

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/97/KOB/2023

IN

CP(IB)/45/KOB/2021

(Under Section 66 of the IBC, 2016)

In the matter of:

M/s. Savute Textiles Private Limited.

Memo of Parties:

Mr. K. Easwara Pillai, 6th Floor, Amrita Trade Towers, S A Road, Pallimukku, Kochi 682 016.

keaswaran@aaainsolvency.com.

... Applicant.

-Versus-

1.Mr. Venesan Gopinathan, Managing Director (Power suspended) - M/s Savute Textiles (P) Ltd, Vaninilayam, PRA 68, Friends Nagar, Palachuvadu, Kakkanad, Ernakulam, Kerala-682 038. Email: vinesan@gmail.com.

2.Mr. Stephan Logan, Director (Power suspended) of M/s Savute Textiles (P) Ltd 5, Wynfort Lodge, Moira, Crajgavon BT 67 OQT, London. Email: Stephen-logan@icloud.com.

3. Mr. Nazeeb Peediyakkal Abdul Saleem Director (Resigned), Peediyakkal House, Peediyakkal Road, Kochi 682 018. Email: nazeebpa@gmail.com.

(Deleted from the array of Respondents as per vide order dated 25.04.2024 in IA(IBC)/376/KOB/2023)

4. M/s. HST Exports (P) Limited, previously known as Savute Textiles and Clothing Exports Pvt Ltd) SEZ, 1G3 Infra Ltd., Vadamugham, Kangeyam, Palayam, Uthukuly Taluk, Tirupur Dt., Tamil Nadu- 638 751. Email: vinesan@gmail.com.

5. Mr. Satheesh Gopalakrishna Pillai- Share Holder 73-74, Swaroop Park, Near Gandhi Bhavan, Kothrud Pune, Maharashtra- 411 029. Email: satishgpillai@hotmail.com.

6. Mr. Nirav Prakash Mehta- Share Holder Flat No. 16, Akash, Plot No. 8, 90 Feet Road, Ghatkopar, East Mumbai, Maharashtra- 400 077. Email: satishgpillai@hotmail.com.

7. Mr. Syam Satish- Share Holder, 73-74, Swaroop Park, Near Gandhi Bhavan, Kothrud Pune, Maharashtra- 411 029. Email: satishgpillai@hotmail.com.

8. Mr. Venky Nayar- Share Holder, Lake View- 3, Fine Arts Avenue, Kochi, Kerala 682 016. Email: satishgpillai@hotmail.com.

9. Mr. Arumugham- Share Holder, #523, DE. Road, R. S. Puram, Coimbatore, Tamil Nadu- 641 002. Email: vinesan@gmail.com.

10. M/s. Global Latitude Limited, First Floor, 2 Woodberry Grove ODR England to Office 9,

Dalton House 60 Windsor Avenue London
SW19 London N 12 OD. Email: Stephen-logan@icloud.com.

11.M/s. Silent Valley Trading- Mr. Vinayan
(Proprietor), SEZ, 1G3 Infra Ltd.,
Vadamugham, Kangeyam, Palayam, Uthukuly
Taluk, Tirupur District., Tamil Nadu 638 751.
Email: vinesan@gmail.com.

12. American Blue Textiles - Vani Vinesan
(Proprietrix), PRA 68 Vaninilayam, Friends
Nagar, Palachuvadu, Kakkanad, Ernakulam,
Kerala- 682 038. Email: vinesan@gmail.com.

13.Mr. C A Nithin S., Partner of M/s. Sivadas C.
and Company, Chartered Accountants, Door
No. 23/513-4, 2nd Floor, A & P Arcade, Lt. Col.
Niranjan Road, Stadium Bye Pass, Palakkad,
Kerala- 678 013. Email:
admin@chettoorca.com.

... Respondents.

Order delivered on: 25.04.2024

Coram:

Hon'ble Member (Technical)
Shyam Babu Gautam

Hon'ble Member (Judicial)
TMT. Justice (Retd.) T. Krishna Valli

Appearances:

For the Applicant : Mr. Akhil Suresh, Adv.,
For the Respondent Nos. 1,
2,10 to 12 :Mr. Shameem Ahamed, Adv.

For the Respondent No. 3 :Mrs. Liza Meghan, Adv.
For the Respondent No. 4 : Mr. K.S. Ravichandran, PCS.
For the Respondents Nos. 5,
7 and 8. : Mr. Joseph Kodianthara, Senior Adv.,
For the Respondent No. 6 : None appeared, set *ex parte* vide
order dated 22.06.2023.
For the Respondent No. 9 : None appeared, set *ex-parte* vide
order dated 22.06.2023
For the Respondent No. 13 : Mr. K.V. Krishna Kumar, Adv.

ORDER

Per: Coram

1. The present application is filed by the Applicant, who is the Resolution Professional of the Corporate Debtor M/s. Savute Textiles (P) Limited under Section 66 of the IBC, 2016 for the following reliefs: -

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- i. To declare the business agreement dated 02.01.2019 vide Annexure A-10 transferring the entire asset of the Corporate Debtor to the 4th Respondent as null and void.
 - ii. To direct the 4th Respondent to Transfer raw material, finished goods and work-in-progress as on 20.10.2022 worth Rs. 19,15,19,796/- to the Corporate Debtor.
 - iii. Direct the 1st Respondent to pay a sum of Rs. 4,14,40,042/- to the account of the Corporate Debtor on account of advances made by the CD without approval.
 - iv. Direct the 4th Respondent to Transfer a sum of Rs. 2,00,12,550 on account of siphoned off the cash resources of Corporate Debtor.
 - v. Direct the 10th Respondent to deposit a sum of 2,35,87,372/- illegally siphoned out of the fund of Corporate Debtor through bogus and sham trade transactions.
 - vi. Direct the 11th Respondent to deposit a sum of Rs. 2,18,74,525/- illegal siphoned out of the fund of Corporate Debtor through bogus and sham trade transactions.
 - vii. Direct the 12th Respondent to deposit a sum of Rs. 1,66,60,063/- illegally siphoned out of the fund of Corporate Debtor through bogus and sham trade transactions.
 - viii. Direct the 1st and 2nd Respondent Directors jointly and severally liable to make such contributions to the asset of the Corporate Debtor as this Tribunal deems fit and proper.

2. The Brief facts of the case are as follows: -
3. The Applicant appointed Statutory Auditor M/s. Rajiv & Rajagopal Chartered Accountants, to complete the audit of annual accounts of the Corporate Debtor for years 2019-20, 2020-21, 2021-22, and also for an interim period up to 31.10.2022.
4. The equity shares capital of the Respondent No. 4 M/s. HST Exports (P) Limited (previously known as M/s. Savute Textiles and Clothing Exports Pvt Ltd) paid up capital of the company has been increased without any knowledge or information of Corporate Debtor who was a 99% equity shareholder till 31.03.2019.
5. The 99% investment of the Corporate Debtor up to 31.03.2019 has been diluted to 9.52% by increasing the issued and paid equity capital of Respondent No. 4 and allotting the same in the name of Respondent No.2 one of the directors (power suspended) of the Corporate Debtor.
6. The Business Transfer Agreement which Respondent No 1 to 4 is relying on is against the definition of slump sale as per Income Tax Act 2 (42C), Section 2(19AA), and Section 2(47) of Income Tax Act 1961.

7. It is stated that the applicable provisions under the Companies Act under section 180 prescribed for slump sales are not at all followed. Hence, the entire transaction is illegal.
8. The Shareholders of Corporate Debtor were not informed or an EGM was summoned to discuss Business Trading Agreement so the decision taken by minority shareholders Respondent No. 1 and 2 kept the majority shareholder ignorant in the subject. Hence such a decision is not binding on the corporate Debtor.
9. It is stated that the recorded slump sale in the books of account of Respondent No. 4 is against the provisions of section 232 of the Companies Act 2013 and the slump sale is not authorized by the Memorandum of Association of the Corporate Debtor. It is further stated that the transactions mentioned under slump sale are not in good faith required as a mandatory condition in section 180(3) of the Companies Act 2013.
10. It is stated that as per resolution dated 08.01.2019, it was recorded that the Respondent Nos. 1 and 2 who are directors (Power suspended) of Corporate Debtor were authorized to sign the documents of Business Transfer Agreement. But the applicant noticed that the said Business Transfer Agreement is executed on

02.01.2019 one week earlier to this said illegal resolution of 08.01.2019. The Statutory Auditor of HST Exports (P) Limited (Respondent No. 4) (previously known Savute Textiles and Clothing Exports Pvt Ltd) also Vide note forming part of Audited Annual Accounts of Respondent No. (4) HST Exports (P) Limited (previously known Savute Textiles and Clothing Exports Pvt Ltd) mentioned the date of said business transfer agreement as agreement as 02.01.2019.

11. It is also stated that the Respondent Nos. 1 and 2 signed the audited annual accounts of the Corporate Debtor from 31.03.2019 on 15.06.2019 without any note on the slump sale or disposal of any assets of the Corporate Debtor. The fixed asset schedule as authenticated by Respondent Nos. 1 and 2 of Corporate Debtor does not record showing any disposal or impairment of assets as on 31.03.2019. Hence how the Respondent Nos. 1 & 2 who are also the directors of Respondent No. 4 claim the addition to fixed assets and business in the audited Annual accounts is true and fair view of Respondent No.4 HST Exports (P) Limited (previously known Savute Textiles and Clothing Exports Pvt Ltd) which is also signed by Respondent Nos. 1 and 2. The actions of the directors is to defraud creditors of the Corporate Debtor.

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12. It is stated that the Applicant from the additional Bond cum Legal undertaking executed by Respondent Nos. 1 and 4 on 22.01.2019 that the leased factory premises of the corporate debtor have been handed over along with its plants and machinery to Respondent No. 4 M/s. HST Exports (P) Limited (previously known as Savute Textiles and Clothing Exports Pvt Ltd).
13. The Respondent Nos. 1 and 4 made an illegal document in favour of the Asst. Development Commissioner, MEPZ Special Economic Zone, Administrative Office Building, Tambaram, Chennai- 600 045 representing that the name of the Corporate Debtor is changed to the name of Respondent No. 4 (formerly Savute Textiles and Clothing Exports Pvt Ltd). As per this agreement concluded by Respondent No.1 Mr. Vinesan Gopinathan on 05.04.2019, a change of name approval was informed in favour of Respondent No. 4 HST Exports (P) Limited (previously known as Savute Textiles and Clothing Exports Pvt Ltd) with the support of an Additional Bond-cum- Legal undertaking with the Special Economic Zone unit. This wrong representation by Respondent No.1 in the form of Additional Bond cum Legal Undertaking the Corporate Debtor changed the name and Respondent No. 4 and Corporate Debtor are one and same.

14. The Applicant stated that the Respondent Nos. 1,2,4,10,11 and 12 siphoned off huge amount of loan availed from the banks and other internal cash accruals through sham entries fabricated in the account name of the following related parties.

1. Vinesan Gopinathan	Respondent No. 1
2. Global Latitude Limited (Respondent No. 10)	Owned by Respondent No. 2, the director (power suspended) of Corporate Debtor.
3. Silent Valley Trading (Respondent No. 11)	The proprietor is Mr. Vinayan, the brother of Mr. Vinesan Gopinathan, Respondent No. 1, the director (power suspended) of Corporate Debtor.
4. American Blue Textiles (Respondent No. 12)	Proprietrix is Mrs. Vani Vinesan, wife of Respondent No. 1 Mr. Vinesan Gopinathan, the director (power suspended) of Corporate Debtor.
5. M/s. HST Exports (P) Limited (previously known as Savute	90.47% now owned by Respondent No. 2 Mr. Stephen Logan, the

Clothing & Textiles Exports (P) Limited (Respondent No. 4)	directors (power suspended) of Corporate Debtor after its fraudulent dilution in the investment of Corporate Debtor.
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15. It is stated that as per the Independent Auditor's Report of the Audited Annual Accounts of Corporate Debtor as on 31.03.2020 and from the details of financial transactions in accounts of the above five parties in their respective accounts in the books of accounts of the Corporate Debtor. It is stated that all these accounts were used as the conduit to siphon off the loan fund and other cash accruals of Corporate Debtor by Respondent Nos. 1, 2, 4, 10, 11 and 12. It is further stated that the bogus sales invoices were recorded by Respondent Nos. 1, 2, 4, 10, 11 and 12 in their name in the books of account of Corporate Debtor by trade name Silent Valley Traders, American Blue Textiles, Global Latitude Trading Limited etc. and same were discounted against the credit facility of Letter of Credit or venders card credit opened with Canara Bank and ICICI bank. The proceeds of the bills so discounted were siphoned off of company through the payment recorded in Savute Textiles and Clothing Exports Pvt Ltd, the Respondent No. 4.

16. It is stated that the Respondent Nos. 1,2,4,10,11 and 12 were collectively involved in generating bogus purchase entries in the books of accounts of Corporate Debtor. The liability towards bogus purchase created by crediting it to American Blue Textiles account will be transferred to the sales account in total in subsequent years thereby the liability towards creditors was converted into an Income in the profit and loss account. Then to mitigate profit on such bogus sales entry in the Profit and Loss account again fresh bogus purchases were booked in the name of above said Respondents who are all related parties. These bogus purchases and sales entries were not recorded by any receipt issue or movement of any actual or physical stock of materials there it resulted in sham transactions. The bogus purchase and sales transaction is further confirmed as per the Qualified Opinion of the Independent Auditor's Report for the year ended 31.03.2020.

17. It is stated that as per report on the account for the year ended 31.03.2019, the auditor reported as items (2) in Accounting Standards 18 that the purchase and sales transactions between American Blue Textiles and Silent Valley Trading as follows: -

Name of party	Purchases	Sales
American Blue Textiles	20,96,18,508.00	4,93,40,042.00

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Silent Valley Trading	4,93,38,881	21,09,50,645.00
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18. The Applicant found out from the accounts of Corporate Debtor and from the notes forming part of Balance Sheet as on 31.03.2019 that a sum of Rs. 1,76,25,000/- and Rs. 44,42,572/- has been advanced to Respondent No. 1 to purchase land and building in the name of Corporate Debtor but as per documents before Financial Creditor the said assets were purchased in the name of Respondent No. 1 instead of the name of Corporate Debtor. The net amount already siphoned off and remaining as due from such related parties as of 31.03.2021 has arrived as per the ledger and is quantified as below:

Global Latitude Limited Mr. Stephen Logan as Director (Respondent Nos. 2 and 10)	2,35,87,372.00
Silent Valley Trading- Proprietor is Mr. Vinayan, brother of Mr. Vinesan (Respondent No. 11)	2,18,74,525.00
American Blue Textiles- Proprietrix is Mrs. Vani Vinesan, wife of Mr. Vinesan Gopinathan (Respondent No. 12)	1,66,60,063.00
Savute Clothing & Textiles Exports (P) Limited (now HST Exports (P) Limited (Respondent No. 4)	2,00,12,550.00
Director Mr. Vinesan Gopinathan (Respondent No. 1)	4,14,40,042.00
Land	:1,76,25,000.00

Building	: 44,42,575.00	
Bogus trade cash withdrawal:	1,93,72,467.00	
Total		12,35,74,552.00

19. It is further stated that there is no evidence available regarding whether any manufacturing or trading activities happened in the premise of Corporate Debtor in its name beyond 2019-20 even though the annual accounts recorded few such transactions up to 2020-21. It is also stated that Respondent Nos. 1 and 2 informed that all the movable assets of the Corporate Debtor were transferred by a slump sale to the related party entity i.e. Respondent No. 4 HST Exports (P) Limited (previously known as Savute Textiles and Clothing Exports Pvt Ltd). Therefore, the Applicant was not able to exercise any powers contemplated under IBC 17(1) and (2) other than just to visit the leased premises of the factory of the Corporate Debtor where movable assets were located as per information available in the Balance Sheet as on 31.03.2019 of the Corporate Debtor were all fraudulently transferred to Respondent No. 4.
20. The Applicant stated that on verification of ROC records, no company by name Savute Textiles and Clothing Pvt Ltd is registered. In balance sheet and notes forming financial statement misrepresented the former name of the company as M/s. Savute Textiles and Clothing Pvt Limited.

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21. **On 19.05.2023, the Respondent Nos. 1,2,4 & 10 to 12** filed their reply statement and stated that during the year 2013-2014, the company had decided to consolidate its activities, which were earlier undertaken through the multiple job workers into one centralized location and therefore, the company had taken a premise on lease from one Vasthra weavers under the lease dated 30.01.2014 and had also executed a job work agreement with Vastra weavers. During the aid period, the Respondents had come to know about the textile park which was announced by the Kerala Industrial Infrastructure Development Corporation (KINFRA) at the Industrial Estate at Kanjikkode, Palakkad District, Kerala for promoting the textile industries in the State of Kerala. Under the scheme announced, there were a lot of facilities extended to the units that were set up in KINFRA including special bank loan schemes. Therefore, to take advantage of the above scheme, the company decided to set up one additional facility in the KINFRA park at Palakkad and accordingly had taken one building on lease having a built-up area of 6730.27 sq.ft. Simultaneously the company had also entered into a MOU with KINFRA for acquiring 1.2 Acres of land which is adjacent to the leased premises and all these measures were undertaken with the long-term objective of setting up a fully-fledged facility in the state of Kerala in the interest of the Corporate Debtor.

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22. It is stated that the Corporate Debtor had started facing some logistical issues especially in view of the cross-border check post between Tamilnadu and Kerala. Therefore, the company in the commercial wisdom of the then management, had decided to shift the packing and warehousing facility from KINFRA at Palakkad to the nearby places in Erode and Trichengode, in Tamilnadu, especially because, all the other major activities were undertaken in the nearby vicinities. Since the company had a banking relationship with the Canara bank, Kanjikode branch (near KINFRA), the company decided to retain its accounting operations at KINFRA, but surrendered the major portion of the lease premises to KINFRA. It is further stated that since the Corporate Debtor was focusing on the export business and since there were a lot of imports happening to meet the export needs, the company had decided to take the benefits of the Special Economic Zone ('SEZ') schemes and therefore approached the SEZ Developer by name 'IG3 Infra Limited' at Uthukuth, Tamilnadu. It is submitted that, since the company was also having domestic supplies, another unit was set up at a nearby location, by taking premises of lease at Paallagoundalin Palayam to cater to the domestic customers. Thus, the Company had two units, one SEZ Unit for export business and the other for Domestic Supplies. All the major manufacturing facilities were undertaken in the SEZ unit, as required under the SEZ policy, which was going for the export and the domestic operations were managed from the

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- premises at Pallagoundampalayam. All the domestic operation was done through job work arrangements, except for the packing and quality inspection were done at the said premises.
23. The Respondents further stated that, since the company had both domestic as well as SEZ units and since there were common vendors, many times, it happens that there were some wrong billing and accounting errors at the end of its vendors which created certain compliance issues under the SEZ scheme. Therefore, the directors and shareholders of the Corporate Debtors had detailed discussions and deliberations and decided to set up a separate subsidiary company, exclusively for the SEZ operations and decided to move all the SEZ unit-related operations to the newly incorporated subsidiary company and further retain the operations in the parent company.
24. The Respondents stated that the setting up of a new company for the SEZ operation for SEZ business. Therefore, there was a business reason for setting up a new company for the SEZ operation which was agreed by all the directors and shareholders and such a decision was taken in the commercial wisdom of the management. The earlier understanding among the management was that the parent company i.e., Corporate Debtor would hold 30% of the shares and the remaining 70% would be contributed by Mr. Sathish G. Pillai,

Mr. Stephen Logan and Mr. Vinesan Gopinathan (who is the shareholders of the Corporate Debtor) who had come forward to make the additional contributions to enable the newly incorporated company to start its business. The Respondents further stated that a new company was set up under the name and style 'SAVUTE TEXTILES AND CLOTHING EXPORTS PRIVATE LIMITED', vide certificate of incorporation dated 29.09.2018, with an authorized capital of Rs. 10,00,000 and paid-up capital of Rs. 1,00,000. Being the wholly owned subsidiary company of the Corporate Debtor, 99.99% of the shares were allotted in the name of the Corporate Debtor and .01% in the name of the 1st Respondent's wife. It is further stated that after reviewing the prospects of the newly set subsidiary company, it was realized that the export operations had huge growth potential, which required about 15 crores of investment and therefore, various discussions happened between the board of directors and the shareholders. It is also stated that since a board meeting was scheduled on 04.01.2020, a presentation regarding the fund requirement and the expected projections were shared by the 1st Respondent by an email dated 2nd January 2020 to the CFO for forwarding the same to the statutory auditor and to the 5th Respondent who was the shareholder.

25. It is stated that in the Board Meeting dated 04.01.2020, it was in principle agreed that the 3 directors, Mr. Sathish G. Pillai, 5th

Respondent, Mr. Stephen Logan the 2nd Respondent and Mr. Vinesan, the 1st Respondent will bring 70% of the capital and the 30% will be retained by the Corporate Debtor. It is further stated that, even though there was an understanding that, 70% of the fund requirement would be brought in by the above referred directors, it is only the 2nd Respondent who had brought a fund of 10,000 GBP equivalent to Rs. 9,48,000 to the newly incorporated company. While bringing the fund by the 2nd Respondent, he had filed the declarations with the RBI that the fund is brought on a non-repatriation basis.

26. It is stated that no funds were brought in by the other directors of the Corporate Debtor including 5th Respondent, and since the declaration was already filed by the 2nd Respondent that the funds are brought in on non-repatriable basis, the company had no option but to allot equity shares to the extent of the amount brought in by the 2nd Respondent and since the authorized capital was only Rs. 10,00,000, the company had decided to increase the authorized capital to 11,00,000 to accommodate additional investment of 9,48,000 brought in by the 2nd Respondent. The shares were allotted to the extent of 91.8% based on the amount in favor of the 2nd Respondent. That is how the 2nd Respondent's shareholding had gone to 91.8% and the Corporate Debtor's shareholding had come down to 8.2% in the 4th Respondent Company. As per the SEZ

Scheme, no SEZ unit can operate without a manufacturing activity and therefore, the only option available for the Corporate Debtor was to move assets from the Corporate Debtor to the newly formed entity which was undertaking the SEZ operations. It was in that the Business Transfer Agreement dated 2.01.2019 was executed between the Corporate Debtor and the newly incorporated subsidiary company. For avoid confusion among the customers, incorrect billing by the vendors and wrong booking of the purchase and sales orders at the end of the accounting staff. Therefore, such a suggestion for the name change was again in the business interest of the Corporate Debtor and of the shareholders.

27. It is stated that after the Covid-19 Pandemic settled, the SEZ company got a new business opportunity from one of the well-known Linen suppliers, by name, HUAREN LINEN INDIA PVT LTD and one of the suggestions put forward by the business association was to have a name change and accordingly they suggested the name 'HST Exports Private Ltd' which is, in fact, the abbreviated form of HAUREN SAVUTE TEXTILES'. The 4th Respondent Company applied for the name change and changed its name to HST Exports Private Limited vide incorporation certificate dated 08.02.2022. It is further stated that the decision regarding the name change was included as one of the agenda in the Extra Ordinary General Meeting (EGM) conducted on 27.07.2022 and the Corporate Debtor is one of

the shareholders of the SEZ company was also served a copy of the EGM dated 27.07.2022 through the IRP in charge. There was no objection from the IRP of the Corporate Debtor concerning any of the agenda in the EGM notice including the agenda regarding the name change.

28. The Respondent stated that the Applicant had not appointed any Transactional Auditor or any Forensic Auditor in connection with the activities of the company and the so called financial statements and the Audit report relied upon by the Applicant was prepared without any sort of involvement of Respondent Nos. 1 & 2 who were the promoter directors of the Corporate Debtor. The entire financial statements and the audit report for the year 2019-2020 were prepared at the back of these Respondents and no clarification were sought from Respondent Nos. 1 & 2 before the financial statements for the Financial Years 2019-20 & 2020-21 were finalized. The Respondents stated that during the Financial Year 2018-2019, there were some disputes raised by Respondent No. 5, who was a director and the major shareholder concerning the losses and who insisted that such losses had to be borne by Respondent No.1 & 2, being in charge of the day-to-day operations. Even though, Respondent No.1 and Respondent No. 2 had clarified that the losses booked during the Financial Year 2018-2019 were mainly on the account of the write-off of the bad debts which were carried forward from the

previous years, Respondent No.5 was adamant that, a part of such losses had to borne by Respondent No.1 & 2. Since the finalization of financial statements were getting delayed, it was crucial for the Corporate Debtor to get the OD facility with the Canara Bank renewed for which the audited accounts were to be submitted, Respondent Nos.1 & 2, with no other option had to finally agree to make debit entries in the name of related entities, i.e. Respondent Nos.11 & 12 subject to the condition that these debit entries will be corrected in the subsequent financial years. These Respondents stated that, therefore it was very important for the RP to ensure the involvement of the Respondents in the finalization of the financial statements for the financial year 2019-20.

29. It is further stated that in this application the documents including the draft audit reports were prepared at the back of the Respondents and therefore, the reliance placed on such documents in support of the present application filed under Section 66, cannot be accepted as it would amount to violation of the principles of natural justice. Therefore, the audit reports for the years 2019-20 and 2020-2021 which are relied upon by the Applicant for making the allegations cannot be accepted, especially since it is an unsigned document that has been placed on record in support of the application. The Respondent further stated that even concerning the alleged related party transaction, the RP ought to have consulted

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- and discussed with these Respondents before he had formed any opinion and determined the issue of fraudulent transactions.
30. **On 11.07.2023, the Respondent Nos. 5,7 and 8** filed their reply statement and stated that these Respondents invested in the share capital of the Corporate Debtor to the tune of 49.5% of the paid-up capital. The 5th Respondent contributed about Rs. 3 crores from the year 2019 to 2021. It is stated that the 8th Respondent resigned from the Board in October 2019 and the 5th Respondent resigned from the Board on 26.08.2020 as per the MCA records.
31. It is stated that the Share Purchase Agreement was entered into by the 5th Respondent on 21.10.2016 under which on the security of the fixed deposits with ICICI Bank held by the 5th Respondent, Rs. 4,00,00,000/- (Rupees Four Crore) was agreed to be given as loan to the Corporate Debtor at an interest rate of 9.35% to 10%. Later on it was also agreed that on 31.03.2017 additional charges of up to 2% and thereafter, 3% were to be reimbursed to the 5th Respondent. Again, through misrepresentation and undue influence, the 5th Respondent was lured into granting a further loan of Rs.3,70,00,000/-. The said loans were never repaid and a Section 7 application was initiated by the 5th Respondent. The 1st and 2nd Respondents also admitting to their fraudulent activities and

misrepresentation executed an indemnity in favour of the 5th and 8th Respondents.

32. It is stated that this application deals with fraudulent transactions committed by the 1st and 2nd Respondents. Even though the 5th, 7th and 8th Respondents were shareholders in the Company, these transactions were not in the knowledge of these Respondents. It is also stated that the transfer of the assets of the Corporate Debtor to one HST Exports (P) Limited, which is the 4th Respondent. The 5th, 7th and 8th Respondents were completely in the dark about the slump sale and business transfer agreement as the same was done completely ignoring the provisions of the Companies Act whereby no AGM or Board Meeting approves the sale of the same nor has it been recorded in any financial statements of the Corporate Debtor Company. The Business Transfer Agreement is dated 02.01.2019 whereby the entire assets of the Corporate Debtor were transferred to the 4th Respondent. It is further stated that there is no record of slump sales in the audited balance sheet of the financial year 2018-2019. No such slump sale is confirmed by any of the shareholders' meetings or by any AGM.
33. It is stated that to extract investment from the 5th Respondent, the 1st Respondent sent a letter dated 17.03.2023, which is self-explanatory where he apologized for his mistakes and admitted that

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- the investment of the 5th Respondent in the Corporate Debtor Company was completely mishandled and mismanaged by the 1st Respondent and requested for another chance to redeem himself.
34. It is stated that the notice of EGM was not sent to the 5th Respondent and the name change was approved in the said EGM. However, the 5th Respondent who is a major shareholder did not receive the notice and was not present at the voting of the EGM. The tally data and supporting documents were taken as a base for the accounting process from the accountants present at the Corporate Debtor Company at that time and the entire audit was based on the available proof, such as GST records and bank transactions. It is also stated that there is an e-mail thread dated 19.12.2020 from the 2nd Respondent to the 5th Respondent stating that the figures in the Books are wrong as they projected a loss of Rs. 38 Crores.
35. It is stated that the Business Transaction Agreement was signed in January 2019. However, the financials and the Books of Account of the Corporate Debtor for 2018-2019 do not mention the Business Transfer Agreement anywhere and there are no entries regarding the same. It is also pertinent to mention that in the draft financial statement for the year 2019-2020, there is no mention of any Business Transfer Agreement, as alleged. The Business Transfer Agreement only came to light suddenly in the year 2021.

36. It is stated that the machinery and stock in 2019-2020 were fully used by the 4th Respondent, HST Exports Pvt. Ltd. Therefore, the assets of the Corporate Debtor were being used by the HST Exports Pvt. Ltd. The business of the 4th Respondent Company and the Corporate Debtor are the same and the stock of the Corporate Debtor was being used by the 4th Respondent without any proper records and initially in 2020, there was no differentiation of records in place for such business activities. It is also stated that the Auditor of the Company did not acknowledge the Business Transfer Agreement and subsidiary Companies when formed were completely without the approval and knowledge of the statutory auditors and company secretary of the Corporate Debtor.
37. It is stated that the Related Party Transactions were not disclosed to the auditors till 2019 and a perusal of all bank transactions and the audited books and the entries made would clearly show that manipulations have occurred. It is further stated that various manipulations have been made to the Books of Account and bogus entries have been made by the 1st and 2nd Respondents. If the Books of the related party Companies are perused, no physical movement of money or services/ goods will be shown and the Ledgers will not tally and the Companies, American Blue Textiles, and Silent Valley Trading have not filed Income Tax Returns as well.

However, the averment that an amount of Rs. 1,93,22,467/- is not a loan or advance given by the Corporate Debtor to the 1st Respondent is completely false as the money was taken by the 1st Respondent to purchase land in the name of the 1st Respondent and the same was credited to the account of the 1st Respondent.

38. **On 22.05.2023, Respondent No. 13** filed his reply statement and stated that he was not the statutory auditor or in any way connected with either the 1st Respondent or the 4th Respondent during the period that the alleged irregularities had taken place. The statutory auditor resigned from the 4th Respondent only on 10.05.2022.
39. It is stated that the transfer of assets under the Business Transfer Agreement dated 02.01.2019 was entered into during the year ended 31.03.2019, and not during the audit period ended 31.03.2020. During the period under audit, there has been no “impairment of assets” as regards the 4th Respondent. The 4th Respondent was not a subsidiary of the 1st Respondent during the audit period ended 31.03.2020., and there was no need for a confirmation from the Corporate Debtor as is stated in the Application. This Respondent is only appointed as the Auditor of Respondent No. 4 which is only a company in which the Corporate Debtor is a shareholder. Therefore, this Respondent has no machinery jurisdiction or control or is expected to have knowledge

of the affairs or business transactions entered into by the Corporate Debtor. Hence, Section 66 has no application to the Respondent.

40. It is further stated that both sides of the Balance Sheet as on 31.03.2020 are tallying and the total of both sides is accurate and adds up to the figure shown as the total of credit and debit side. The Applicant failed to understand and failed to take note of a negative figure of Rs 3,26,388/- appearing in the balance sheet under the head "Reserves and Surplus" which the Applicant has taken as a positive figure. It appears that the allegation that both sides of the balance sheet are not tallying may be due to the erroneous calculation made by the Applicant. It is also stated that that a very negligible difference of Rupees 1 may also be found in the Balance Sheet which is nothing but an error due to rounding off. Rupees 1 is also not an error because if the decimal figures are added up the difference of Rupees 1 will also be not there and the balance sheet would tally without any difference.
41. It is stated that the allegation that the Statutory Auditor is involved with the preparation of the Financial Statement of the 4th Respondent is without any basis as that job is the responsibility of the Management and not the Auditor. The CIN of the company has not changed due to the change in name of the company and the CIN and the registered office address are mentioned wherever

statutorily required and it's a mere typographical/clerical error in the heading mentioned on the face of the Balance Sheet and Statement of Profit & Loss. It is stated that the Management of the 4th Respondent has pointed out the name Savute Textiles and Clothing Exports Private Limited in Note No. 1. The Corporate Information in the Notes forms part of the Financial Statements. Therefore, there appears to be no deliberate misstatement.

42. It is stated that the Balance Sheet of Respondent No. 4 as on 31.03.2020 has been signed by Respondent No. 1 and one Vanidevi Valsala, Executive Director of Respondent No. 4 holding DIN 08090515. It is further stated that the auditor of Respondent No. 4 has no duty to obtain confirmation from the Corporate Debtor about the alleged business transfer agreement which is entered into in the normal course of carrying on the business as a part of acquiring fixed assets to carry out the manufacturing activities of the company and had no occasion to suspect the validity of the agreement in terms of whether necessary secretarial procedures and approvals had been adhered to by the Corporate Debtor or any other seller party for that matter. The auditor of Respondent No. 4 has no duty to ensure compliance with provisions of various laws of a company (the Corporate Debtor) in which this Respondent has no role. Moreover, as per SA 505, an external confirmation is obtained as audit evidence from an independent third party for obtaining reasonable assurance

on the balances and transactions entered into by the auditee company. Whereas, in this case, the Directors are common in both companies and the audit procedure of obtaining audit evidence through seeking external confirmation from the Corporate Debtor would have no relevance for the want of an independent third party at the other end.

43. It is stated that this Respondent does not know any occasion where an impairment of assets is warranted. The machineries are transferred at the agreed value as per the Business Transfer Agreement and the manufacturing activity and business have been carried by Respondent. No. 4 throughout the year. The Respondent came across no instances where an impairment of assets in the books of accounts of Respondent No. 4 has taken place. The Management has reported their accounting policy on impairment of Assets in Note No 2.9 of Notes forming part of Financial Statements and also had submitted in the Management Representation Letter provided to this Respondent that they have reviewed the carrying value of the assets as on 31 03.2020 and based on their assessment, no impairment is required to be recognized in the books of accounts.
44. It is further stated that the dilution of 99% equity holding of the corporate debtor in Respondent No. 4 to 9.52% equity holding has happened in due course due to the allotment of shares to

Respondent No. 2 against the Share Application Money received by Respondent No. 4 from him and issued of shares to Respondent No. 2. This Respondent was provided with the necessary e-forms filed with ROC and the Resolutions passed to this effect and necessary entries made in the required Statutory Registers during Audit. The fact of change in equity structure and issue of shares have been duly reported in the Financial Statements themselves. According to the professional judgment and knowledge of this Respondent, there was no occasion or a statutory obligation or professional standard mandating reporting any such events about the change in the equity structure of a company that warranted a qualified opinion or reporting requirement except in case there was any material misstatement or disclosure.

45. On 11.12.2023, this Tribunal allowed the Applicant to file the amended rejoinder, subsequently **On 05.09.2023, the Applicant filed his amended common rejoinder** and stated that Regulation 35A of the CIRP Regulations imposes a duty on the Resolution Professional to take measures within the timeline as prescribed. In performance of such duty the public in general has no control including the Corporate Debtor. In event it is held that any action taken by the Resolution Professional beyond the time prescribed in Regulation 35A of the CIRP Regulations is prohibited, it shall cause serious general inconvenience or injustice to the Corporate Debtor.

One of the objectives of the Code is to maximize the assets of the Corporate Debtor. In the event, that the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of the Resolution Process, reach the Court and shall cause great inconvenience and injustice to Corporate Debtor. Hence, the applicant stated that the timeline prescribed in Regulation 35A of the CIRP Regulations is only a directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations.

46. The Applicant stated that though it has been averred that there were errors in raising bills against the unit that had domestic supplies and the SEZ unit, no proof to that effect has been produced along with their counter affidavit. It has been further stated that it was decided to set up a separate subsidiary company exclusively for the SEZ operations and thereafter move all the SEZ-related operations to the newly incorporated subsidiary company. The Corporate debtor held 99.99% shares in the newly incorporated subsidiary up to 31.03.2019 and the same was only the intent of the board as well as the shareholders. However, subsequently, the 4th Respondent's

shares were diluted to 9.52% by fresh issues from new equity of 90.47 % in the name of the 2nd Respondent, and all movable assets and plant & Machinery transferred from the Corporate Debtor by the 4th Respondent leaving only liabilities to Corporate Debtor with an intent to deceive the Financial Creditors. The Respondents have produced minutes of the Board Meeting dated 14.07.2018 but a copy of the same is not reflected in the original minute records handed over to the applicant. Assuming the document to be true, minutes of the Board Meeting dated 14.07.2018 clearly state that respondent No. 4 is to be created as a 100% wholly owned subsidiary of the corporate debtor. Hence, its subsequent dilution is with the clear intention of fraud, the business transfer agreement fraudulently transfers the assets of the Corporate Debtor to the 4th Respondent.

47. It is further stated that the shares of the shares of corporate debtor were diluted and 91.8% of shares were allotted to the 2nd Respondent. It is further admitted that by way of a business transfer agreement the assets of the corporate debtor were transferred to the newly incorporated subsidiary company. The applicant submits that such a business transfer agreement whatever the internal arrangement is a transaction that defrauds the creditors of the corporate debtor including the financial creditors. The 1st Respondent had not intimated any such transfer of assets of the Corporate Debtor to the financial creditors of the Corporate Debtor

especially when the business was carried with funds borrowed from them.

48. It is stated that the Corporate Debtor ought to have prepared the financial statements, and audit reports for the year 2019-20 and 2020-21, and their inaction forced the applicant to step into the shoes of the corporate debtor and complete the same. Had the respondents diligently performed their duties and completed the audits for the aforementioned periods, there wouldn't have been any need for the RP to do so. The applicant further submits that a duty is cast on the Resolution Professional to complete and finalize the audited financials and balance sheets of the corporate debtor with all the materials available to them. Hence the respondents herein have failed to comply with the provisions of the Companies Act and complete the financial statements and audited reports for the aforementioned years and are now estopped from challenging the same prepared by an independent Chartered Accountant in good faith. The applicant apart from raising a vague and ambiguous allegation that principles of natural justice were violated, no specific allegations are seen to be raised against the observations made in the audit report prepared by M/s Rajeev & Rajagopal, Chartered Accountants. The applicant as well as the Chartered Accountant has no vested interest apart from the smooth completion of CIRP process and are persons who are officers of the court. From a mere

perusal of the facts and circumstances of the present case, it can be seen that the entire business as well as the assets of the corporate debtor has been transferred to a new entity i.e., the 4th Respondent. This according to the applicant is a clear case of fraud which falls within the purview of Section 66 of the I&B Code and the Respondents are duty bound to make such contributions to the assets of the Corporate Debtor.

49. It is stated that this application is pointing out fraudulent transactions by the Respondents are fundamentally based and qualified by the Statutory Auditor on the balance sheet of the corporate debtor upto the year 2018-2019 as maintained by them. The applicant further submits that pursuant to the Business Transfer Agreement, there were no major activities in the corporate debtor during the financial years 2019- 2020; 2020- 2021 and 2021-2022. It has been further alleged that the applicant has not appointed any transactional auditor or forensic auditor in connection with the activities of the company. In this regard, the applicant stated that the I&B code, 2016 does not mandate a transaction and forensic audit report as a pre-requisite to file a petition under section 66 of the I&B code, 2016 and the same is only a tool to aid and assist the Resolution Professional in his independent determination. The applicant stated that in so far as the fraudulent transactions in the Corporate Debtor are concerned, the

same are ex-facie evident from the Balance Sheet, Auditor's report and the documents which are made available to the Applicant.

50. It is stated that the revenue from operations of the 4th Respondent was zero in the year 2019 and the same had drastically increased to Rs. 1,75,03,612/- by the end of the Financial Year - 2020. Though the intent of the company initially was to set up the 4th Respondent as a 100% wholly owned subsidiary of the Corporate Debtor, the Respondents thereafter diluted the shares of the Corporate Debtor in the 4th Respondent company with the intent to defraud its creditors. However, the respondents were running the 4th respondent company in such a manner as if it was the Corporate Debtor whose name was changed to "HST Exports Pvt. Ltd".
51. It is further stated that the corporate debtor was not maintaining statutory records properly and hence the applicants did not receive the same from the erstwhile RP. It is further stated that though he received certain selected documents including tally data, the respondents failed to provide purchase details, sales details, bank remittance details, audit trial details and such other documents in support of transactions which were undertaken by the Corporate Debtor. Mere tally data without the aforementioned transaction supporting documents would not validate or authenticate any transactions in the tally date.

52. It is stated that the service of the earlier CFO was sought to assist as a consultant for co-ordination not for anything beyond such capacity and the same is not illegal. It is further stated that though the completion date has been mentioned in the business transfer agreement as 31.03.2019, the Respondents are duty-bound to disclose the same in the accounts of the same financial year. As per clause 3 of the agreement, the consideration for the sale and purchase is to be determined based on an appraisal which will be adjusted for actual working capital changes on the completion date. It is a matter of record that as on this date, the Corporate Debtor has not paid any consideration for the said business transfer agreement making the said contract null and void. This matter has been qualified by statutory Auditor in audited statement accounts of 2019- 2020 and subsequent years up to 2021- 2022. As per clause 4 of the agreement, the completion shall take place when the seller shall deliver to the purchaser, duly stamped, executed and, were necessary registered, conveyances, transfers, assignments, etc., and all deeds and documents relating to the SEZ business and the title of the seller to the assets. The Applicant stated that there has been no completion of the agreement as contemplated in clause 4 and hence, the same is not valid. As per clause 5, it has been stated that the purchaser and seller confirm that they have received the requisite approvals but as already stated above the corporate debtor has

entered into the present agreement without any valid board resolution/ Special resolution and hence void on this ground also. As per clause 14 all taxes payable in respect of or in connection with the transaction under this agreement shall be borne by the seller. However, from the records available with the applicants no payment has been made by the company towards taxes or stamp duty.

53. It is stated that on a perusal of the letter dated 12.02.2019 issued by the Development Commissioner approving the name change, it can be seen that the same has been applied by the 4th Respondent and not the Corporate Debtor. It has further been projected that the intent of the name change was only to divide the SEZ business from the domestic business but failed to disclose the business transfer agreement, the mounting financial loss in the Corporate Debtor, etc. The applicant further stated that if the Respondents had disclosed the entire facts, the development commissioner would have never approved their request for the name change as they would also indirectly be accessories to the said fraudulent activities.
54. It is stated that the bogus sales invoices were recorded by Respondents No. 1,2,4,10,11 and 12 in their name and the same were discounted against credit facility of letter of credit or vendors credit opened with Canara Bank and ICICI Bank and the proceeds of the bills discounted were siphoned off of the company through the

payments recorded in Savute Textiles and Clothing Exports Pvt. Ltd., The Applicant stated that the Audit reports relied upon by the Applicant were finalised and the same is already produced along with this application. Apart from a blanket denial and an allegation that the audit reports have been prepared behind their backs, there appears to be no justification by the respondents for the said illegal acts undertaken. It is further stated that the Corporate Debtor had written off Rs.4,48,84,809/- as bad debts which directly relate to such discounting against the bill discounting credit facility of Rs. Five Crores availed from Financial Creditor.

55. It is stated that in respect of Related Party Transactions of Global Latitude Ltd, the clarification given by the respondents is far from satisfactory. The FOB value in itself is only Rs. 1,05,60,003/- which is not even half of the outstanding amount. It has been stated that the company has made sales of finished goods routed through Global Latitude Ltd. which in itself demonstrates their lack of bonafides. Though the respondents stated that M/s Lanxi Vega Linen Textiles Co. Ltd refused the payment stating that they are entitled to interest on the delayed payments made by the Corporate Debtor for the purchase of raw materials, no such communication from them is seen to be annexed along with the counter affidavit. Hence the Applicant stated that the same is only a story intended to mislead this Tribunal and it is the very same lack of confirmation and

reconciliation that has resulted in the same being included as a fraudulent transaction.

56. It is stated that the Respondent has admitted that they have created parallel entities to bill customers and to maintain bogus/sham sales turnover without actual movement of goods. It is an admitted fact that financial institutions advance credit facilities based on the company's volume of business and their sales turnovers. When such data is manipulated, the financial institutions would advance more money to companies which can be misused as done in the present case. The Respondents have further not denied the fact that there was no actual movement of goods which in itself is an admission to fraud. It is stated that the transactions on American Blue Textiles Ltd are concerned, and the clarification given by the Respondents is far from being satisfactory. It is the case of the Applicant that the Related Party Transactions were carried out by the Corporate Debtor and such amounts were written off by the Corporate Debtor which has resulted in huge losses to the Corporate Debtor. It is only such amounts that the applicant herein is seeking to recover.
57. The Applicant has clearly explained the siphoning of funds by placing reliance on the Independent Auditors Reports from 2013-2014 to 2019-2020 and the fact that there was no record of stock of materials other than a stock physically verified by RP on 20.10.2022

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- at the time of the visit of the factory. The Applicant also stated that the respondents have manipulated the accounts of the Corporate Debtor for the 31.03.2018 but the said manipulated entries have been reversed in the audit of the subsequent years.
58. It is stated that the Business Transfer Agreement includes a transfer of the entire business as well as the stock and finished goods which were also undervalued to defraud the creditors. The entire premise where the Corporate Debtor was carrying on their business was vacated leaving the only conclusion that the same as also transferred to the 4th Respondent. The physical verification of stock by Independent Auditor of Financial Creditor as on 03.02.2021 discloses a stock balance of Rs. 9,21,69,728/- which is also backed by the Bank Audit Certificate.
59. It is stated that Respondent No. 13 audited the accounts of Respondent 4 for the years 2019- 2020 and 2020- 2021 approving the violations and illegality involved in accounting the "Slum Sales" transaction to the advantage of Respondent Nos. 1 and 2 as if such transactions were before his appointment date though the year of audit of the account was well within his assignment. This is an action of the blatant temerity of Respondent No. 13 deliberately failing to report on accounted fraud transactions on the asset acquired

through slump sales by Respondent No. 4 from assets belonging to the Corporate Debtor.

60. As per ROC records the Statutory Auditor has been appointed for five years from 2019 to 2024 by the Corporate Debtor in the AGM dated 30.09.2019. The applicant consented to said appointment as an independent auditor to continue as the Statutory Auditor of the Corporate Debtor. The AGM of Respondent No. 4 appointed Respondent No. 13 on 10.07.2022 in the casual vacancy of the resignation of the previous auditor who was also appointed auditor of Corporate Debtor is yet to be verified on the voting share since 99% of equity shares originally were held by the Corporate Debtor and Corporate Debtor never voted or attended such AGM.
61. As per audited accounts of Respondent No. 4 HST Exports (P) Limited, the paid-up value of share capital of the Corporate Debtor is Rs. 10,49,770/- and as per notes forming part of said balance sheet value of share capital is Rs. 1,04,977/- and this reveals the sheer negligence and non-application of mind on the part of the Respondent No. 13 which is otherwise expected to exercise with proper care and diligence under normal professional involvement while finalizing Balance Sheet of Respondent No. 4. It is stated that the slump sales of accounting for asset purchase was adopted by Respondent No. 4 to transfer only the assets of the Corporate Debtor

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- which against the principle of slum sales. The principle of slum sales in assets as well as liabilities. Respondent No. 4 diluted the equity capital of the Corporate Debtor with Respondent No. 4 to less than 10% from its original holding of 99%. These are all concocted deals of Respondent Nos. 1 and 2 with the convenience of Respondent 13.
62. **On 23.02.2024, Respondent No. 4 filed a reply statement against the amended common rejoinder** and stated that Regulation 35A of the CIRP Regulation states that the Insolvency Professional or the Liquidator shall form an opinion and decide if any transaction had been entered into during the relevant period. There cannot be an additional document coming up one after another to sustain an application under Section 66 in the first place. Therefore, if on the date of application, the applicant had formed the opinion and had made the determination about the transaction falling under Section 66, it must sustain on its own. Any other construction would only establish that the determination was either premature or half-baked. As a result. the application appears to be an abuse of process.
63. The additional documents filed through the Common Rejoinder are the auditor report for the years 2019- 2020, 2020-2021, and 2021-2022 pertain to the Corporate Debtor and they are approved and signed by the Resolution Professional. No such document will bind

the Respondent No.4. Evidently, the Business Transfer Agreement was on 2nd January 2019. In the Amended Common Rejoinder, the applicant has submitted a Certificate dated 30th March 2021 described in the common rejoinder as “Stock Verification Report”. Not only that it pertains to 03rd February 2021 falling within the financial year 2020- 2021 but also it is about Respondent No.1 Company and it is much after the date of the Business Transfer Agreement. Therefore, it has nothing to do with the date on which there was a business transfer. Moreover, it pertains to Respondent No.1 Company. Therefore, this document has no relevance to the claims against Respondent No.4.

64. It is stated that the Business Transfer Agreement contains the consideration and assets forming part of the Business Transfer Agreement. Concerning those assets nothing has been mentioned in any of these additional documents contradicting the Business Transfer Agreement.

FINDINGS: -

65. We have heard the learned counsel for both parties and perused the entire case records/documents. We have also gone through the shreds of evidence on record. To decide on the matter, we have framed the following issue: -

- i. Whether the Respondents are indulged in fraudulent Transactions?
- ii. Whether the applicant is entitled to recovery of the amounts as prayed in the application?

66. Issue no. i: - To answer this issue, we have gone through the observation made in the audit report of the Corporate Debtor as on 31.03.2020 which is quoted hereunder: -

*“An agreement came to our knowledge as having been executed by Savute Textiles Pvt Ltd and Savute Textiles & Clothing Exports Pvt Ltd. As per said business transfer agreement, Savute Textiles (P) Ltd transferred all business and undertaking to Savute Textiles & Clothing Exports Pvt terming it as a slump sale. **There is no record to substantiate said transactions such as resolutions adopted by Board of Directors and members of the company is available to verify it. There is also no evidence recording such transaction is available in the ROC records.** The fixed assets forming part of Balance Sheet as on 31/03/2020 does not represent any transfer or disposal of any assets of the Company.”*

The slump sale of assets as it is recorded in the business transfer agreement dated 02/01/2019 is an agreement

which has not been approved/regularized in the board hence cannot be treated as a legally approved document.

On verification of audited Annual Accounts of HST Exports Pvt Ltd (Formerly Savute Textiles & Clothing Exports Pvt Ltd) as on 31.03.2020 (was 100% subsidiary company till 31.03.2020) and its notes forming part of accounts, it has been observed that a slump sale of Savute textiles Pvt ltd has valued as 1.56 crores and recorded it as consideration of business trade agreement. Based on the information available and discussion with majority equity shareholders, it is reported that the majority of equity shareholders are not aware of this transaction. Hence the alleged slump sale is without the knowledge and belief of majority shareholders of Savute Textiles Pvt Ltd.

67. On a perusal of the consent, we could see that the Business Transfer Agreement is dated 02.01.2019 whereby the entire assets of the Corporate Debtor were transferred to the 4th Respondent and there is a record of slump sales in the audited balance sheet of the financial year 2018-2019. No such slump sale is confirmed by any of the shareholders' meetings or by any AGM. Meanwhile, the Business Transfer Agreement was dated 02.01.2019, the Respondents needed to disclose the same in the financial year ending on 31.03.2019 but the same was deliberately concealed by the Respondents. It is seen from the record that the depreciated value of assets worked out to Rs. 1,57,07,027/- however,

the said amount has not been paid by the 4th Respondent to the Corporate Debtor as of date. The Financial Statements of the corporate debtor for the year 2019-2020 are only a continuation of 2018- 2019 as there were no major transactions that took place during this period. Hence, the company was not authorized to sign the Business Transfer Agreement and a board resolution that was entered subsequently cannot validate the agreement entered into on 02.01.2019.

68. A perusal of the entire case records shows that the Respondents failed to provide purchase details, sales details, bank remittance details, audit trial details and such other documents in support of transactions that were undertaken by the Corporate Debtor. Mere tally data without the aforementioned transaction supporting documents would not validate or authenticate any transactions in the tally date.

69. In the matter of Anuj Jain IRP for ***Jaypee Infratech Limited vs. Axis Bank Limited*** (Civil Appeal No. 8512 -8527 of 2019), it was held that during the CIRP or liquidation process, if 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.

70. Therefore, this Bench found that the acts of the Respondents will squarely attract the provisions of Section 66 of the Code, 2016.

71. Apart from the record placed before us we also need to observe whether the purchase and sale transactions between the Corporate Debtor and Respondent Nos. 10,11,12 falls under the Related Party Transactions. In this respect, we have gone through Note. 5 of Annexure A18, Independent Auditor's Report which is reproduced below: -

- **Related Party Transactions**

- ***Global Latitude Limited- (related party of Mr.Stephen Logan. Ex-Director)***

Balance in the account amounting to Rs. 2,35,87,371.44 (debit) has been outstanding since the financial year 2017-18 and is subject to confirmation/ reconciliation.

- ***Silent Valley Trading (related party of Mr. Vinesan Gopinathan. Ex-Director)***

The opening debit balance of the company amounting to Rs. 2,18,74,525.00 has been adjusted against purchases made by the company from Silent Valley during the year 2019-20. The balance after adjusting the purchases is transferred to American blue textiles which is another related/associate concern of Savute Textiles Pvtfor which there is no support for movement

of stock, and balance after this adjustment is nil. The total purchase made above is listed below: -

2019- 2020: Rs. 1,66,60,063.00

➤ ***American blue textiles (related party of Mr. Vinesan Gopinathan. Ex-Director)***

The total transaction during the year from the above party is listed

below: -

<i>FY</i>	<i>PURCHASE</i>	<i>SALE</i>
<i>2019-2020</i>	<i>1,53,72,355.00</i>	<i>Nil</i>

➤ ***Transactions with Savute Textiles & Clothing Exports Pvt (HST Exports Pvt. Ltd.)***

The company has entered into fund transfers in and out with M/s. Savute Textiles & Clothing Exports Pvt (HST Exports Pvt Ltd) which is a subsidiary of M/s Savute Textiles Pvt Ltd which has resulted in excess transfer out of M/s Savute Textiles Pvt Ltd.

Details of transaction with Savute Textiles & Clothing Exports Pvt (HST Exports Pvt Ltd) is listed in Annexure 5

The transaction mentioned above is non-trading and not related to the business of the company.

From the board minutes and resolution made available to us, there is no board approval for disclosures for the above transactions. It is observed from the accounts maintained in the

name of Silent Valley, Savute Textiles & Clothing Exports Pvt Ltd (HST Exports Pvt Ltd), American Blue, the said accounts are acting as a routing for transfer between related-party transactions.

We are of the opinion that the transactions recorded is out ride the purview of normal business trading transaction of the company and it resulted in excess debit of Rs. 2,00,12,550. 00

➤ ***Advance to Vinesan Gopinathan (Ex - Director)***

The Company has provided advance to Vinesan Gopinathan.

Details are given below –

<i>Opening Balance</i>	<i>Receipt</i>	<i>Payment</i>	<i>Closing Balance 31.03.2020</i>
<i>1,93,22,467.11 (Dr.)</i>	<i>Nil</i>	<i>50,000.00</i>	<i>1,93,72,467.11 (Dr.)</i>

72. It is observed from the documents placed before this Adjudicating Authority that the purchase and sales transactions of both the related parties i.e. American Blue Textiles and Silent Valley Trading merely bogus and sham transactions that were not represented by any record of stock of materials and merely made to siphon off funds of the Corporate Debtor and to further distort the financial position of the Corporate Debtor. In respect of Related Party Transactions of Global Latitude Ltd, the clarification given by the respondents is far from

satisfactory. Therefore, after analysing the issue framed, we are of the considered opinion that the Related Party Transactions done by the Respondents are contrary to the provisions of law and in breach of the Articles of Association of the Corporate Debtor and, therefore, the said Related Party Transactions are hereby declared as invalid and all the proceedings which have been done in violation of the Articles of Associations are also hereby declared as invalid.

73. Issue no. ii: - We have found that the Audited Annual Accounts of the Corporate Debtor for 31.03.2019 are signed and authenticated by Respondent No. 1 & 2 as directors (Mr. Vinesan Gopinathan and Mr. Stephen Logan) without any qualification on disposal, transfer of all assets under slump sale and Business even though the alleged Transfer Agreement is dated 02.01.2019. Respondent Nos. 1 and 2 also signed as directors and authenticated the Balance Sheet of the Respondent No. 4 as on 31.03.2020 in addition to fixed assets and business resulting from the alleged business transfer agreement. The Statutory Auditor of respondent 4 has failed in duty to seek confirmation from the Corporate Debtor and to report on the status of impairment of assets and report on the glaring misstatement in the related party transactions. The 99% equity right of the subsidiary company has been diluted to 9.52% as a result of these fraudulent transactions of Respondent Nos. 1, 2, and 4 were left unreported by Respondent No. 13.

74. With the aforesaid observation, **IA(IBC)/97/KOB/2023 is allowed.**

In view of the aforesaid observations, the following orders are passed:

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a) The Business Transfer Agreement dated 02.01.2019 is null and void and also directs the 4th Respondent M/s. HST Exports (P) Limited to transfer raw materials, finished goods and work-in-progress as on 20.10.2022 worth Rs. 19,15,19,796/- to the Corporate Debtor. Respondent No. 4 is also directed to transfer a sum of Rs. 2,00,12,550/- to the account of the Corporate Debtor.

b) This Bench directed Respondent No. 1 to pay a sum of Rs. 4,14,40,042/- to the account of the Corporate Debtor.

c) This Bench also directed Respondent Nos. 10, 11 and 12 to deposit Rs. 2,18,74.525/-, 2,18,74,525 and 1,66,60,063/- to the account of the Corporate Debtor.

d) The parties are directed to comply with this order within 30 days from the receipt of this order

75. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC) /97/KOB/2023
IN
CP(IB)/45/KOB/2021
In re: M/s. Savute Textiles Private Limited.

76. An urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

77. File be consigned to records.

SHYAM BABU GAUTAM Digitally signed by SHYAM BABU GAUTAM
Date: 2024.04.25 16:03:16 +05'30'

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T.KRISHNAVALLI Digitally signed by
T.KRISHNAVALLI
Date: 2024.04.25 16:02:56 +05'30'

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 25th day of April, 2024.

Rajasree R. Nair/LRA