THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA No.4565 of 2024

Under Section 66 of Insolvency and Bankruptcy Code, 2016

Shekhar Arvind Parkhi Resolution Professional For M/s. Green India Building Systems and Services Private Ltd.

...**Applicant**

V/s

Mr. Arun Shenoy and Anr.

...**Respondent**

In the matter of

C.P.(IB) NO. 998 (MB) OF 2023

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

...Petitioner

V/s

M/s. Green India Building Systems and Services Private Ltd.

...Respondent

Order delivered on: 13.08.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Ms. Pinki.

For the Respondent : Mr. Kunal Mehta and Aviral Jain.

ORDER

1. This Application IA 4565/2024 was filed by Mr. Shekhar Arvind Parkhi (Applicant), the Resolution Professional of M/s. Green India Building Systems and Services Private Ltd. ("Corporate Debtor") against the Mr. Arun Shenoy and Mr. Mandar Kaprekar, both directors of Corporate Debtor on commencement of Corporate Insolvency Resolution Process ("CIRP") and referred as Respondent No. 1 and 2 respectively hereinafter, under Section 66 of The Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:

   a. *Allow the present application.*
   b. *Pass an order declaring the transaction entered by the Board of Directors (power suspended) as summarized in Page no. 11 to Page no. 18 as transactions under Section 66 of the Code declaring the transaction as null and void and reverse the effect of said transaction.*
   c. *Pass consequential directions against Respondents to contribute the amount of Rs. 7,18,52,883/- to the asset of the Corporate Debtor along with an interest as may be deemed fit by the Adjudicating Authority from the date of default till the time of refund of the amount to the Corporate Debtor.*
   d. *Pass directions under Section 69 of the Insolvency and Bankruptcy Code, 2016 against the respondents for deliberately defrauding the Creditors of the Corporate Debtor and siphoning/diverting funds/assets/ property of the Corporate Debtor.*

e. *Condone delay of 43 days from 22.06.2024 to 15.07.2024 caused due to delay in receiving Bank Statements from the Bank Authorities / Suspended Directors and therefore delay in receiving PUFE transaction Audit Report.*

f. *Pass any order or further directions as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice in favour of the applicant and against the Respondents.*

2. An application in terms of the provisions of section 7 of the Insolvency and Bankruptcy code 2016 ("Code") read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was filed before this Tribunal and the same was admitted vide order dated 05th January, 2024 of this tribunal appointing Shekhar Arvind Parkhi as the Interim Resolution Professional of Corporate Debtor to carry on CIRP in this case and moratorium in terms of Section 14 of Code commenced.
3. The order dated 05.01.2024 was recalled and this Tribunal re-admitted this application vide order dated 24.01.2024, the was re-admitted appointing Shekhar Arvind Parkhi as the Interim Resolution Professional of Corporate Debtor, who was later confirmed as Resolution Professional by the Committee of Creditors on 04th February, 2024, to carry on CIRP in this case and moratorium in terms of Section 14 of Code commenced.
4. The applicant appointed M/s M. Ali & Co. (Chartered Accountants), New Delhi, as Transaction Auditor for the Corporate Debtor, pursuant to decision of CoC in its meeting held on 1.4.2024 in this regard, to carry out a review of financial transaction of Corporate Debtor under section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016 to be carried out for a period which covers FY 2014-15 to FY 2019-20.
5. The Applicant sought clarifications from the Respondents herein vide emails dated 11th May, 2024 in respect of following queries raised by the Transaction

Auditor. on the Fraudulent Transaction entered by the Corporate Debtor along with queries attached in the mail :

"1. What is Geothermal & Hot Water Co-Gen Product Development?

2. Payments were made to Vendors against purchases and first transferred to CWIP ISB, OMS and then to Geothermal & Hot Water Co-Gen Product Development. Prove the genuineness of the transactions.

3. Why is it written off to the amount of Rs. 20464571.25 in the FY 2016-17? Provide any concrete basis with supporting documents.

4. Name the related parties to whom the payments were made during FY 2014-15 to FY 2019-20 on account of salaries, consultancy fees, Credit Cards payments, expenses etc.

5. Supporting documents for appointments, qualification, job description and fixation of salary of certain personnel having relatively high salaries, allowances, reimbursement etc. and justification for having such high salaries irrespective of financial difficulties. Arun Cherian Thomas, Balasubranian Vishwanathan, Vishawnath Kotkar, Himanshu Wani, Jagdish Gharote, Jiten Grover, Manoj Manve, Ramdas Shenoy, Sanjeevani kamalakar, Sushma Bhede, Arun Shenoy, Mandar kaprekar. Please substantiate relative high salaries to some of the related parties along with documentary evidence of authorisation of such high payments.

6. Purpose and authorisation of writing off/impairment of fixed assets, receivables, payables and sale of fixed assets to various parties including employees and on cash during the FY 2014-15 to 2019-20.

7. Purchases of Fixed assets were made using credit cards of related parties, whether fixed assets were acquired in the name of the company? Substantiate with documentary evidence.

8. Certain advance payments were made to overseas vendors? Reason for such advances. Further, these advances were written off, please provide justification and documentary evidence for such a decision.

9. Water Energy Distributors- Nature and purpose with supporting contract/evidence.

10. Contracts/agreements for Professional fee payments made to GIBBS PTE Limited- Investment w/o- Reason and documentation.

11. Company has a significant number of Laptops (Based on values in the Books), irrespective of this company is paying rental charges to Laptop and PCs- Reason and authenticity of such payments."

6. The clarifications were provided by the Respondents vide email dated 15th May, 2024.
7. The Transaction Auditor submitted its report on 24th June, 2024 identifying following transactions as fraudulent under S.66 of Code :

Sr. No	Particulars	Amount (in Rs.)
A.	Writing off of Fixed Assets	2,46,48,804
B.	Writing off of Inventory	4,72,04,079
	TOTAL (in Rs.)	Rs. 7,18,52,883/-

8. It is stated in the Application that –

(a) based on the report submitted by the Transaction Auditor, the Applicant determined various transactions which fall under the scopes of Sections 43, 45 & 66 of the Code;

(b) the Statutory Auditors of the Corporate Debtor has reported that the company and its directors have not provided all the supporting documents and adequate explanation/justification regarding transfer of fixed asset to the vendor/third party and writing off inventory, and have failed to give all the substantial relevant evidence to support their reply for clarification to the above queries of the Transaction Auditor;

(c) the said transactions were not made in the ordinary course of the business of the Corporate Debtor and were made with the intent to defraud the creditors of the corporate debtor for fraudulent; and

(d) the fraudulent transaction discussed hereinunder, has been carried out by the Respondents with the sole — of diverting/ siphoning the funds of the Corporate Debtor and thereby dissipating the assets of the Corporate Debtor, to leave little for distribution among the creditors of the Corporate Debtor. Lastly, it is stated that the applicant has formed an opinion that the said transaction as detailed above has been carried out by the respondents with intent to defraud creditors of the Corporate Debtor.

Reply on behalf of the Respondents

9. The Respondents have filed a joint reply dated 9.12.2024 stating that –

(a) Section 66 casts a burden on the Resolution Professional to establish a case of fraud in very specific circumstances, and there have to be specific pleadings which fulfil the requirements of law for a case of fraud having been made out. The fraud has to be proved beyond reasonable doubt;

(b) There is just no independent application of mind on the part of the Resolution Professional and no analysis whatsoever of the contents of the Transaction Audit Report;

(c) As regards write off of the fixed assets, the entire basis of the Transaction Audit Report are observations made by statutory auditor of the Corporate Debtor A.R. Sodha & Co. (Chartered Accountants) for the financial year 2017-18 in its report dated 14th August 2019 and the Statutory Auditor has commented on the management's view that fixed assets will not fetch any value on disposal and that the net realizable value would be considered as zero, by stating that "*We have not been provided with any supporting documents for the basis on which the management has estimated net realizable value of fixed assets and inventories*";

(d) As regards inventory (WIP) write off of Rs. 4,72,04,079/-, the Transaction Audit Report mistakenly claims a write off of Rs.. 4,72,04,079/- (Rupees Four Crore Seventy Two Lakh Four Thousand Seventy Nine only) for financial year 2016-17. There was no inventory write off recorded in the financial year 2016-17 which is apparent from the audited financials of the Corporate Debtor for that year. Rs.4.72 Crores inventory in financial year 2016-17 largely consisted of material, component and services for the Hewlett Packard Enterprise Geothermal System project ("HPE Project") which was awarded to the Corporate Debtor. The inventory comprises work in progress items at the project site such as electrical panels and pipes, all intended for installation of the project execution phase.

10. Heard the Learned Counsel and perused the material on record.
11. Section 66 of the reads as under :

"Section 66: Fraudulent trading or wrongful trading.

*[*]**66.** (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.*

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub- section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation.—For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor."

12. The Applicant has sought condonation of delay in filing of present application, as it has been filed beyond the time limit prescribed under Regulation 35A of CIRP Regulations and has explained the reasons for such delay. In the case of ***Aditya Kumar Tibrewal v. am Prakash Pandey alld Ors. (2022 SCC OnLine NCLAT 142), Hon'ble NCLAT*** has held that the timelines prescribed under Regulation 35A of the CIRP Regulations providing for filing an application for preferential and other transactions, is directory and not mandatory and any action taken by the RP beyond the timelines prescribed under Regulation 35A cannot be held to be non est or void only on the ground that it is beyond the prescribed timeline. Accordingly, we consider it appropriate to condone the delay in filing of present application.
13. The Applicant has sought declaration that the impugned transaction as null and void and reversal of the effect of said transactions in prayer (2), which this Tribunal can not make while passing order in terms of Section 66 of the Code, as held in case of ***Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors. (2025) ibclaw.in 120 SC,*** wherein the Hon'ble Supreme Court held that ""*60. However, in cases of "Fraudulent or Wrongful trading" in respect of the business of the CD as contemplated in Section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, but is empowered to pass orders to the effect*

that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. The Adjudicating Authority in such applications may also direct that the Director of the CD shall be liable to make such contribution to the assets of the CD as it may deem fit, as contemplated in Section 66(2). In case of Fraudulent trading or Wrongful trading, it would be a matter of inquiry to be made by the Adjudicating Authority as to whether the business of CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose". Accordingly, the prayer 2 is rejected.

14. The Applicant has also made prayer for consequential directions against Respondents to contribute a sum of Rs. 7,18,52,883/- to the assets of the Corporate Debtor along with interest, which this Tribunal is empowered to order provided the conditions precedent in section 66 of the Code are met.
15. Section 66(1) of the Code deals with the carrying on business with an intent to defraud creditors or for fraudulent purpose and Section 66(2) deals with failure of directors to exercise due diligence in minimising the potential loss to the creditors of the corporate debtor having knowledge that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor. The Applicant has alleged two transactions pertaining to write off of Assets of the Corporate Debtor. The write off of assets may arise when such assets has ceased to have any economic value or such assets was non-existent since it came into existence. While the first case relates to diminution or erosion of value of assets, which may occur on account of various factors viz efflux of time, change in technology or cessation of its utility to the business of an entity due to changed circumstances, the second case falls within the domain of fraudulent reporting of financial affairs of the entity for some collateral purposes. In neither of case, the write off would fall within scope of Section 66(2) of the Code, as the person in control and management of business of an entity can not do any thing to minimize the losses arising on that account. Accordingly, we

shall proceed to examine the impugned transactions in terms of Section 66(1) of the Code.

16. The first transaction pertains to write off of Fixed Assets amounting to Rs. 2,46,48,804/-, which have been written off over a period of three years i.e. Rs. 2,06,469/- in Financial Year 20156-16, Rs. 2,23,43,492/- in Financial Year 2016-17 and Rs. 20,98,843/- in Financial Year 2017-18.

    a. Fixed Assets schedule for the year ended on 31.3.2016, placed in the Transaction Audit Report, has reported deduction from the Gross Block (Tangible & Intangible) amounting to Rs. 9,41,923/- on account of Disposals/Deletions and corresponding accumulated depreciation amounting to Rs. 7,35,452/- on such disposals, accordingly, there is net reduction of Rs. 2,06,471/- from the Fixed Assets on account of disposal. The audited financial statements for the financial year ended on 31.3.2017, which also contains the corresponding figures for the preceding year i.e. 31.3.2016, shows that the Corporate Debtor has reported a sum of Rs. 80,742/- in its Profit & loss account as "Fixed Assets written off". Thus, only a sum of Rs. 80,742/- has been charged to Profit & Loss account for year ended 31.3.2016 on this account, however, such write off, per se, can not held to be fraudulent considering that these amounts are duly certified and no material has been placed on record demonstrating any adverse comment of the Statutory Auditor reporting such write-off not having been satisfactorily explained.

    b. Fixed Assets schedule for the year ended on 31.3.2017, placed in the Transaction Audit Report, has reported deduction from the Gross Block (Tangible & Intangible) amounting to Rs. 2,61,55,666/- (230,96,944+30,58,722) on account of Disposals/write offs and corresponding accumulated depreciation amounting to Rs. 38,12,174/- (35,08,158+3,04,016) on such disposals (termed as reversal of excess depreciation), accordingly, the alleged net reduction has been computed at Rs. 2,23,43,492/- from the Fixed Assets on account of disposal/write off, however, it appears that the Auditor has missed to also consider Rs. 6,36,984/- being the accumulated depreciation on WEB PMT and reduce the same from the total amount of write off. The audited financial statements for the financial year ended on 31.3.2017, shows that the Corporate Debtor has reported a sum of Rs. 2,58,90,835/- in its Profit & loss account as "Fixed Assets written off". Thus, a sum of Rs. 2,58,90,835/- has actually been charged to Profit & Loss account for year ended 31.3.2017 on account of write off as against Rs. 2,23,43,492/- alleged in the present application. Note 1B(d) "Significant Accounting Policies" forming part of the Audited Financial Statement for the year ended 31.3.2017 discloses that "*1} Tangible assets are stated at cost, less accumulated depreciation and Impairment losses, If any. The cast comprises of the purchase price and any attributable cost of bringing the asset to its working condition for its Intended use. 2} since the ambitious project of the Company with Hewlett Packard India Software Operations Put. Ltd, ("HPE"} was ended up in a failure and it provides a sever set back to its business operation, Company suffered a huge losses and consequent financial crunch due to it. The plant and machinery and other fixed 3ssets relating to this project are neither usable in other project nor they have any realisable value in Market. 3} Hence the Company is compelled to take a decision to write off all these obsolete fixed assets in books of Account." 4} Accordingly fixed assets to the extent of Rs 2,58,90,835.75/- {net of accumulated depreciation) has been written off in the books of accounts."* It is pertinent to refer to the statement of the Statutory Auditor in relation to this write off in Annexure A" to the independent Auditors' Report, which reads as "*2. All fixed assets have not been physically verified by management during the year, but there is a regular programme of verification which, in our opinion, is reasonable having regard to the size of the company and the nature of its assets. The fixed assets worth Rs. 2,58,90,836/ have been written off as the assets,* *being on third party locations, are not realizable. The same has been accounted for in the books of accounts…………*" These facts clearly shows that the decision to write off was taken on basis of erosion in the economic value of such assets and such value having become NIL in the opinion of the Management, which has not been disputed by the Statutory Auditor. The Transaction Auditor in his Report has only expressed suspicion in this relation while stating that "*it is practically implausible for fixed assets valued at Rs. 2,46,48,804 to have no residual value, even as scrap. This raises suspicions of potential irregularities, potentially falling within the scope of Section 66 of the Insolvency and Bankruptcy Code, 2016.*" Neither the Transaction Auditor nor the Applicant, herein, has carried out any due diligence or verification in relation to the statement appearing in the Audited Financial Statement for the year ended 31.3.2017 in this regard. Further, no material has been placed on record to demonstrate that the ground of such write off in the year 2016-17 i.e. failure of project of the Company with Hewlett Packard India Software Operations Put. Ltd. making such assets with no economic value, is farce or misleading, particularly when the Transaction Auditor has stated in the Report that "*A significant portion of the fixed assets is comprised of Plant and machinery, with the majority of this being allocated to Geothermal & Hot Water Co-Gen Product Development*." It is pertinent to note that such write off has been found by the Statutory Auditor in accordance with the accepted accounting principles calling for no adverse observation in this relation. There is no evidence on record suggesting if the Applicant or Transaction Auditor had carried out any inquiry with such third parties in relation to existence of those assets or whether those assets were not found in existence at such third party location in an inquiry conducted by them. As regards observation of the Transaction Auditor that how could written off assets could not have scrap value also, it is pertinent to note that the existence of these assets has not been disputed by the Applicant in this application and the Applicant, including the Transaction Auditor, ought have carried out due diligence to find out the scrap value of those assets and the estimated costs to be incurred for disposal thereof before concluding existence of any fraudulent or malicious intent on part of the Respondents in this regard. A transaction, duly disclosed in the Audited Financial Statements, can not be held to be fraudulent merely on the basis of suspicion based on surmises or conjectures. Accordingly, we do not find any merit in the contention of the Application in relation to write off of fixed assets during the year 2016-17 as being fraudulent merely on the ground that such assets have been written off in the books of accounts.

c. As regards write off of Rs. 20,98,843/- in Financial Year 2017-18, this amount represented opening net block of tangible assets carried forward from the previous year and the same has been written off fully in the books of the accounts for the year ended on 31.3.2018. The statutory Auditors in their report to the audited financial statements for the year ended 31.3.2018 have commented that "*The management is of the view that assets fixed assets and inventory will not fetch any value on disposal and accordingly the net realizable value these assets have been considered as zero in the financial statements. The labilities have been stated in the financial statements at the value appearing in the books of accounts instead of the amount that would be payable in case of liquidation of the company since the reliable estimate of the cash flow cannot be made for payment of liabilities. We have not been provided with any supporting documents for the basis on which the management has estimated net realizable value of fixed assets and Inventories. Hence we are unable to ascertain the fair net realizable value on disposal of the Fixed Assets and Inventories which is disclosed as Zero in financial statements. In case of the liabilities, the management is unable to estimate the reliable cash flow for payment of liabilities, we cannot comment on its impact on the financial statements.*" It is not in dispute that such written off assets were carried forward from the preceding year(s) and the Statutory Auditor has certified in the Annexure A to Independent Auditor's Report for the year ended on 31.3.2017 that "*a. The Company has maintained records showing full particulars, including quantitative details and situation of fixed assets; and b. Al fixed assets have not been physically verified by management during the year, but there is a regular programme of verification which, in our opinion, is reasonable having regard to the size of the company and the nature of its assets……….*". The Statutory Auditor has only commented in its Audit Report for the year ended on 31.3.2018, the year in which the assets have been written off, expressing their inability to ascertain the realizable value of written off assets. The existence of these assets has not been disputed by the Applicant in this application and the Applicant, including the Transaction Auditor, ought have carried out due diligence to find out the scrap value of those assets and the estimated costs to be incurred for disposal thereof before concluding existence of any fraudulent or malicious intent on part of the Respondents in this regard. A transaction, duly disclosed in the Audited Financial Statements, can not be held to be fraudulent merely on the basis of suspicion based on surmises or conjectures. It is also pertinent to note that the Applicant has not disputed the submission of the Respondents that "*there are several assets currently stored in Badlapur, Maharashtra, which are in the custody of the Applicant*." Accordingly, we do not find any merit in the contention of the Application in relation to write off of fixed assets during the year 2017-18 as being fraudulent merely on the ground that such assets have been written off in the books of accounts.

d. Needless to say, the Applicant shall be at liberty to identify such written off assets to take over possession and control over those assets, after making economic evaluation in respect of realizable value thereof and the estimated costs to be incurred for realizing those assets. The Respondents as well as Statutory Auditors for the relevant year(s) shall provide the complete details of those assets for identification and recoverability.

17. The Applicant has also impugned write off of Inventory (Work In progress) balance of Rs. 4,72,04,079/- in the financial year 2017-18 (incorrectly appears to have been stated as 2016-17). The Corporate Debtor had reported closing balance under the sub-head "Work in Progress" under the head "Inventory" amounting to Rs. 4,72,04,079/- in the Audited Financial Statements for the year ended on 31.3.2017 and that balance was carried forward to the next year as opening balance, as is apparent from the audited financial statements for the year ended on 31.3.2018, however, the closing balance of such Work in Progress has been taken as NIL in those financial statements, thus, it has the effect of charging whole of such value to the Profit & Loss Account. Note 23 to the Audited Financial Statements for the year ended on 31.3.2017 shows that there was a balance of Rs. 99,90,316/-, earlier considered as Capital Work in Progress-HPE were transferred to Work in Progress under Inventory during the year 31.3.2016 and the remaining amount was added to this account head in the financial year 2016-17 making it Rs. 4,72,04,079/- as on 31.3.2017.

    a. The Transaction Auditor has pointed out that this decision is not substantiated with any documentary evidence, neither provided to the independent auditor nor to them; the independent auditor's report highlights the absence of documentation supporting the write-off.; this lack of supporting evidence raises concerns about the validity of the write-off, consequently, the rationale for reducing the inventory value to zero remains unverified and unsupported; and this situation potentially constitutes grounds for reporting under Section 66 of the Insolvency and Bankruptcy Code, 2016, which addresses fraudulent trading and wrongful trading.

    b. The Statutory Auditor has stated in its report to the Audited Financial Statements for the year ended 31.3.2017 under heading "Basis of adverse opinion" that "*3. Work in progress at HPE Bangalore site -. Details of Inventory at customer site has been made available, but could not be* *physically verified. The company was unable to value the site inventory by a professional valuer. The valuation given in financial statements has been provided by the management.*" It has further been stated in their report to the audited financial statements for the year ended 31.3.2018 have commented that "*The management is of the view that assets fixed assets and inventory will not fetch any value on disposal and accordingly the net realizable value these assets have been considered as zero in the financial statements…………."*

c. The Respondents have explained in their Reply that (a) Out of Rs. 4.72 crores inventory in financial year 2016-17, inventory worth Rs. 3.94 Crores was sold for which sales revenue was generated and this is recognized as part of the revenue in the audited books of accounts for the years 2017-18,(b) For the remaining inventory aggregating to a sum of approximately Rs.78 lakhs, the reason why it was not reflected anymore in the inventory is that it had been categorized as inventory as part of work in progress since it represented the installation and commissioning services that the Corporate Debtor was to provide to Hewlett Packard. However, since the project itself could not be completed, the installation and commissioning did not take place. Hence, this payment would never be received by the Corporate Debtor and therefore, it had to be written off.

d. The Applicant, in his rejoinder, has submitted that while the Respondent states that Rs. 3.94 crores were recognized as revenue in the financial year 2017-18, they fail to clarify the reasons behind the Rs. 78 lakhs write off. The assertion that the project could not be completed and that this amount was written off in accordance with accounting standards does not suffice as justification unless supported by corresponding approvals and verifiable records.

e. The Audited Financial Statements for the year ended on 31.3.2018 shows that the Corporate Debtor neither had any inventory of traded goods as on 1.4.2017 nor it made any purchases of traded goods during the year, but the

Corporate Debtor has declared a revenue from 'sale of traded goods' amounting to Rs. 3,16,53,955/-. Since, there was no inventory, except 'Work in Progress balance' available with the Corporate Debtor during the year 2017-18, we find substance in the contention of the Respondents that this revenue was booked against the value of Work in Progress charged to profit & loss account for the year ended on 31.3.2018. Besides this, the Corporate Debtor has booked a revenue from 'Sale of services' amounting to Rs. 78,94,180/- during the year ended on 31.3.2018, accordingly, the total revenue credited to profit & loss account during the year 2017-18 amounts to Rs. 3,95,48,135/- as against net debit on account of inventory items to the profit & loss account amounting to Rs. 4,72,04,079/-, thus causing a net loss of Rs. 76,55,944/- on this account besides expenses incurred on account of employee benefit expenses for provision of services for which revenue has been credited. It is not the case of the applicant that the amount of revenue booked against the work in progress charged to profit & loss account is understated or there remains some amount to be recovered against the work in progress in future. The Respondents have claimed that the amount of work in progress was arising from the contract with HPE, which came to be aborted later on and the Corporate Debtor had raised invoices for claiming revenue against the work completed in respect of this contract to the extent claimable in terms of contract in relation thereto. The Applicant has not found any discrepancy in the explanation that revenue of Rs. 3.94 crores was booked against the work in progress charged to the profit & loss account, but the applicant has doubted this explanation in his rejoinder on the ground that the Respondents have failed to clarify about the remaining amounts on the basis of corresponding approvals and verifiable records. The Applicant's rejoinder in this relation does not reject the Respondent's argument that the revenue of Rs. 3.94 crores was booked against the work in progress only and has not claimed such explanation to be false. As regards the remainder amount, it needs to be appreciated that the amount of work in progress represents the costs incurred by an entity in execution of a contract, the revenue from which are estimated to flow under the contract and such revenue are estimated to be more than the balance carried forward in such work in progress account. Accordingly, the amount of Rs. 4,72,04,079/- carried forward from the financial year 2016-17 had realizable value not less than such amount, however, the question arises whether amount of revenue actually accruing finally being less than the carrying value of work in progress can lead to a conclusion that the work in progress was stated at inflated value in the financial statement to defraud the creditors. To our mind, it can not be said so as the realisable value is an estimate, which is prone to adjustments or variations. Even the accounting policy disclosed in the Audited Financial Statements in this relation clearly discloses that "*The preparation of the financial statements in conformity with Indian GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and labilities, disclosure of contingent liabilities as at the date of financial statements and the reported amounts of revenue and expenses during the reporting year. Key estimates include estimate of useful life of fixed assets, income taxes, warranty and future obligations. Although these estimates are based upon management's knowledge of current events and actions, actual results could differ from these estimates which are recognised in the period for which they are determined. Any revision to the accounting estimates will be recognised prospectively in the current and future period*". Accordingly, in our considered view, any difference arising on account of estimates used in the financial statement can not result into the characterization of transaction, in relation to which such estimation error occurred, a fraudulent transaction, unless such estimates are demonstrated to be perverse or irrational, which is not the case here. Accordingly, we are of considered view that the impugned transaction of alleged write off of inventory can not held to be fraudulent so as to require an order for contribution from the Respondents.

18. In view of the foregoing conclusions, IA 4565 of 2024 is dismissed and disposed of accordingly.

Sd/-	**Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)