an ‘affected person’, being dissatisfied with the ‘impugned order’ dated 01.07.2022 in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai).

2. The ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai), while passing the ‘impugned order’ dated 01.07.2022 in IA(IBC)/591(CHE)/2021 in IBA/1424/2019 at Paragraphs 34 to 36, had observed the following:

34. *“The Applicant in the present case has miserably failed to prove the dishonest intention of the Respondents to defraud the creditors. It was submitted that 2.03.36 hectares of land in the registration District of Morbi in Gujarat State was purchased with RISPL funds of Rs.58,25,050/- for RPPL and the said amount has been transferred from the RISPL’s current account in favour of the seller farmer. It is required to be noted that a transfer of assets within the group companies per se would not constitute ‘fraudulent trading’ as stipulated under Section 66(1) of IBC, 2016. In the present case, the reason given by the Respondent in respect to transfer of assets among its group companies appears to be plausible and cannot be brought under Section 66 (1) of IBC, 2016. Only allegations have been made by the Applicants and no documentary proof has been filed in support of the same, to show that the business of the Corporate Debtor was carried out by the Respondents with a dishonest intention and to defraud the creditors.*

35. *Further, it is also a fact borne on record that the Applicant has also not served the copy of the entire Transaction Audit Report to the Respondents, which left them in lurch and to answer to the contentions raised by the Applicants. In this connection, reliance was placed upon the decision of the Hon’ble Supreme Court in the matter of **T. Takano – Vs- Securities and Exchange Board of India &Anr;** (2022 SCC OnLine SC 210), wherein the Hon’ble Supreme has held that fraud is a sensitive and serious allegation and the authority claiming such allegation is duty bound to provide the copies of the report concerning the allegations even before issuing the Show-cause notice. Further, it has been held that non-disclosure of such reports is not in compliance with the principles of natural justice before the final decision is arrived at. Therefore, non-disclosure of the report of the transaction audit conducted by the RP of the Corporate Debtor is sufficient*

*for this Tribunal to dismiss the present application since it amounts to gross violation of principles of natural justice.*

*36. Thus, the Applicant has not made a case of fraud or dishonest intention on the part of the Respondents except making sweeping allegations and hence Section 66 of IBC, 2016 cannot be invoked under such circumstances.”*

and dismissed the ‘Application’, without Costs.

**Appellant’s Contentions:**

3. Challenging the ‘Order of Dismissal’ in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai), the Learned Counsel for the ‘Appellant’ / ‘Applicant’ submits that the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai) had failed to appreciate that there is no ‘Moratorium’, as per Section 14 of the Insolvency & Bankruptcy Code, 2016, in force, against the ‘1<sup>st</sup> Respondent / M/s. Regen Powertech Private Limited’.

4, According to the Learned Counsel for the ‘Appellant’, the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai) had failed to take into consideration the ‘Documents’, i.e., a) Audited Financial Statement for the year ended 31.03.2020; b) Fixed Assets of the Corporate Debtor; c) Bank Statement of the Corporate Debtor;

d) Sale Deed; and e) 'Record of Rights' in the Application, bearing in IA(IBC)/591(CHE)/2021 in IBA/1424/2019.

5. The crystalline stand of the 'Appellant' is that the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) had not considered the 'Relevant Documents' (as mentioned supra), notwithstanding the 'Forensic' and 'Transactions Audit Report'.

6. The 'prime plea' of the 'Appellant' is that the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) should have seen that the 'Sale Consideration' for the purchase of the 'Land' was paid by the 'Appellant' / 'Applicant' / 'RISPL', but the 'Land' was registered in the name of the '1<sup>st</sup> Respondent / M/s. Regen Powertech Private Limited', and further that the 'Respondents' had indulged in a 'Fraudulent Transactions' with an intent to 'Defraud' the 'Creditors' of the 'Corporate Debtor'.

7. The other submission of the Learned Counsel for the 'Appellant' is that the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) had failed to appreciate that the 'Documents' submitted by the 'Appellant' / 'Applicant' establishes the fact that the second and third Respondents, in respect of exercising due 'Pleadings', in

maximising the 'Potential Loss' to the 'Creditors' of the 'Corporate Debtor' had transferred the 'Land' of the 'Corporate Debtor' and 'Registered' the 'Land' in the name of the '1<sup>st</sup> Respondent / Company'.

8. The Leaned Counsel for the 'Appellant' takes a stand that the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) had failed to note that the 'Transfer of Assets' within the 'Group Companies', *per se*, would constitute a 'Fraudulent Trading' / 'Wrongful Trading', as per Section 66 of the Insolvency & Bankruptcy Code, 2016. Continuing further, it is the stand of the 'Appellant' / 'Applicant' that the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) had committed an error in placing 'reliance' heavily on the 'Forensic' and 'Audit Report', without adverting to the 'Statutory Documents', 'Registers', 'Bank Statements', 'Records of Rights' and 'Sale Deed', produced along with the 'Application'.

9. The Leaned Counsel for the 'Appellant' points out that the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) should have seen that the 'Fixed Asset' of the 'Corporate Debtor' had clearly mentioned that the 'Land' is in the name of the 'Corporate Debtor'.

10. While rounding up, the Learned Counsel for the ‘Appellant’ pressed for allowing the instant Comp. App. (AT) (CH) (Ins.) No.357 of 2022, filed by the ‘Appellant’ / ‘Applicant’, by setting aside the ‘impugned order’ dated 01.07.2022 in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, passed by the ‘Adjudicating Authority’ (‘National Company Law Tribunal’, Division Bench – II, Chennai) in the ‘interest of Justice.

11. This ‘Tribunal’, heard the Learned Counsel for the ‘Appellant’, at the ‘Admission’ stage itself, and noticed his contentions.

12. It comes to be known that the ‘Appellant’ / ‘Applicant’ (‘Resolution Professional’ of the ‘Corporate Debtor’ / ‘M/s. Regen Infrastructure and Services Private Limited’ (‘RISPL’) had averred that she moved an Application in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, as per Section 19 (2) of the Insolvency & Bankruptcy Code, 2016, seeking a ‘Direction’ to the ‘Suspended Directors’ / ‘second and third Respondents’ to comply with the ‘various requirements’ of this ‘Resolution Professional’, including submission of particulars (a) RISPL Assets on CIRP commencement Date with a copy of ‘Fixed Assets Register’ (FAR), (b) ‘Original Land Documents’ of RISPL and its ‘wholly owned subsidiaries’ with ‘Index of Land Description’, including ‘Leased Land’, ‘Survey Number’, ‘Registered

Document Number', name in which registered, Name / Address and 'Related Document' of the 'Power of Attorney', if the 'Land' is not yet registered in Companies Name, Book Value, Details of 'Right to Way' with documents and (c) RISPL Lands in Inventory and Manual.

13. It is the stand of the 'Appellant' / 'Applicant' that 'pending determination' of the 'aforesaid Application' and procurement of the 'Fixed Assets Register', the 'Appellant' / 'Applicant' had perused the 'Financial Statements' of the 'Corporate Debtor' including the 'Balance Sheet' as on 31.03.2020 and the 'Balance Sheet' reflects the details of the 'Land Assets' of the 'Corporate Debtor', as under:

*“(a) Land in Fixed Assets Category at Rs.7,71,98,398/-*

*(b) Land in Inventory and Manual Category at Rs.44,11,76,094/-”*

and that the break-up for the 'Lands' in 'inventory' and 'manual', reveal that various lands situated within the different locations of Tamil Nadu, Gujarat, Maharashtra and Madhya Pradesh were purchased by the 'Corporate Debtor' / 'RISPL'.

14. The plea of the Learned Counsel for the 'Appellant' / Applicant' is that 2.03.36 hectares of 'Land' in the 'Registration District' of Morbi in



Gujarat State was purchased with 'RISPL' funds of Rs.58,25,050/- (including 'Stamp Duty', 'Registration Charges' etc.,) in February and March 2017 and that the said sum of Rs.58,25,050/- was transferred from RISPL's SBI CC A/c. No. 31486176855 in favour of the 'Seller Farmer'. Furthermore, it is represented that the 'Appellant' / 'Applicant' found that 'no Documents' were available in the 'Records' of the 'Corporate Debtor' and that the 'Assets' were to be traced. In fact, the second and third Respondents (Suspended Directors) had never given these details to the 'Appellant' / 'Applicant', in her endeavours to procure the 'Asset' details of the 'Corporate Debtor'. Besides this, the '1<sup>st</sup> Respondent' / 'M/s. Regen Powertech Private Limited', is a 'Related Party' of the 'Corporate Debtor', by means of being the 'Holding Company' of the 'Corporate Debtor', and having a 'Common Directorship' (the second and third Respondents).

15. The Grievance of the 'Appellant'/'Resolution Professional'/'Applicant' is that she had arranged to secure the 'Certified Copy' of the 'Registered Sale Deed' from the 'Sub Registrar Office' of Mamlatdar, in the 'State of Gujarat', in particular to the 'Assets'. Also, it was found that, although, the funds were paid to the 'Seller' / 'Farmer', directly from the 'Accounts' of the 'Corporate Debtor', M/s. Regen

Infrastructure and Services (P) Ltd. (RISPL), the 'Sale Deed' was 'Registered' in the name of the `1<sup>st</sup> Respondent / M/s. Regen Powertech (P) Ltd.', instead of the same being 'Registered' in the name of the 'Corporate Debtor'.

16. It is represented on behalf of the 'Appellant' that the aforesaid fact, coupled with the 'Documents' were placed before the 'Committee of Creditors' in their 'Sixth Meeting' on 02.02.2021 and discussions were held at length, which mentions the 'Transactions of Rs.58,25,050/-, which connected land is registered, in the name of `RPPL'. Indeed, no explanations or clarifications were provided by the second and third Respondents. In reality, in the 'Forensic' and 'Transactions Audit Report' dated 30.03.2021, the said 'Transactions' was pointing out that the 'Books of Accounts' are not reliable and that no 'supporting Documents' were found, in respect of the entries in SAP, recommending 'legal action' against the second and third Respondents. Later, in the 'Seventh' and the 'Eighth Committee of Creditors Meetings', that took place on 26.04.2021 and 06.05.2021, respectively, the matter was deliberated upon and based on the advice of the 'Committee of Creditors', the 'Appellant' / 'Applicant' was instructed to file 'Petitions', in recovering the said 'Land', etc.

17. It is the version of the 'Appellant' that earlier she had filed IA/487(CHE)/2021, in terms of the ingredients of Section 66 of the Insolvency & Bankruptcy Code, 2016 against 'M/s. Lakshmiranga Perumal Renewable Energy (P) Ltd.' ('Related Party') in its name, Land measuring 21.35 Acres, in the Morbi Registration District, Gujarat State, were transferred in an illegal manner, with the knowledge and consent of the second / third Respondents and further that 'RISPL' Books, reflected this aspect in 'Inventory & Manual Caption'.

18. The forceful stand of the 'Appellant' is that the hurdle in identifying 'RISPL Assets', among the unpredictable transactions and circumstances, 'fair disclosure of Assets', not belonging to the 1<sup>st</sup> Respondent, but to its 'Subsidiary' / 'RISPL', is to be furnished by the 'Resolution Professional' of the '1<sup>st</sup> Respondent' / 'M/s. Regen Powertech Private Limited'.

19. On the side of the 'Appellant', a contention is raised that the conduct of the 'Suspended Directors' of the 'Corporate Debtor' from the commencement date of the 'Corporate Insolvency Resolution Process' ('CIRP') had not furnished the 'necessary requisite details' / 'Documents', as prayed for, by the 'Appellant', and the silence of the second and third Respondents affirm their role in the 'Business of Corporate Debtor', with an

intention to 'defraud' the 'Creditors'. Apart from that, the 'Suspended Directors' of the 'Company' / 'RPPL' ('Holding Company') in 'Corporate Insolvency Resolution Process', from 09.12.2019.

20. The categorical averment made by the 'Appellant' in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) is that the 'Sale' registered in the name of 'RPPL' ('Holding Company'), instead of 'RISPL', when direct funds 'Transfer' was made by the 'Corporate Debtor' to the 'Farmer' was contemplated by the 'Respondents' in a wilful manner, with a 'malafide intention' for satisfying a 'fraudulent purpose'.

21. The submission of the 'Appellant' is that in reducing the 'Loss' to the 'Creditors' of the 'Corporate Debtor' was not exercised in a 'conscious manner' by the 'Suspended Directors' of the 'Corporate Debtor' / 'RISPL'. Furthermore, in as much as the '1<sup>st</sup> Respondent / M/s. Regen Powertech Private Limited', was knowingly a party to the carrying on all businesses of the 'Corporate Debtor', by means of 'Transferring' the Corporate Debtor's funds towards purchase of 'Agricultural Land' and 'Registering' it, in the name of 'Holding Company' / 'Related Party' is an improper one and untenable in 'Law'.

### **Contents of 2<sup>nd</sup> & 3<sup>rd</sup> Respondents' Reply:**

22. Before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai), the second and third 3<sup>rd</sup> Respondents, had filed a 'Reply' to IA(IBC)/591(CHE)/2021 in IBA/1424/2019, wherein it was mentioned many other things that the 'Corporate Debtor' and the `1<sup>st</sup> Respondent / M/s. Regen Powertech Private Limited' have several 'Subsidiaries' / 'Entities', which comprise the 'Regen Group'.

23. The stand of the second and third Respondents, before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai), as evident from their 'Replies', indicate that depending upon the 'Business Requirements' and various 'Rules and Regulations' prevailing at that point of time, in numerous stages, the 'Lands' were required either by the 'Appellant Company' / 'Subsidiary Company', because each 'State' had different 'Rules'. As a matter of fact, the `1<sup>st</sup> Respondent / M/s. Regen Powertech Private Limited / Holding Company' of all Companies, it was the 'Prime Holding Company', many times for the 'most Long Term Assets'.

24. On behalf of the second and third Respondents, a plea is taken, before the 'Adjudicating Authority' (in its 'Reply' to IA/591/IB/2021 in IBA/1424/2019) is that in the 'State of Gujarat', a mandatory condition was that, the 'Land' ought to be 'owned' / 'Leased' by an individual, making an 'Applicant' for 'Eviction Approval'. According to the second and third Respondents of all 'Transactions' between the 'Companies' as well as the 'Assets' details were all maintained in a 'complete transparent manner' on an 'SAP' system (including the Fixed Assets Register) and 'Intra Group Transaction' were also maintained in 'SAP'. In fact, there was no 'Fraudulent Transaction', as averred by the 'Appellant'.

25. According to the second and third Respondents that all the 'Transactions' of the 'Corporate Debtor' and the '1<sup>st</sup> Respondent / M/s. Regen Powertech Private Limited', were added every year with a particular focus on 'Related Party Transactions' (being the issue in IA(IBC)/591(CHE)/2021 in IBA/1424/2019) and not 'one clarification' was made in respect thereof and this indicates that the 'Transactions' are legitimate one.

26. The 'Prime' stand of the second and third Respondents, before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) is that the 'Two Resolution Professionals' have

complete control over the 'Employees', 'Records' and 'Books of Accounts' and among them, they have to find a way to give access to each, they need.

27. As a matter of fact, it is the case of the second and third Respondents that everything in both the Companies shall benefit with the knowledge of the respective 'Bankers' and the 'Resolution Professionals' can refer to the relevant 'Documents', being available at the 'Registered Office' of both the Companies. For any clarification, relating to the 'Transaction' questioned and the same were not in their possession.

28. The second and third Respondents in their 'Replies' to IA(IBC)/591(CHE)/2021 in IBA/1424/2019, before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) had categorically mentioned that on perusal of the 'Statements of Accounts' of the 'Corporate Debtor', at the relevant point of time, will exhibit as to how the 'Amount' was received from 'RPPL' and further it would disclose the 'Amounts' received by the 'Corporate Debtor' from the 'Regen customers', till date. Also, the second and third Respondents do not have any 'Access' to the 'Records' and only the 'Appellant' / 'Applicant' and the '1<sup>st</sup> Respondent' / 'Resolution Professional' are in possession of the same and, therefore, the IA(IBC)/591(CHE)/2021 in IBA/1424/2019, filed by the 'Appellant' / 'Applicant' is liable to be 'dismissed'.

29. This 'Tribunal' relevantly points out that the 'Appellant' / 'Applicant' had filed IA(IBC)/591(CHE)/2021 in IBA/1424/2019, before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) under Section 25 of the Insolvency & Bankruptcy Code, 2016 and 66 of the Insolvency & Bankruptcy Code, 2016, in respect of 'Fraudulent Trading' / 'Wrongful Trading'. Indeed, Section 23 of the I & B Code, 2016, provides for the 'Resolution Professional', to conduct 'Corporate Insolvency Resolution Process'. Section 25 of the Insolvency & Bankruptcy Code, 2016, speaks of a 'Resolution Professional', to conduct 'Corporate Insolvency Resolution Process', in 'managing the affairs of the 'Corporate Debtor', during the 'Resolution Process' period and not at a subsequent point of time.

30. It must be borne in mind that whenever a 'Fraud' on a 'Corporate Debtor' is committed, in the course of carrying 'business', it does not necessarily mean that the 'business' is being carried on with an intent to 'defraud' the 'Creditors'. In this connection, this 'Tribunal' pertinently, points out that if the 'Directors' of a 'Company' had acted on a bona-fide belief that the 'Company' will recover from its 'Financial Set Back' / 'Difficulties' / 'Problems', then, it will not be liable for the 'Act' / 'Offence' of 'Fraudulent Trading', in the considered opinion of this 'Tribunal'.



31. A 'Director' of a 'Company', can be proceeded against, for a 'Wrongful Trading', on account of 'Negligent Failure of Management'. 'An Individual', knowingly being a 'Party' to a 'Fraudulent Trading' by the Company concerned, may be subject to the 'Proceeding'.

32. To put it succinctly, a 'High Level Proof', is very much required in regard to a 'Fraudulent Intent'. Even for an 'Isolated' / 'Single Fraud', against an 'Individual', the action, in 'Civil Wrong' (Tort) will lie. Furthermore, a 'Creditor', who was 'Defaulter' has a 'viable', 'effective', an 'efficacious', 'alternate remedy' in 'Civil Law'. In this connection, this 'Tribunal', pertinently points out that it is not open to the 'Directors' of a 'Company' accused of 'Fraudulent Trading' to allege that the 'Company's Claim' for recovery in 'Tort', are barred.

33. The 'Yardstick' / 'Tape' i.e., to be pressed in to service to determine, the 'Liability', is whether a 'Director' had exercised the 'General Knowledge', 'Skill' and 'Experience', to be expected of a person, in carrying out the functions of his duties, as per decision 'In re Produce Marketing Consortium Ltd. 1989 BCLC 520'. The aspect of 'Fraud' is the cementing platform for a 'Liability'. An element of 'Dishonesty', is to be 'Proved' and the 'Aspect of Dishonesty', cannot be inferred, when the 'Conduct of the concerned Individuals' is 'Receptive' of more than one

explanation, as per decision 'In re M. Kushler Ltd., reported in 1943 Ch D 248 (CA)'.

34. At this juncture, this 'Tribunal' worth recalls and recollects the decision of the Hon'ble High Court of Kerala, in the matter of South India Paper Mills Pvt. Ltd. v. Sree Rama Vilasam Press Publications (P) Ltd., reported in (1982) 52 Comp Cas 145 (Ker.), whereby and whereunder at Paragraph 10, it is observed as under:

*10. "This is a far cry from the " false representations " or the " false pretence " alleged in the affidavit, and I have not been referred to any authority to hold that the carrying on of business after the presentation of a winding-up petition, without disclosing the pendency of the proceedings, should by itself be presumed to be fraudulent. Mr. Vyasani Potti argued that where such presentation is actually followed by a winding-up order, even if it be nearly four years later as in this case, the effect of it is to hold that the company was unable to pay its debts at the time the petition was presented, and that the directors should be presumed to know even at that time that there was no reasonable prospect of repayment. A proposition so wide has not received judicial recognition so far. A company may actually be insolvent at a given time; but its directors may bona fide hold a different view. Even in a case where they are aware of the true position, they may still think that all was not lost and that they would be able to stem the rot by further borrowings and improving the business. In re F.L.E. Holdings Ltd. [1967] 1 WLR 1409 ; [1968] 38 Comp Cas 214 (Ch D) is a case in point. Mr. Brown who was in de facto control of the company had borrowed some amounts from a bank in July, 1965, by deposit of title deeds. But the mortgage was not registered. By September, 1965, two other creditors had obtained*

*decrees against the company and it was fairly clear that it had become insolvent. Thereafter, he gave a legal mortgage to the bank by registering the charge and this transaction was attacked as a fraudulent preference. Pennycuick J. held that there was no fraud at all because Mr. Brown had faint hopes that by keeping good faith with the bank he could get further advances from it to revive the company. As already seen from Exs. A-1 and A-2, the company was indebted to the applicant to the tune of Rs. 28,000 even before winding up had commenced in January, 1973. During the year 1973, the company purchased paper worth Rs. 9,496 but paid Rs. 15,486 to the applicant. That is, during the first year after the commencement of winding-up, it paid not only the full value of its purchases, but something more. Exhibit A-4 indicates that paper was supplied to the company only once during 1974, i.e., in the month of June; and by that time the outstandings had been brought down to around Rs. 11,000. No supply was made at all in 1975, but still the company paid Rs. 7,760 during that year. These facts do not fit in with a presumption that the directors of the company were aware, at the time the purchases were made, that there was no reasonable prospect of repayment at all. The inference referred to by Maugham J. in William C. Leitch Bros.' case [1932] 2 Ch 71 (Ch D) is one to be drawn when knowledge on the part of the directors is shown to exist; it is not an inference to be drawn about such knowledge itself.'"*

35. It is the 'Obligatory Duty', on the part of the 'Appellant' to prove the subjective satisfaction of this 'Tribunal' that 1) 'An Individual', must be knowingly carrying on the business with the 'Corporate Debtor', 2) Such an 'Individual', ought to have a 'Dishonest Intent', to 'Defraud' the 'Creditors'.

36. No wonder, the ingredients of Section 66 (1) and 66 (2) of the Insolvency & Bankruptcy Code, 2016, operate in a different field. It must be borne in mind, that for 'Fraudulent Trading' / 'Wrongful Trading', 'Relevant Facts' / 'Acceptable Materials', are to be pleaded by a 'Party', by providing requisite 'details' / adequate 'facts, to fall within the parameters of Section 66 of the I & B Code, 2016.

37. In the instant case on hand, this 'Tribunal', points out that the second and third Respondents had repudiated the Appellant's plea, in their 'Replies', before the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, by taking a clear cut stand that depending on the 'Business' requirement and numerous 'Rules and Regulations', at that point of time, in different States, 'Lands' were acquired either by the 'Appellant Company' or the 'Subsidiary Company', at each State had different 'Rules' and it was a mandatory condition of the 'State of Gujarat' that the 'Lands' should be 'Owned' or 'Leased' by the person making such an 'Application' for 'Evacuation Approvals' and in fact, the 'Lands' were acquired either by the 'Appellant Company' or the 'Subsidiary Company', but 'primarily', for the benefit of 'Regen Group' and added further, all 'Transactions' between the 'Companies' and the 'Asset' details were maintained in a 'Transparent

Manner' of `SAP System' (including the `Fixed Asset Register') and therefore, there was no `Fraudulent Transaction'.

38. Also that, it is the plea of the `Respondents' that they had not derived any gain in a personal manner, from any such transactions and any benefit derived that was always received and retained within the `Regen Group'. Therefore, in the light of the definite stand taken by the `Respondents' as mentioned in the preceding paragraph, this `Tribunal, is of the earnest opinion that a `Transfer of Asset' among / within the `Group Companies', will not partake the character of a `Fraudulent Trading'/'Wrongful Trading', in the teeth of the ingredients of Section 66 (1) of the Insolvency & Bankruptcy Code, 2016.

**Result:**

39. Be that as it may, in the light of detailed upshot, this `Tribunal', on going through the `impugned order' in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, passed by the `Adjudicating Authority' (`National Company Law Tribunal', Division Bench – II, Chennai) dated 01.07.2022, keeping in mind the facts and circumstances of the case and the stand taken by the respective parties, comes to a `Resultant Conclusion' that the `Transfer of Assets' among the `Group Companies' *ex-facie* is not a

'Fraudulent Trading', as per Section 66 (1) of the Insolvency & Bankruptcy Code, 2016. Moreover, because of the fact that all 'Transactions' between the Companies as well as the 'Asset' details were maintained in a 'Transparent Manner' on an 'SAP System' (including the 'Fixed Assets Register') and further the 'Transactions' of the 'Corporate Debtor' and the '1<sup>st</sup> Respondent' were 'Audited', every year, the 'Plea' of 'Fraudulent Trading' as projected by the 'Appellant' / 'Applicant' is not proved, to the subjective satisfaction of this 'Tribunal', in a 'convincing manner'. Apart from that, mere 'Averments' / 'Allegations' made in IA(IBC)/591(CHE)/2021 in IBA/1424/2019, before the Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai) are not good enough to exhibit that the 'business' of the 'Corporate Debtor' was carried out by the 'Respondents' either with a 'mala-fide intent' for achieving a 'Fraudulent Purpose' or with a 'dishonest intent' to 'Defraud' the 'Creditors'.

40. Looking at from any point of view, this 'Tribunal', comes to an inevitable and irresistible conclusion that the view arrived at by the 'Adjudicating Authority' ('National Company Law Tribunal', Division Bench – II, Chennai), in dismissing IA(IBC)/591(CHE)/2021 in IBA/1424/2019, does not suffer from any 'material irregularity' or 'patent

legality’, in the `eye of Law’. Consequently, the ‘Appeal’ is devoid of merits.

In fine, the instant Comp. App. (AT) (CH) (Ins.) No. 357 of 2022 is ‘Dismissed’. No Costs. The connected IA/814/2022 (for ‘Stay’) is Closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Naresh Salecha]**  
**Member (Technical)**

10/10/2022

ghk/tm