

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH-I**

IA. No. 141/2021

in CP (IB) No.745/7/HDB/2018

*Under Section 66(1) and (2) and in pursuance of provisions of Section
25(2)(J) of the Insolvency and Bankruptcy Code, 2016*

Between

The Liquidator for
M/s. Kanakadhara Ventures Private Limited
Mr. Rajesh Chillale
IP Registration No. IBBI/IP-001/IP-P00699/2017-2018/11226
Resolution Professional of M/s.Kanakadhara Ventures Private Limited
A Company incorporated under the Companies Act, 1956
Having its Registered office at H.No.8-3-1114/1,
Keshav Nagar, Sri Nagar Colony, Hyderabad.
**(Amended as per the orders in IA.No.548 of 2022,
Dated 09.12.2023 by this Tribunal)**

... Applicant

AND

1. Mr. P.Venkateswara Rao
Flat No. 402, 6-2-10, Temple View Residency,
Lakdi ka pul, Hyderabad – 500 004.
Email id: pochiraju.venkat6@gmail.com
2. Mr. B.V.Subba Rao,
Flat No. 301, Venkata Sai Residency
H.No.1-1-238/1,
Chikadapalli, Hyderabad – 20
Email id : kollamsetty@gmail.com
3. Mr. T.Srinivas
H.No.8-4-369/377/378, Kanakadhara residency
Flat No.301, New Sastry Nagar, Erragadda,
Hyderabad – 18.
Email id: durgatanikella@gmail.com

4. Mr. Anji Reddy.N,
H.No.13-1-101/601, Kanakadhara Gold apartments,
Moti Nagar, Hyderabad -18.
Email id: anjireddyb930@gmail.com
5. Mr. Suresh Babu Kulluru
H.No.8-4-369-3, Kanakadhara ARF,
New Sastry Nagar, Erragadda,
Hyderabad – 18
Email id: kullurusureshbabu@gmail.com
6. Mr. Ramesh Babu Amuri
H.No.8-4-378/1/2, Srinilaya apartments,
Flat No. 401, New Sastry Nagar, Erragadda,
Sanathnagar, Hyderabad – 500 018.
Email id: rameshamuru@gmail.com
7. M/s. Arun Jyothi Enterprises Ltd.
Plot No.29, HACP Colony, Kharkhana Road,
Secunderabad – 500 099.
8. M/s. Sai Tipparaju Infraventures Pvt. Ltd.
Plot No. 342, Road No.7, Sri Srinivasa Puram Colony,
Vanasthalipuram, Hyderabad,
Telangana – 500070.
Email id: naguvasupalli9@gmail.com
9. Smart Login Solutions Pvt.Ltd.
Flat No.301, Jyothi Blooms, Union Bank of India,
Colony, Road No.3, Banjara Hills, Hyderabad – 500034.
Email id: smartloginsolutions@gmail.com
10. Comfort Securities Ltd.
301, 3rd Floor, A wing, Hetal Arch,
Opp Natraj Market, SV road, Malad (West)
Mumbai – 400 064.
Email id: info@comfortsecurities.co.in

11. Kanakadhara Avenues Private Limited
Sy.No. 20/1 to 20/6, H.No.6-14/2, KK Gardens,
Raghu Ram Colony, Hydershakote, Rajendra Nagar,
Hyderabad – 500008.
Email id: kk.shiva@hotmail.com
12. M/s. Four Square Homes Pvt. Ltd.
D.No.10-175, Sivalayam Street, Nadendla mandal,
Ganapavaram, Krishna district – 522 619.
Email id: foursquarehmes@gmail.com
13. M/s. Varnsace Infotech Pvt. Ltd.
207, LSC Vardhman Plaza, Vasundhara enclave
Second Floor, Delhi (East) – 110 096
Email id: shubh.kar@gmail.com
14. M/s. JMD Ispat Pvt. Ltd.
2-2-105 to 108, Ganesh Chamber,
Raniganj, MG Road, Secunderabad – 3.
15. Haritha Suppliers
Flat No. 301, Venkata Sai Residency
H.No.1-1-238/1,
Chikkadapalli, Hyderabad – 20.
Email id: kollamsetty@gmail.com

...Respondent

In the matter of:-

IDBI Bank Limited.,

... Financial Creditor

AND

M/s.Kanakadhara Ventures Private Limited

... Corporate Debtor

DATE OF ORDER: 21.12.2023

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant/Liquidator : Mr. Kalyan Chakravarthy, Counsel

For the Respondents No.1 to 6, 12 to 15 : Mr.P.Kailashnath, Counsel

For the Respondent No.7 : Mr.Raveendra Babu, Counsel

For the Respondent No.10 : Mr. Y.Suryanarayana, Counsel

PER : BENCH

ORDER

1. This is an application filed by the Applicant/Resolution Professional of the Corporate Debtor under Section 66(1) and (2) and in pursuance of provisions of Section 25(2)(J) of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs to:
 - a) Declare that the transactions undertaken by Respondent Nos. 1 to 6, as set out in this Application, who are /were directors of the corporate debtor, are with intent to defraud the creditors of the Corporate Debtor, as provided in Section 66 of IBC, and be reversed and the amount of Rs 42.19 crores be brought back into the corporate debtor.
 - b) Declare that the transactions undertaken by Respondent 7 to 15 as set out in this Application, who in connivance with Respondent 1 to 6, entered into the transactions with intent to defraud the creditors of the Corporate Debtor, as provided in Section 66 of IBC, be reversed and

the amount of Rs 42.19 crores be brought back into the corporate debtor.

- c) Direct that the Applicant can take possession from the Respondents 1 to 6 (being Directors of the Corporate Debtor in period when such transactions were undertaken) of their movable and immovable properties and to make inventory, to sell and/or recover and/or realise the same towards the contribution of the assets of the Corporate Debtor.
- d) Direct that pending hearing and final disposal of the Application, the Respondents 1 to 6, themselves, their agents and / or otherwise whosoever, by way of an ex parte interim order, be restrained by an order and injunction of this Honourable Tribunal from in any manner dealing with and / or selling or transferring, disposing of or assigning or alienating or encumbering or parting with possession or creating any third party rights or interest in the properties and assets including shares, debentures, FDRs, etc. belonging to them without prior permission of this Honourable Tribunal.
- e) Direct the Respondents 1 to 6, to contribute towards the assets of the Corporate Debtor as required under Section 66(1) of the Insolvency and Bankruptcy Code, 2016.
- f) Direct the Respondents 1 to 6, to disclose on oath all assets movable and immovable including bank accounts, lockets, fixed deposits with the Banks, Companies, Life Insurance Policies, Mutual Funds, Bonds, Shares in Demat Account as well as physical form, securities along with Income Tax Returns, before this Honourable Tribunal.

- g) Order Respondents 1 to 6, to cooperate in further investigation with the said Applicant, and provide such information relating to their transactions with the Corporate Debtor as the Applicant may require.
- h) That the Hon'ble NCLT be pleased to pass an order granting leave to the applicant to add necessary parties, if required, for proper adjudication.
- i) That the applicant craves the leave of this Hon'ble Tribunal to add other necessary parties at a later stage for proper adjudication.
- j) Pass such other orders as this Honourable Tribunal deems fit in the facts and circumstances of the case.

2. Gist of the application:

2.1 It is averred that the Corporate Insolvency Resolution Process (CIRP) filed by IDBI Bank, Financial Creditor under Section 7 of Insolvency and Bankruptcy Code, 2016 was admitted by this Tribunal vide its order dated 22.11.2019 in CP (IB) No. 745/7/HBD/2018 wherein Mr.B.Naga Bhushan was appointed as the Interim Resolution Professional. It is stated that IA.No.548/2022 in IA.No.141/2021 was filed for replacement of RP to Liquidator. Accordingly, IA was allowed and directed to make necessary amendment of Cause Title in IA.No.141/2021.

2.2 It is stated that the Corporate Debtor is engaged in the business of construction of ESI hospitals for Uttar Pradesh Rashtriya Nigam Ltd.

(UPRNNL), a Govt. of India undertaking, who in turn has taken up the works for Employees State Insurance Corporation of India.

2.3 It is stated that in the fifth meeting of the Committee of Creditor held on 10.07.2020, it was agreed to by all the members that a forensic audit of the Corporate Debtor be carried out. In order to facilitate the identification of the preferential and fraudulent transactions as set out in sections 43 to 50 and Section 66 of the Code, the Applicant in his capacity as the RP, and in compliance with Regulation 39(2) of the CIRP Regulations had engaged M/s. Raju & Prasad, Chartered Accountants, on 13th July, 2020 to conduct a forensic audit of the Corporate Debtor.

2.4 It is stated that the Forensic auditor has submitted his report on 04.12.2020, subsequently certain clarifications were sought from the forensic auditor which were provided by the auditors on 31.12.2020 and the final certifications on 02.02.2021. Discussions on forensic audit has taken place in the 11th CoC meeting held on 08.01.2021, 12th CoC meeting that has taken place on 19.01.2021 and also in the 14th CoC meeting which was held on 03.03.2021. In the 14th CoC meeting, RP has informed the CoC about his decision to file a petition under section 66 of IBC before this Tribunal as the contents of the forensic report and also the information that is available from the records of the Corporate Debtor suggest that certain transactions which were entered into by the Corporate Debtor/directors/ promoters are not in the best interests of running the company but a fraudulent motive.

2.5 It is stated that the Applicant submits the provisions of Section 66 as under:

"66. Fraudulent trading or wrongful trading:

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 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.

2.6 It stated that the Forensic Auditor with reference to aforesaid Section 66 of the IBC made certain key observations indicating red flags in the Forensic audit Report, which persuade the Applicant to believe that the below mentioned transactions of the Corporate Debtor are in breach of Section 66 of IBC:

| S. No. | Observation | Amount in Crores | Reference to Executive Summary | Reference to main report |
|--------|--|------------------|---|--|
| 1 | Arunjyoti Enterprises: Utilisation of BGs/LCs towards purchase of steel which has not resulted in any economic benefit to the company | 8.31 Cr | Point 4 (Forensic Audit Report PG No:16) | Point 1(A)(1) of chapter 14 (Forensic Audit Report PG No.63) |
| 2 | Smart Login Solutions Pvt. Ltd: Utilisation of BGs towards purchase of steel which has not resulted in any economic benefit to the company | 0.20 Cr | Point 4 (Forensic Audit Report PG No:19) | Point 1(A)(4) of chapter 14 (Forensic Audit Report PG No:70) |
| 3 | Utilisation of Bank Guarantees (BGs) towards Mobilisation advance. Amounts received as advance was used for the purposes which has not resulted in any economic benefits to the company. a) Comfort Securities Rs.1.79 Cr b) Comfort Commotrade Rs.0.60 Crores | 2.39 Cr | Point 5(A) and 5(B) (Forensic Audit Report PG No: 19) | Point 1(B)(1) and Point 1(B)(2) of Chapter 14 (Forensic Audit Report PG No: 76 and 79) |
| 4 | Bank guarantees issued by the company resulted in Undue advantage position to Four Square Homes Pvt. Ltd. to the extent of Rs.0.45 crores (0.34 cr+0.21 Cr) | 0.45 Cr | Point 8(A) and 8(B) (Forensic Audit Report PG No.22 and 23) | Point 1(C)(5) and Point 1(C)(6) of Chapter 14 (Forensic Audit |

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| | | | | |
|----|---|---------|--|---|
| | | | | Report PG No.90 and 91) |
| 5 | BG was issued to Varnsace Infotech Pvt.Ltd towards purchase of furniture. The same was invoked. Company has neither received furniture nor collected the money. Invoked amount has been written off. | 3.14 Cr | Point 6(B) (Forensic Audit Report PG No.21) | Point 1(C)(2) of Chapter 14 (Forensic Audit Report PG No.84) |
| 6 | JMD Ispat: Utilisation of Letter of Credits (LCs) towards purchase of steel which is not genuine to the extent of Rs.0.12 Crores | 0.12 Cr | Point 11 (Forensic Audit Report PG No.26) | Point 2(2) of Chapter 14 (Forensic Audit Report PG No.96) |
| 7 | Non-recovery of amounts from Haritha Suppliers (related party) | 7.02 Cr | Point 24 (Forensic Audit Report PG No.40) | Point 18 of Chapter 14 (Forensic Audit Report PG No.188) |
| 8 | Diversion of funds w.r.t. Ambivali project | 6.40 Cr | Point 15 (Forensic Audit Report PG No.29) | Point 9 of Chapter 14 (Forensic Audit Report PG No.153) |
| 9. | a) Unrealised sale proceeds of flats at Kapra of Rs.0.24 crores from directors/ guarantors, b) Flats mortgaged by Mr. BV Subbarao for personal use Rs.1.40 Crores | 1.64 Cr | Point 16 (Forensic Audit Report PG No.30) | Point 10(iii), (iv)(vi) and Point 20€ of Chapter 14 (Forensic Audit Report PG No.159) |
| 10 | Advances paid to various parties and written off of Rs.9.35 crores as detailed (7.98+1.15+0.22) | 9.35 Cr | Point 18 (Forensic Audit Report PG No.33) | Point 12 of Chapter 14 (Forensic Audit report PG No.168) |
| 11 | Payment made to Shivom enterprises and Sun enterprises and written off as stock | 2.23 Cr | Point 23 (Forensic Audit | Point 17 of Chapter 14 (Forensic Audit |

| | | | Report No.39) | PG | Report No.187) | PG |
|--------------|--|-----------------|--|----------|---|----|
| 12 | Payments made to KAPL from which no economic benefits were derived amounting to Diversion of Funds | 1.20 Cr | Point (Forensic Audit Report No.41) | 25 PG | Point 19 of Chapter 14 (Forensic Audit Report No.190) | PG |
| Total | | 42.19 Cr | | | | |

2.7 It is stated that a detailed forensic audit report submitted by the auditor is given as **Annexure A1**. The transactions with Arun Jyothi Enterprises:

2.7.1. It is stated that as per the books of accounts of the Corporate Debtor, there were purchase of steel worth Rs.30.49 Crores during the years 2012 and 2013 and the liability against such purchases has been discharged through BGs of Rs.10 Crores and LCs of Rs.17.02 Crores and other adjustments. That when requested to provide the supporting documents, purchase invoices, LRs to the extent of Rs.1.02 Crores relating to Head Office and ESIC Nacharam project out of total Rs.30.49 Crores purchased in different branches were only provided.

2.7.2. It is stated that the forensic auditor has analysed the movement of steel purchases and noted that the most of the purchases made from M/s. Arun Jyothi Enterprises in Head office were sold on the same day or the next day to M/s. Sai Tipparaju Infra Ventures Private Limited. The forensic auditor felt that the purchases at least to the extent of Rs.8.31 Crores (Rs.7.92 Crores + 0.39 Crores) are not genuine, thereby the

BG/LC facilities to the same extent are also mis utilised and hence are to be made good to the Corporate Debtor.

2.8 Transactions with Smart Login Solutions Private Limited. It is stated that during the years 2013-14 and 2014-15, the purchase of Rs.6.37 Crores was made from Smart Login Solutions Private Limited and Steel sales of Rs.1.82 Crores. The forensic auditor has verified the details of vehicle numbers in central repository for vehicles maintained by Ministry of Road Transport & Highways, wherein it is observed that in some cases as mentioned in the above table, the vehicle numbers pertain to “Three-wheeler passenger Bajaj Auto riksha” and “Kinetic Safari”. This clearly indicates that there was no actual movement of the sales in subject and it can be construed that the underlying sales of Rs.0.20 Crores (0.069+0.130) was not genuine.

2.9 Transactions with Comfort Securities. It is stated that mobilisation advance of Rs.710 Lacs was received from Comfort Securities on production of bank guarantees. The liability got discharged on invocation of the bank guarantees which has all happened within one year. That the Company has paid Rs.0.60 Crores to K.R.Jagadish on 25.04.2013 and 06.04.2013 and 06.04.2013 from mobilisation advance receipts. We have observed from the ledger account of K.R.Jagadish that that same amount has been transferred to P.Venkateshwara Rao (Loan A/c.) who is the Managing Director of the Company.

2.9.1 That an amount of Rs.0.02 Crores has been paid to KAPL, an associate concern, on 26.04.2013. That Rs.0.22 Crores was paid to BV Subbarao,

one of the directors who has since resigned. That on 23.01.2014, Rs.0.94 Crores was paid to Kamalpushap Barter Private Limited which was subsequently written off by the Company in FY 2014-2015. The forensic auditor is of the view that the Company has mis utilised the BG amount at least to the extent of Rs.1.79 Crores (0.94+0.60+0.23+0.02) against which the Company has not received any economic benefit.

2.10 Transactions with Comfort Commotrade. It is stated that the Company has received mobilisation advance of Rs.2,13,26,000/- and the liability got discharged as the BGs provided to them got invoked. The Company has paid Rs.0.20 Crores to BV Subbarao (Loan A/c) on 03.07.2013 from mobilisation advance receipts. That an amount of Rs.0.15 Crores was paid to Padma Impex Pvt. Limited on 03.07.2013 as an advance which was written off in financial year 2014. That an amount of Rs.0.09 Crores was paid to T.Sreenivas (Loan a/c) on 19.08.2013, one of the directors of the Company. That an amount of Rs.0.03 Crores has been paid to B.Haritha Rao on 19.08.2013, the wife of Mr.BV Subbarao. That an amount of Rs.0.13 Crores cash has been withdrawn immediately on mobilisation advance receipts. That the forensic auditor is of the view that the company has mis utilised the BG amount atleast to the extent of Rs.0.60 Crores (0.20+0.15+0.09+0.03+0.13) out of which the company has not received any economic benefit.’

2.11 Transactions with four Square Homes Private Limited. It is stated that the Company has issued BG (BOB-2420IGPER003213) to Tamilnadu Housing Board (TNHB) on 15.04.2013 of Rs.34.50 Lakh. From the books of TNHB Chennai – 8 Blocks project, it is understood that

company has engaged in a project with TNHB which was subcontracted to Four Square Homes Pvt. Ltd (FSHPL). The forensic auditor observes that as the amounts received against BG devolvement of Rs.21.53 lakhs and EMD of Rs.6.09 lakhs of TNHB 5 blocks project, same should have been used for honouring the BG devolvement instead company has made payment to FSHPL.

2.12 Transactions with Varnsace Infotech Pvt. Ltd. The forensic auditors are of the view that the company has foregone the economic benefit of the above BG of Rs.3.30 Crores which is quite unusual. Hence, from the nature of the transaction, the RP is of the opinion that the Bank Guarantee was got issued at the instance of Corporate Debtor with fraudulent intention and with connivance of M/s. Varnsace Infotech Pvt.Ltd.

2.13 Transactions with JMD Ispat. That underlying purchases of Rs.0.12 Crores was not genuine as an auto riksha cannot carry 24.715 MTs of steel. As mentioned above, liability towards stell purchase has been discharged through invocation of bank guarantee/devolvement of LCs. Thus, the BG/ facilities atleast to the extent of Rs.0.12 Crores are mis utilised.

2.14 Transactions with Haritha Suppliers. That the company has explained that amount receivable from Haritha Suppliers has been adjusted with JMD ISPAT (related party). However, the company has not provided any documents like tri-partite agreement to substantiate the adjustment between the parties. Company has also not mentioned when the

adjustment has happened. However, from the financial statements as at 30.11.2019 provided by the company, it is understood that the above said adjustment is not made indicating the amount is unrealized from Haritha Suppliers. Hence, the forensic auditors are of the view that non-realisation from related parties amounts to diversion of funds and the transaction fraudulent in nature.

2.15 Transactions with Ambivali Project. That from the books of accounts, it is understood that, before commencing the project, the rights were sold/relinquished for an amount of Rs.3.40 Crores to Fairmount Lifespaces LLP (Fairmount). Thereby indicating that the company has not received economic benefit at least to the extent of Rs.8.02 Crores. That from the books of accounts of the company it is noted that Rs.3.40 Crores has been received by B.V.Subba Rao. Also from the Trial balance of FY 2018-19 provided by the Company, we have noted that during FY 2018-19 an amount of Rs.1.00 Crores has been debited to Mr. B.V.Subba Rao and credited to Fairmount Lifespaces LLP indicating that Rs.1.00 Crores has been received by Mr.B.V.Subba Rao. As per the agreement, it is stated that an amount of Rs.2.00 Crores has been received in cash by B.V.Subba Rao. The forensic auditors are of the view that Rs.6.40 Crores (3.40+2.00+1.00) has been misappropriated by the Company.

2.16 Unrealised sale proceeds of flats at Kapra. It is stated that Mr.B.V.Subba Rao has mortgaged four flats (Ft.No.103, 107, 108 & 118) in "Kanakadhara Landmark" at Kapra Village of value Rs.1.40 Crores, owned by the Company, against the Chit amount utilised for his

personal benefit from M/s.Margadarsi Chit Fund Pvt. Ltd. The said flats were auctioned by Margadarshi Chit Fund Pvt. Ltd. The forensic auditors are of the view that Rs.1.40 Crores has been misappropriated.

2.17 Unrealised sale proceeds of flats at Kapra from Directors & Guarantors.

That it can be noted that the Company has sold certain flats to its Directors & Guarantors. Out of the total consideration receivable of Rs.1.75 Crores (1.41+0.17+0.19+0.14) an amount of Rs.0.58 Crores has been received in cash and an amount of Rs.0.24 Crores has been unrealized since FY 2010-11 outstanding as on 30.11.2019.

2.18 Advances paid to various parties written off. That most of the amounts

have been paid through OD accounts and CC accounts of the Company for unexplained reasons, writing off in less than 2 years without making adequate efforts to recover the money, considering the observations noted from the financial statements of the other companies and the company has not taken permission from the banks, forensic auditors are of the view that an amount to the extent of Rs.9.35 Crores (7.98+0.22+1.15) written off can be considered as diversion/misappropriation of funds by the Company.

2.19 Payments made to Shivam Enterprises and Sun Enterprises and write

off of stocks. That during financial year 2016-17, the Company has made a payment of Rs.1 Crore to Sun Enterprises and Rs.1,13,09,293/- to Shivom Enterprises from Corporation Bank which is a non-consortium bank. That considering the above and in the absence of any

supporting documents, payments made to Sun Enterprises and Shivom Enterprises can be considered as Diversion of funds.

2.20 Payments made to Kanakadhara Avenues Private Limited (KAPL) from which no economic benefit were derived. The Kanakadhara Avenues Private Limited (KAPL) is a company in which Mr. B V Subbarao and Mr. P.Venkateshwara Rao were also directors up to 25.07.2015. That there are adhoc receipts and payments to KAPL and the net position as at 30.11.2019 is Rs.1.20 Crores receivable from KAPL.

2.21 It is stated that the respondents have undertaken several transactions with sinister design with a sole motive to divert the funds of the Corporate Debtor by playing a fraud on the creditors. Therefore, there is an imminent necessity for this Tribunal to intervene and pass appropriate orders as prayed for in the interest of justice.

3. Respondent No.1 filed reply, inter-alia stating that:

3.1 It is stated that the Respondent No.1 was the Chairman and Managing Director of the Corporate Debtor. It is stated that the Applicant is attempting to foist a liability on the Respondent herein under Section 66 of the Code by invoking the principle of vicarious liability, without there being any specific allegations or any involvement of the Respondent herein.

3.2 It is stated that the assumptions of the Forensic Auditors (i.e., misutilization and misappropriation of funds because documents are not provided for their verification) are purely preconceived opinions

formed by the Auditor without getting into the actual facts that documents couldn't be provided due to the reasons stated above and the Applicant also failed to ascertain the nature of the transactions and veracity of the Forensic Audit Report before filing the present application. Copies of the important email explanations dated 24.07.2021, 27.08.2020, 07.10.2020, 09.10.2020 and 05.11.2020 written to Forensic Auditors are enclosed herewith and marked as **Annexure-1.**

3.3 It is stated that the statement made by the Applicant that the decision to file petition under Section 66 of IBC on the basis of the Forensic Audit Report and also the information that is available from the records of the corporate debtor, is incorrect as can be established from the minutes of the very 14th CoC meeting, which was attended by the Respondent No.1 herein on 03.03.2021, in the said meeting, the Applicant himself agreed that the said Forensic Audit Report is not conclusive and members of CoC also expressed the same on the report being inconclusive. Further, in the said meeting RP requested the CoC to give direction regarding the filing of Application to NCLT as regards PUFEE transactions whereas in the present Application the Applicant stated in contradiction to the discussions happened in the said meeting. Copy of the minutes of 14th CoC meeting held on 03.03.2021 are enclosed herewith and marked as **Annexure-2.**

3.4 It is stated that **the transactions with Arun Jyothi Enterprises**, made by the Applicant are denied in toto. The reason given by the Applicant for concluding 3 transactions out of thousands of transactions

undertaken by the Corporate Debtor is that the vehicle numbers mentioned in the records are of vehicles without capacity to carry the goods mentioned in the invoice therein. It is stated that apart from disputing the vehicle numbers, the Applicant has not supplied any other reason to treat the transactions as fraudulent.

3.5 It is stated that **the transactions with Sai Tipparaju Infra Ventures Pvt. Ltd.(STIVPL)**, the Applicant proposes to classify the said transactions as not genuine only on basis that one of the directors of Sai Tipparaju Infra Ventures Pvt. Ltd. and Arun Jyothi Enterprises(AJEL) is common. In this regard the Respondent humbly submits that the said director joined AJEL as Additional Director on 07.06.2019 which is almost 6 Years after the said transactions had taken place and resigned on 31.12.2020. Further, the said person joined STIVPL as a Director on 22.10.2018 and holds office to date. The same is evident from public details available on the website of Ministry of Corporate Affairs namely 'www.mca.gov.in'. Copy of the same is enclosed herewith and marked as Annexure-3.

3.6 It is stated that the **transactions with Smart Login Solutions Pvt. Ltd.**, the averments made by the Applicant are denied in toto. It is stated that apart from disputing the vehicle numbers, the Applicant has not supplied any other reason to treat the transactions as fraudulent. Every transaction is undertaken with a set of documents including tax invoice, e-way bill number, lorry receipt etc. The Applicant has not denied the existence of all the documents, but only denies the transactions on the basis of vehicle numbers. The averments are same as those with Arun

Jyothi Enterprises and reflect that the Applicant has not exercised diligence in his approach.

3.7 It is stated that the **transactions with Comfort Securities and Comfort Commotrade**, made by the Applicant are denied in toto. The Corporate Debtor secured a project for construction of sheds to setup a distillery project in Hyderabad from Comfort Securities and Comfort Commontrade and obtained mobilization advances against issuance of BGs to Comfort Securities and Comfort Commotrade. However, with the Company being declared as an NPA during the year 2013, and all the bank accounts were frozen by the lenders which catapulted the financial stress of the company and therefore said projects couldn't be executed. Consequently, Comfort Securities and Comfort Commotrade encashed the BGs issued by the Corporate Debtor.

3.8 It is stated that, in reply to para 5.ix.E & F, the averments made by the Applicant are denied in toto. It is stated that the Corporate Debtor had subcontracted the construction of Two (2) residential projects of Tamilnadu Housing Board ("TNHB" a Govt. of Tamilnadu Organization) on back-to-back basis vide contract dated 01.07.2013, one with 8 Blocks and another with 5 Blocks of Residential Apartments. During the entire tenure of the said projects Corporate Debtor was deducting 5%, 1% and additional 0.3% against each bill of the Respondent Company towards Retention amount, Labour cess and additional Labour cess respectively. The said deduction cumulated on the account of **Four Square Homes Pvt.Ltd. (FSHPL)** but the same was not accounted properly after all the employees left the Company.

It is stated that in the year 2018 the Corporate Debtor called for a settlement meeting on 23.04.2018 and during the said meeting it was mutually agreed that Corporate Debtor will be paying a sum of Rs.1.05 Crores as a full and final settlement towards all liabilities of Corporate Debtor to FSHPL. Accordingly, Corporate Debtor has issued 7 Cheques totalling to Rs.1.05 Crores drawn on Union Bank and Bank of Baroda, but all the cheques were dishonoured. Hence, there were no instances of undue advantage given to the FSHPL but books of accounts may be showing debit balances as those are not updated and audited.

3.9 It is stated that, in reply to para 5.ix.G, the averments made by the Applicant are denied in toto. It is stated that the Corporate Debtor issued Purchase Orders vide no. 421 dated 06.07.2013 for worth of Rs.3.14 Crores to **Varnsace Infotech Pvt. Ltd.** for procuring furniture of both hospital projects and general office use in Employee State Insurance Corporation (“ESIC”) Projects viz., ESIC Dental College, Nacharam at the prices negotiated for bulk quantities of Rs. 20 Crores. It is stated that as the furniture was custom made and the Corporate Debtor did not take delivery of the furniture by paying the agreed amount as the account had become NPA and the operations had ceased, Varnsace Infotech was constrained to invoke the BGs for recovery of its dues.

3.10 It is stated that, in reply to para 5.ix.H, the averments made by the Applicant are denied in toto. It is stated that purchases from **JMD Ispat** amounting to Rs.0.12 Crores against the invoice number 1135 dated 05.03.2012 were not genuine as the materials of 24.715 MTs of steel was carried by Three-Wheeler passenger Bajaj Auto rikshaw with

registration number AP20X5154 as noted from the said invoice. It is further stated that the said invoice is also accommodated with Way Bill No. VAT23041112024886 containing the correct vehicle number as AP20X5754 in which said materials were transported. The wrong vehicle number i.e., AP20X5154 on the invoice might be a result of manual clerical error by JMD Ispat. Whereas the Forensic Auditor and the Applicant are completely failed to verify said WayBill for correctness of the transportation details including the vehicle number through which the said materials were transported. Hence, the Respondents denying all the averments made by the Applicant and the present application can be dismissed on this ground alone.

3.11 It is stated that, in reply to para 5.ix.I, the averments made by the Applicant are denied in toto. The Applicant averred that there are outstanding receivables of Rs.7.03 Crores from **Haritha Suppliers**. It has been explained to the forensic auditor that these time barred transaction of Rs.7.03 Crores is part of related party transactions approved by the board of Directors and adjusted against other related party transactions pertaining to JMD Ispat. All these Companies are already dealing with sale and purchase of steel and it was in the best interest of the company to deal with these companies to ensure definitive supplies during shortages apart from reasonable profits in all these transactions.

3.12 It is stated that, in reply to para 5.ix.J, the averments made by the Applicant are denied in toto. The Respondent takes strong objection to Applicant's allegations that there had been diversion of funds with

regards to **Ambivali projects**. The allegations made by forensic auditor are not substantiated by any documentary evidence but are based only on Applicant assumptions. The Applicant's baseless allegation that Rs.6.40 Crores (Rs.16.25(-)9.85 Crores) was defrauded by Mr. B V Subbarao is based on frivolous, non-existent and imaginary FIR dated 31.01.2019 and the same is entirely based on here say. There is no such FIR dated 31.01.2019 which was the premise on which this allegation was levelled. The Applicant completely failed to prove frivolous allegation beyond reasonable doubt by submitting said non-existent FIR dated 31.01.2019. This clearly establishes that the purpose of the forensic audit report is to sensationalize issues rather than make fair assessment and comments, and the Respondents have taken a serious objection to this kind of biased reporting.

3.13 It is stated that, in reply to para 5.ix.K & L, the averments made by the Applicant are denied in toto. The Applicant averred that there are revenues unrealized in sale of Flats at Kapra site and there are outstanding balances against sales to the related parties. The Statement of the Applicant that "*these are only years when the bankers sold flats, the Company has earned profits*" is utter falsehood. This statement is made by the Applicant just by comparing the sales with cost of Finished Goods costed in FY 2011-12 without considering the prevailing market price in FY 2017-18 at the time of sales by bankers. Hence, there were neither unaccounted sales nor miss appropriation of sale proceeds.

3.14 It is stated that, in reply to para 5.ix.M & N, the averments made by the Applicant are denied in toto. The Accounts detailed in the chart pertain

to the transactions entered in the ordinary course of business by the company. As explained to the Forensic Auditor, declaring the company as NPA and freezing the Bank accounts of the company completely disrupted all the projects in course and the company could not execute the same. All the parties mentioned hitherto had levied penalties for non-performance and encashed the BGs towards the same. Therefore, the Accounts extracted from the ledger by the Forensic Auditor and classified as advances given and subsequently written off are in reality those projects which the company had contracted to execute but failed to deliver because its accounts were abruptly frozen by the Banks.

3.15 It is stated that, in reply to para 5.ix.O, the averments made by the Applicant are denied in toto. It is further stated that M/s. Kanakadhara Avenues (P) Ltd. (“KAPL”) was incorporated in the year 200 by the promoters of Corporate Debtor (“KVPL”) to cater to the Residential Development Arm of KVPL. In the year 2010, KAPL had two projects in pipeline. An amount of Rs. 1 Crore was transferred by KVPL for the working capital requirements in KAPL after intimating to consortium lenders. The said pipelined projects were converted to development agreements in the year 2012. But due to technical issues in the land documents and for the reason of getting clearance from local authorities, project did not commence till the year 2016. In the year 2016, KAPL had commenced the project in the name and style of “Kanakadhara Pushkar” and spent around Rs. 2 Crores for initial site and other clearances. KAPL also commenced marketing with brochure for better marketing of the project. Subsequently, the said projects were stalled due to inability of KVPL in supporting of KAPL’s working

capital requirements. The poor performance and financials of KVPL severely impacted the ambitious launch of KAPL. Consequently, the company failed to take off, defaulted in filing Annual Returns and ROC had struck off the company.

3.16 It is further stated that there are no dues from KAPL to KVPL as appearing the Books of Accounts. It is to reiterate that the said Books of Accounts are not updated and not audited, hence the outstanding balances shown are not correct as appearing as on date. The Respondent states that the Applicant prayed beyond the power and duties specified under IBC, 2016, hence the present IA can be dismissed on this ground alone.

4. Respondent No.2 filed reply, inter-alia stating that:

4.1 It is stated that the Respondent No.2 was acted as Director of the Corporate Debtor M/s. Kanakadhara Ventures Private Limited till 22.09.2016. The Respondent at the most outset humbly submits that while denying each of the allegations and without admitting the correctness of any of the allegations made by the Applicant against the present Respondent, neither the Forensic Auditor nor the erstwhile Resolution Professional served the so-called and alleged Final Forensic Audit Report on the Respondent nor given the opportunity to explain the correctness and genuineness of the transactions highlighted by the Forensic Auditor before filing of this Interlocutory Application whereby the Applicant violated the fundamental right under first

principle of civilized jurisprudence i.e., reasonable opportunity to defend.

- 4.2 It is stated that, in reply to para 5.ix.C & D, the averments made by the Applicant are denied in toto. It is stated that the Company obtained project for construction of sheds to setup a distillery project in Hyderabad and obtained mobilization advances against issuance of BGs to Comfort Securities and Comfort Commotrade. However, company accounts are become Non-Performing Assets during the Year 2013 and all the bank accounts are freezed by the lenders and because of which the financial stress of the company started and the said projects couldn't be executed.
- 4.3 It is stated that, in reply to para 5.ix.I, the averments made by the Applicant are denied in toto. The Applicant averred that there are outstanding receivables of Rs.7.03 Crores from Haritha Suppliers. It has been explained to the forensic auditor that these time barred transaction of Rs.7.03 Crores is part of related party transactions approved by the Board of Directors and adjusted against other related party transactions pertaining to JMD Ispat. All these Companies are already dealing with sale and purchase of steel and it was in the best interest of the Company to deal with these Companies to ensure definitive supplies during shortages apart from reasonable profits in all these transactions. Hence, there are no receivables from Haritha Suppliers.
- 4.4 It is stated that, in reply to para 5.ix.I, the averments made by the Applicant are denied in toto. The Applicant averred that there are

outstanding receivables of Rs.7.03 Crores from Haritha Suppliers. It has been explained to the forensic auditor that these time barred transaction of Rs.7.03 Crores is part of related party transactions approved by the Board of Directors and adjusted against other related party transactions pertaining to JMD Ispat. All these Companies are already dealing with sale and purchase of steel and it was in the best interest of the Company to deal with these companies to ensure definitive supplies during shortages apart from reasonable profits in all these transactions. Hence, there are no receivables from Haritha Suppliers.

4.5 It is stated that, in reply to para 5.ix.J, the averments made by the Applicant are denied in toto. The allegations made by the Applicant are not substantiated by any documentary evidence but are based only on Applicant assumptions. In the year 2012, Corporate Debtor came to know that there was a potential redevelopment project worth around Rs. 200 Crores with New Ambivali Co-operative Housing Society Ltd. (NACHS) where M/s. Dhansri Developers already have redevelopment agreement with NACHS but pending execution. Corporate Debtor entered into redevelopment agreement (submitted earlier to forensic auditors) with NACHS on 10.03.2013 by obtaining NOC from M/s Dhansri Developers through court in Mumbai by paying Compensation of Rs.2 Crores and stamp duty for such agreement is Rs.1.52 Crores.

4.6 It is stated that, in reply to para 5.ix.K & L, the averments made by the Applicant are denied in toto. It is stated that the KVPL has not able to complete the project in all respects like Lifts are not installed,

swimming pool not constructed. Hence, the flat owners were not paid the full consideration. The same scenario is happened with the present Respondent also.

- 4.7 It is stated that, in reply to para 5.ix.O, the averments made by the Applicant are denied in toto. It is stated that M/s. Kanakadhara Avenues (P) Ltd (“KAPL”) was incorporated in the year 2008 by the promoters of Corporate Debtor (“KVPL”) to cater to the Residential Development Arm of KVPL. In the year 2010, KAPL had two projects in pipeline. An amount of Rs.1 Crore was transferred by KVPL for the working capital requirements in KAPL after intimating to consortium lenders. The said pipelined projects were converted to development agreements in the year 2012. But due to technical issues in the land documents and for the reason of getting clearance from local authorities, project was not commenced till the year 2016. It is further stated that there are no dues from KAPL to KVPL as appearing the Books of Accounts. It is to reiterate that the said Books of Accounts are not updated and not audited, hence the outstanding balances shown are not correct as appearing as on date.

5. Respondent Nos. 3, 4 & 6 filed reply, inter-alia stating that:

- 5.1 It is stated that the Respondents are erstwhile Directors of the Corporate Debtor M/s. Kanakadhara Ventures Private Limited. It is stated that the Respondents are non-executive directors of the Company viz. M/s. Kanakadhara Ventures Private Limited and are not involved in the day-to-day business operations of the Company.

5.2 It is stated that there are other erstwhile Directors of the Company namely Shri Shyam Sundar Bansal, Shri Laxmi Narayana Ambati and Shri Mallaiah Gunda who acted as Directors of the Company for a substantial period of more than 5 years. But the Applicant has not made any of them as parties to the present IA for the reasons best known to the Applicant. The Applicant made the answering Respondents as parties just to corner them with ill motive of harassing.

5.3 It is stated that *Hon'ble Supreme Court in the matter of Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd. and Ors. Etc., Criminal Appeal Nos. 1047 and 1048 of 2021* held that Directors cannot be held vicariously liable for criminal offences of Company by stating in its order as follows:

“Merely because Respondent Nos. 2 to 5 and 7 & 8 are the Chairman/Managing Director/ Executive Director/ Deputy General Manager/ Planner & Executor, automatically they cannot be held vicariously liable, unless there are specific allegations and averments against them with respect to their individual role.”

6. Respondent No.7 filed reply, inter-alia stating that:

6.1 It is stated that most of the contents made in the Application under reply are totally false, baseless. It is stated that this Application filed on 18.03.2021 i.e., 480 days after the commencement of Corporate Insolvency Resolution Process (CIRP) is hopelessly barred by limitation. Regulation 35A of Regulations lays down a specific and stipulated time line to initiate action in respect of transactions covered by Sections 43, 45, 50 and 66 namely preferential transactions, under-valued transactions, extortionate transactions, under-valued

transactions, extortionate transactions and fraudulent transactions respectively.

- 6.2 It is stated that there is no provision either in the IB Code or in the Regulations that warrant Forensic Audit Report for the purpose of forming an opinion on preferential or other transactions or for the purpose of determination of preferential and other transactions or for the purpose of filing applications under Sections 43, 45, 50 and 66 of the IB Code. But Applicant sought for Forensic Audit of the Corporate Debtor for the period from 01.04.2010 to 22.11.2019 and on the basis of such report only this Application is filed. Neither the Applicant nor the Raju and Prasad, Chartered Accounts nor the Raju and Prasad, Chartered Accountants who conducted the Forensic Audit of the Corporate Debtor did not provide opportunity to the Respondent No.7 to present its clarification on the findings of the Auditors.
- 6.3 It is stated that the Hon'ble High Court for the State of Telangana in W.P.No. 19102/2019 in the case of Rajesh Agarwal Vs. Reserve Bank of India and others while dealing with the circular issued by the Reserve Bank of India (RBI/DBS/2016-17/28 Dated 01.07.2016) is clearly held that the virtual requirement of audi alteram partem is conspicuously missing in relying on Forensic Audit Report as a piece of evidence for declaring the account of the company as "fraud". This Respondent further stated that the Forensic Audit Report dated 04.12.2020 has not been communicated to this Respondent except filing along with the petition.

6.4 It is stated that this Hon'ble Tribunal in *Rohan Varma Constructions Private Limited Vs. Indi-Bharat Power (Madras) Limited in IA.No.157/2019 in C.P.(IB) No. 150/9/HDB/2017* clearly held in Para 11 as follows:

“11. If we take note of the above Disclaimer declared by the Auditor, then we have to hold that this Audit Report, on the basis of which the Resolution Professional wanted us to infer that the transactions in dispute are fraudulent in nature, etc., is too inconclusive report. The Auditor himself is not confident about the finding recorded by him for want of sufficient material before him. If we keep out of our consideration such inconclusive Audit Report, we have to hold that there is no additional and sufficient material brought on record by the Resolution Professional so as to enable us to record a different finding on the disputed transaction which this Adjudicating Authority has already recorded in its order dated 08.05.2018. We cannot review our own order in absence of cogent and sufficient material.”

6.5 It is stated that the above said decision is a well-set precedent and equally applies to the case of this Respondent. It is further stated that it has exercised complete due diligence and thereby entered into the transactions and insisted upon letter of credits and bank guarantees as against the supplies made by it. The due diligence required to be exercised by this Respondent is the same as that of an ordinary, prudent person would exercise in this type of supply of material. The Respondent stated that no financial loss has been caused to the Corporate Debtor because of the transactions with this Respondent and prays to dismiss this application 0.as against this Respondent.

7. Respondent No.10 filed reply, inter-alia stating that:

7.1 It is stated that the Respondent deny all the contents, allegations and averments made in the Interlocutory Application. It is stated that all the

payments by the Corporate Debtor KVPL from Respondent No.10 is either to the Andhra Bank Overdraft Account No. 05434131100000131 (Rs.5,33,06,000/-) or Union Bank of India Cash Credit Account No. 411505040042110 (Rs.1.50 Crores) of the Corporate Debtor KVPL and the responsibility of the consortium banks to monitor. Under no circumstances, can it be said that Respondent No.10 has disbursed these amounts to third parties from the OD/CC accounts of the Corporate Debtor, which were operated by the Corporate Debtor and maintained with the consortium banker.

7.2 The forensic auditor has stated that the Corporate Debtor KVPL has not provided reasons along with supporting statements substantiating that the payments have been made in the normal course of business for these particular amounts. As such, it is best to be questioned to the Corporate Debtor and replies taken from them or the concerned banks who were lax in their responsibility of monitoring the account of the concerned entity KVPL, since the Respondent No.10 were not involved in their business decisions, as they are a separate entity. For the above reasons it is prayed to dismiss this Interlocutory Application

8. Respondent No.12 filed reply, inter-alia stating that:

8.1 It is stated that M/s. Kanakadhara Ventures Private Limited (“KVPL”) had subcontracted the construction of two (2) residential projects of Tamilnadu Housing Board (“TNHB” a Govt. of Tamilnadu Organization) on back-to-back basis vide contract dated 01.07.2013, one with 8 Blocks and another with 5 Blocks of Residential Apartments. The total contract value of the said projects was Rs.32 crores and it was

further escalated to Rs.35.90 crores as per the escalation clause of the Contract. It is stated that TNHB has withdrawn 8 blocks project after successful completion of 6 blocks worth Rs.15.66 Crores and 5 Blocks project was withdrawn before its commencement and after mobilization of all resources like construction equipment, manpower, raw materials for construction etc. Both the projects were withdrawn in the beginning of the year 2016. It is further stated that initially TNHB awarded total area of construction of 2.10 Lakhs Square Feet, accordingly prices were quoted for execution by the Respondent Company for such huge quantities. Since the projects were pre-closed by TNHB after competition of 96,000 sft out of contracted 2.10 lakh sft., the Respondent had to incur huge working loss as the works for 96,000 sft were executed at the prices quoted for 2.10 lakhs sft.

8.2 It is stated that since beginning of the project, KVPL was deducting 5%, 1% and additional 0.3% against each bill of the Respondent Company towards Retention amount, Labour cess and additional Labour cess respectively. The said deduction cumulatively amounted to Rs.0.85 lakhs. It is further stated that the answering Respondent Company further lodged a claim of about Rs.1.70 Crores towards working loss, on account of preliminary expenses incurred and loss in mobilization of resources for 5 Blocks Project which was terminated even before the commencement.

8.3 It is further stated that the Corporate Debtor/KVPL called for a settlement meeting on 23.04.2018 and during the said meeting it was mutually agreed that KVPL will be paying a sum of Rs.1.05 Crores as

a full and final settlement towards all liabilities of KVPL to the Respondent Company. Accordingly, KVPL has issued 7 Cheques totalling to Rs.1.05 Crores drawn on Union Bank and Bank of Baroda, but all the cheques were dishonored. The Respondent Company has also sent Legal Notice under Section 138 & 142 of N.I Act to KVPL for such dishonor, and the copy of the legal notice is enclosed here with as Annexure-1.

8.4 It is further stated that the allegations made against present Respondent were solely made/ stated simply based on forensic audit report without seeking explanations/ clarifications from the parties concerned including the present Respondent. Thereby the Applicant violated the principles of *civilized jurisprudence i.e., reasonable opportunity to defend*.

8.5 It is stated that the instant Application was filed frivolously and seems to be a result of thorough misunderstanding and misconceived of provisions of IBC, 2016. Further the Applicant must have exercised due care including giving opportunity to the Respondent to explain the transaction while alleging the Respondent for fraudulent activity as fraudulent activities be seen very serious in the Court of law.

9. Respondent No.13 filed reply, inter-alia stating that:

9.1 It is stated that the Respondent at the first instance denies all the allegations made by the Applicant except the averments specifically admitted by the Respondent hereinafter. The Applicant made averments against the Respondent in para G at page 24 & 25 of the present

application alleging Bank Guarantee of Rs.3,14,02,755/- was issued in favour of the Respondent to defraud the creditors of the Corporate Debtor.

9.2 It is stated that KVPL/Corporate Debtor has not taken the delivery of the Furniture and the reasons why the furniture has not taken by KVPL are not known to this Respondent. It is further stated that as per terms of the purchase order, the Respondent has invoked BGs submitted by KVPL. It is more relevant to mention here that since the furniture is more than 7 years old and totally kept in ideally, entire furniture is not in usable condition and the same is disposed off long back.

9.3 It is stated that the Respondent Company strongly object the averment that “Bank Guarantee was got issued at the instance of Corporate Debtor with fraudulent intention and with connivance of M/s. Vansace Infotech Pvt. Ltd.” As the same are evidently made blindly/ instinctively/ biasedly without seeking explanations from the party concerned and without verifying all the facts on the records of Lenders of KVPL. The Applicant must have exercised due care including giving opportunity to the Respondent to explain the transaction while alleging the Respondent for fraudulent activity as fraudulent activities be seen very serious in the court of law.

10. Respondent No.14 filed reply, inter-alia stating that:

10.1 It is stated that it has been alleged by the Applicant that the present Respondent is liable for an amount of Rs.0.12 Crores at Page No.11 in tabular row No.6 and at page No.26 of the instant application. The

Applicant averred that the purchases from the present Respondent by M/s. Kanakadhara Ventures Pvt. Ltd. amounting to Rs.0.12 Crores against invoice number 1135 dated 05.03.2012 were not genuine as the materials of 24.715 MTs of steel was carried by Three-Wheeler passenger Bajaj Auto rikshaw with registration number AP20X5154 as noted from the said invoice.

10.2 It is stated that instant application is filed only based on Forensic Audit report without even single evidence. The present application against the answering Respondent herein is solely based on the allegation that the vehicle number quoted on the invoice is that of an auto rickshaw and hence the forensic auditor has come to a conclusion that purchases under the said invoice were not genuine.

10.3 It is stated that the instant application is filed blindly and instinctively without verifying all the facts on record. The Applicant must have exercised due care including giving an opportunity to the Respondent to explain the transaction before alleging the Respondent for fraudulent activity as fraudulent activities will be seen very seriously in the court of law. It is prayed to dismiss the present application against the Respondent No.14.

11. Respondent No.15 filed reply, inter-alia stating that:

11.1 It is stated that neither the Forensic Auditor nor the Applicant i.e., Resolution Professional reached out to the Respondent, before filing of the Application, seeking either the explanations or the settlement details. It is further stated that the Applicant simply filed, one sidedly,

the based on the explanations provided by the Company. Thereby the applicant discrete the principle of nature justice i.e., opportunity of being heard.

11.2 It is stated that the allegation of the Applicant is that there is an outstanding amount of Rs.7,02,83,839/- to be received by the Company from the Respondent for steel sales in Financial Year 2013-14 and payment to the corresponding steel purchases has been discharged by M/s. Kanakadhara Ventures Pvt.Ltd. through invocation of BGs. Applicant further stated that forensic auditors are of the view that non-realization from related party viz., M/s. Haritha Suppliers i.e., present Respondent amounts to diversion of funds and the transaction fraudulent in nature.

11.3 It is stated that time barred transaction of Rs.7.03 Crores is part of related party transactions approved by the Board of Directors and adjusted against other related party transactions pertaining to JMD Ispat. All these Companies are already dealing with sale and purchase of steel and it was in the best interest of the Company to deal with these companies to ensure definitive supplies during shortages apart from reasonable profits in all these transactions. Hence, there are no receivables from Haritha Suppliers. The necessary entries were not reflected in the books of accounts since neither were accounts maintained nor were accounts audited as most of the employees have left the organization by 2016-17.

11.4 It is stated that the answering Respondent entity stopped its operations in 2014 and closed all its statutory and other liabilities before its closure. Now, after 7 years from closure, it is astonishing to note such vein averments of the Applicant. Hence, all the averments of the Applicant against M/s. Haritha Suppliers are denied in toto.

12. The Counsel for the Respondent No.7 filed written submissions by reiterating the pleadings in the counter, apart from that:

12.1 It is stated that the non-furnishing of purchase invoices, lorry receipts by the Corporate Debtor, there is no request from the Auditors to this Respondent to furnish the information that is said to be not furnished by the Corporate Debtor. More over such information is available with the Bankers.

12.2 It is stated that the allegation regarding the mismatch of vehicle numbers and the observation of Auditors that there was no actual moment of the purchases and the BGs and LCs was not genuine, this Respondent submit that the mismatch of vehicle numbers is only a clerical error for the reasons stated in the earlier paragraphs. Coming to the BGs and LCs the International Chamber of Commerce issued certain guidelines for any form of letter of credit. One of the guidelines is that the details mentioned in the letter should be correct that include the name of the seller, date, amount, product name, quantity, transport details etc., it is the duty of Bankers to deny the payment if they find any slightest mistake in the buyers name, product name or shipping details etc., The Auditors without taking into consideration the standard

procedure laid down for issuance of letter of credit, observed that there is no actual movement of goods and BGs and LCs are not genuine. If really the BGs and LCs are not genuine it is for the Auditors to explain how the Bankers made payment.

12.3 It is stated that M/s. Sai Tipparaju Infra Ventures Private Limited is not a related party to this Respondent. Similarly, Corporate Debtor is not a related party to this Respondent. None of the Directors in M/s. Sai Tipparaju Infra Ventures Private Limited are Directors of this Respondent Company during the relevant period i.e., during the years 2012 and 2013. None of the Directors of the Corporate Debtor are the Directors of Respondent Company during the relevant period i.e., during the years 2012 and 2013. Mohammed Sadiq Khan joined as Director in this Respondent Company on 07.06.2019 which is almost 6 years after the alleged transactions had taken place.

12.4 It is stated that this Tribunal in ***Rohan Varma Constructions Private Limited Vs. Ind-Bharat Power (Madras) Limited in IA.No. 157/2019 in C.P. (IB) No. 150/9/HDB/2017 clearly held in Para 11 as follows:***

“11. If we take note of the above Disclaimer declared by the Auditor, then we have to hold that this Audit Report, on the basis of which the Resolution Professional wanted us to infer that the transactions in dispute are fraudulent in nature, etc., is too inconclusive report. The Auditor himself is not confident about the finding recorded by him for want of sufficient material before him. If we keep out of our consideration such inconclusive Audit Report, we have to hold that there is no additional and sufficient material brought on record by the Resolution Professional so as to enable us to record a different finding on the disputed transaction which this Adjudicating Authority has

already recorded in its order dated 08.05.2018. We cannot review our own order in absence of cogent and sufficient material.”

- 12.5 It is stated that it has exercised complete due diligence and thereby entered into the transactions and insisted upon letter of credits and bank guarantees as against the supplies made by it. The due diligence required to be exercised by this Respondent is the same as that of an ordinary, prudent person would exercise in this type of supply of material. It is stated that no financial loss has been caused to the Corporate Debtor because of the transactions with the Respondent and prays to dismiss the petition as against this Respondent.
13. The Counsel for the Respondent No.10 filed written submissions by reiterating the reply, apart from that filed the following citations:
- a. Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors. Reported in (2023) ibclaw.in 75 SC.
 - b. Mr. Anju Bajpai, RP of Tollways (Ujjain) Pvt. Ltd. Vs. Surendra Lodha Reported in (2023) ibclaw.in 479 NCLT.
14. On the basis of the above submissions, the point that emerges for our consideration is:
- “Whether 12 transactions as described at point no 5 (viii), page nos 10-12 of the application undertaken by respondents are of the nature of fraudulent trading and thus attract Section 66 of IBC, 2016?”**
15. We heard advocates from both sides and perused the written statements and other documents submitted to us by both the parties. We find that allegations made by the applicant are based on his observations on the

basis of forensic auditor report dated 31.12.2020, clarifications submitted by forensic auditor on 02.02.2021 and also the discussions which took place in 11th, 12th and 14th COC meetings.

Point:

“Whether 12 transactions as described at point no 5 (viii), page nos 10-12 of the application undertaken by respondents are of the nature of fraudulent trading and thus attract Section 66 of IBC, 2016?”

16. This application is filed by the liquidator of Corporate Debtor under section 66 of IBC with a prayer to treat 12 transactions of Rs 42.19 crores undertaken by Respondents as fraudulent and in the result order R1 to R6 to contribute towards the assets of the Corporate Debtor by the aforesaid amount. Since the application is filed under Section 66 and Section 67 of IBC, 2016, we reproduce hereunder the above said sections, for an easy reference.

"Section 66. Fraudulent trading or wrongful trading:

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 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.

Section 67: Proceedings under section 66.

67. (1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section. Explanation.—For the purposes of this section, "assignee" includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.

(2) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, in relation to a person who is a creditor the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.”

- 17.** Our findings and observations in respect of all the twelve observations / alleged fraudulent transactions, allegation and other documents submitted to us, as under:

- i. Our findings and observations in respect of Arunjyoti Enterprises (R7):** Applicant submits that Corporate Debtor has purchased steel of Rs.7.92 Crores from M/s. Arun Jyothi Enterprises (AJE) and sold to the related party of (AJE) on the same day or the next day to M/s. Sai Tipparaju Infra Ventures Private Limited (STIVPL). The forensic auditor has identified that the purchases at least to the extent of Rs.8.31 Crores (Rs.7.92 Crores + 0.39 Crores) are not genuine, thereby the BG/LC facilities to the same extent are mis utilised and hence are to be made good to the Corporate Debtor. Respondent No.1/Mr.P.Venkateswara Rao who was the Chairman and Managing Director of the Corporate Debtor rejected the allegation and submitted that reason given by the Applicant for concluding 3 transactions out of thousands of transactions undertaken by the Corporate Debtor is that the vehicle numbers mentioned in the records are of vehicles which don't have capacity to carry the goods mentioned in the invoice therein. It is stated that apart from disputing the vehicle numbers, the Applicant has not supplied any other reason to treat the transactions as fraudulent. Respondent No.7/ M/s. Arun Jyothi Enterprises Limited also submitted almost on the same line submitting that mismatch of vehicle numbers is only a clerical error and M/s. Sai Tipparaju Infra Ventures Private Limited is not a related party to this Respondent. Other respondents made no comments on this allegation as either it was not related to them or they decided not to comment. We observe that this allegation is based on documentary evidence that the registration number of vehicles which are mentioned on the documents are of small vehicles which cannot

carry that load which proves that goods were not dispatched, and the documents prepared by respondents are fake. We cannot accept the contention of the respondent that it is a clerical mistake. **In view of the above facts and submissions from both sides, we decide that transaction of Rs 8.31 crores with M/s Arunjyoti Enterprises (R7) is a fraudulent trading.**

- ii. **Our findings and observations in respect of Smart Login Solutions Pvt. Ltd (R9) :** The applicant submits that during the years 2013-14 and 2014-15, the purchase and sales of steel was made from Smart Login Solutions Private Limited. The forensic auditor has verified the details of vehicle numbers in central repository for vehicles maintained by Ministry of Road Transport & Highways, wherein it is observed that in some cases, the vehicle numbers purported to be carrying goods pertain to “Three-wheeler passenger Bajaj Auto riksha” and “Kinetic Safari”. This clearly indicates that there was no actual movement of the goods in subject and it can be construed that the underlying sales of Rs.0.20 Crores (0.069+0.130) was not genuine. Respondent No.1 contended that apart from disputing the vehicle numbers, the Applicant has not supplied any other reason to treat the transactions as fraudulent. Every transaction is undertaken with a set of documents including tax invoice, e-way bill number, lorry receipt etc. The Applicant has not denied the existence of all the documents, but only denies the transactions on the basis of vehicle numbers. No other respondent has submitted any comments on the allegations. **We decide to treat the amount of Rs 0.20 crores as fraudulent trading on the same logic as**

discussed in the paragraph above in case of M/s Arunjyoti Enterprises limited.

iii. Our findings and observations in respect of Comfort Securities Ltd.

(R10) and Comfort commotrade : The applicant submits that the Company has mis utilised the BG amount at least to the extent of Rs.2.39 Crores by taking mobilization advances against issuance of BGs to Comfort Securities and Comfort Commotrade but the project was not completed. The Respondent No.1 refuted the claim and submits that the Corporate Debtor secured a project for construction of sheds to setup a distillery project in Hyderabad from Comfort Securities and Comfort Commotrade and obtained mobilization advances against issuance of BGs to Comfort Securities and Comfort Commotrade. However, with the Company being declared as an NPA during the year 2013, and all the bank accounts were frozen by the lenders which catapulted the financial stress of the company and therefore said projects couldn't be executed. Consequently, Comfort Securities and Comfort Commotrade encashed the BGs issued by the Corporate Debtor. Since, the award of said projects is not in dispute and the CD has availed mobilization advances in the normal course of project execution, these transactions cannot tantamount to fraudulent transactions even if projects could not be completed for whatever reasons. **Therefore, we reject the contention of liquidator to treat this amount of Rs 2.39 crores as fraudulent transactions.**

iv. Our findings and observations in respect of Four Square Homes

Pvt. Ltd (R12) : The applicant submits that Company has issued Bank

guarantees to Tamilnadu Housing Board (TNHB) on 15.04.2013 of Rs.34.50 Lakh for the projects awarded to it by TNHB and these projects in turn were subcontracted to Four Square Homes Pvt. Ltd (FSHPL). The applicant submits that these bank guarantees were invoked but not recovered from FSHPL. We have perused para (iii) and para (iv) of forensic audit report at age 23 of forensic audit report (internal page 69 of application), which is reproduced hereunder.

***“8. Bank Guarantee invoked and not recovered from FSHPL:
A. issued towards BG for TNHB Chennai Project – 8 Blocks:***

....
(iii) *We have noted that the amounts received were transferred to FSHPL immediately. Any deductions from the bills by TNHB were also deducted against FSHPL bills. EMD was also recovered from FSHPL. Similarly, the BG devolvement amount of rs.34.5 lakhs was also debited to FSHPL on 14.10.2014 and reversed.*
(iv) *Later, BG invoked amount was received from TNHB and paid to FSHPL, instead of honouring the BG devolvement amount. This is also evidence as there is a Debit balance of Rs.47 lakhs receivable from FSHPL as on 30.11.2019. By virtue of all these, we are of the view that FSHPL got undue advantage.”*

The reading of the above paras indicate that the amount devolved for BG was debited to FSHPL and later on this amount was received from TNHB and the entry was reversed. To our understanding it is a normal transaction and does not amount to fraudulent transaction. Respondent no. 1 countered the allegation and submitted that during the entire tenure of the said projects Corporate Debtor was deducting 5%, 1% and additional 0.3% against each bill of the Respondent Company towards Retention amount, Labour cess and additional Labour cess respectively and the amount was payable to FSHPL. Respondent no.12 (FSHPL) also submitted that since beginning of the project, KVPL was deducting 5%, 1% and additional 0.3% against each bill of the Respondent

Company towards Retention amount, Labour cess and additional Labour cess respectively. The said deduction cumulatively amounted to Rs.0.85 lakhs. FSHPL(R12) further stated that the answering Respondent Company further lodged a claim of about Rs.1.70 Crores towards working loss, on account of preliminary expenses incurred and loss in mobilization of resources for 5 Blocks Project which was terminated even before the commencement, therefore no undue advantage has been received by it. **Keeping in view the facts as above and also lack of clarity in the forensic audit report to treat this transaction as fraudulent transaction, we decide not to treat this transaction as fraudulent transaction.**

- v. **Our findings and observations in respect of Varnsace Infotech Pvt. Ltd. (R-13):** The applicant submits that BG was issued to Varnsace Infotech Pvt. Ltd., towards purchase of furniture and the same was invoked. Thus, Company neither received furniture nor collected the money for BG invoked and finally the BG invoked amount has been written off. Therefore, Company suffered losses and thus the transaction be treated as fraudulent transaction. Respondent No.13/ M/s. Varnsace Infotech Pvt. Ltd., submits that KVPL/Corporate Debtor has not taken the delivery of the Furniture without giving any reason and therefore as per terms of the purchase order, the Respondent has invoked BGs submitted by KVPL. It is more relevant to mention here that since the furniture is more than 7 years old and totally kept in ideally, entire furniture is not in usable condition and the same is disposed off long back. The Respondent Company strongly objected

the allegation that “Bank Guarantee was got issued at the instance of Corporate Debtor with fraudulent intention and with connivance of M/s. Varnsace Infotech Pvt. Ltd.” In this transaction also we do not find any fraudulent practice as the BG was invoked as per terms of purchase order. **Therefore, we decide not to treat this transaction as fraudulent transaction.**

vi. Our findings and observations in respect of JMD Ispat (R-14): The applicant submits that underlying purchases of Rs.0.12 Crores cannot be genuine as a passenger bajaj auto riksha with registration number AP20X5154 cannot carry 24.715 MTs of steel which is shown in the underlying invoice to the said transaction. The liability towards steel purchase has been discharged through invocation of bank guarantee/devolvement of LCs., thus, the BG/ facilities at least to the extent of Rs.0.12 Crores are mis utilized. The respondents have not submitted any convincing reply to the allegation except submitting that they were not given sufficient opportunity at the time of forensic audit to explain the transaction. **We agree with the contention of the applicant and decide to treat the transaction of Rs 0.12 crore as fraudulent.**

vii. Our findings and observations in respect of Haritha Suppliers (related party) (R-15): The applicant submits that an amount of Rs 7.02 crores were not recovered from Haritha Suppliers which a related party to the CD, hence it is tantamount to diversion of funds and the transaction be treated as fraudulent in nature. Respondent No.1 & 2 countered the argument submitting that, it has been explained to the

forensic auditor that these time barred transaction of Rs.7.03 Crores is part of related party transactions approved by the board of Directors and adjusted against other related party transactions pertaining to JMD Ispat. All these Companies are already dealing with sale and purchase of steel and it was in the best interest of the company to deal with these companies to ensure definitive supplies during shortages apart from reasonable profits in all these transactions. **We are not convinced by the explanation given by respondents for non-recovery of amount of Rs 7.02 crores from R15 which is a related party to the Corporate Debtor, hence we treat this transaction of Rs.7.02 crores as fraudulent transaction.**

- viii. Our findings and observations in respect of diversion of funds w.r.t to Ambivali Project:** The applicant submits that an amount of Rs 6.40 crores in total, consisting of three transactions of (a) Rs 3.40 crores in 2018-19 received from Fairmont Lifespaces LLP for selling rights of Ambivali Project to the said company, (b) Rs 1.00 crores paid to Fairmont Lifespaces LLP on behalf of Mr.B.V.Subba Rao and (c) cash of Rs.2.00 crores cash paid to Mr.B.V.Subba Rao as per the agreement, has been misappropriated by the Company by giving undue benefit to R2, Mr B.V.Subba Rao. Respondent No.1 refuted the submission of applicant and contented that allegations made by forensic auditor are not substantiated by any documentary evidence but are based only on frivolous, non-existent and imaginary FIR dated 31.01.2019 on the basis of which this allegation is made is entirely based on here say. There is no such FIR dated 31.01.2019 which was the premise on which

this allegation was levelled. The Applicant completely failed to prove frivolous allegation beyond reasonable doubt by submitting said non-existent FIR dated 31.01.2019. Respondent No.2/Mr.B.V.Subba Rao contended that this amount was spent for paying compensation of Rs 2.00 crores and stamp duty of Rs. 1.52 crores for getting this project in company's fold which was awarded to M/s Dhansri Developers. But the respondent has failed to submit any documentary evidence to support his contention. **In view of the above facts, we treat this transaction of Rs 6.40 crores as fraudulent transaction.**

- ix. Our findings and observations in respect of unrealised sale proceeds of flats at Kapra of Rs.0.24 crores and Company's flats mortgaged by R2 for his personal loan, total amount involved Rs.1.64 crores.** The Applicant submits that Mr.B.V.Subba Rao (R2) has mortgaged four flats (Ft.No.103, 107, 108 & 118) in "Kanakadhara Landmark" at Kapra Village, valuing Rs.1.40 Crores, owned by the Company, against the Chit amount from M/s.Margadarsi Chit Fund Pvt. Ltd., utilized for his personal benefit. The said flats were auctioned by Margadarshi Chit Fund Pvt. Ltd. The applicant further submitted that the Company has sold certain flats to its Directors & Guarantors and an amount of Rs.0.24 Crores has been unrealized since FY 2010-11 outstanding as on 30.11.2019 against the sale price of these flats. The respondents chose not to respond for the flats mortgaged to Margadarshi Chit Fund Pvt. Ltd., but for unrealized sale proceeds of flats, R2 submitted a clarification that since Company could not fully complete the project, full consideration was not paid by other flat

owners as well and same is the case with the respondents. Though no documents have been furnished by R2 to prove his contention but considering that amount unrealized is quite low as compared to the value of flats, we accept the contention of R2 and may consider it as a waiver for unfinished work in the project. Hence this transaction of Rs.0.24 crores is not treated as fraudulent transaction. **Since, there is no contest by any respondent for the flats mortgaged to Margadarshi Chit Fund Pvt. Ltd., we treat this transaction of Rs.1.40 crores as fraudulent transaction.**

- x. **Our findings and observations in respect of advances paid to various parties and written off, amount involved Rs 9.35 crores (7.98+1.15+0.22):** Applicant submits that most of the amounts have been paid through OD accounts and CC accounts of the Company for unexplained reasons and which were written off in less than 2 years without making adequate efforts to recover the money. Therefore, this write off of Rs.9.35 crores can be considered as diversion/misappropriation of funds by the Company. Respondent No.1 rejecting the submission made by applicant contended that the advances detailed in the chart pertain to the transactions entered in the ordinary course of business by the company. Respondent further submitted that it was explained to the Forensic Auditor, that after declaration of company's account as NPA and consequently freezing of the Bank accounts of the company all the projects got disrupted and the company could not execute the same. All the parties mentioned hitherto had levied penalties for non-performance and encashed the BGs towards the same.

Therefore, the Accounts extracted from the ledger by the Forensic Auditor and classified as advances given and subsequently written off are in reality those projects which the company had contracted to execute but failed to deliver because its accounts were abruptly frozen by the Banks. The explanation given by respondent is convincing and can be accepted and applicant has also not submitted any such proof which proves that these write off are not done in the ordinary course of business. **Therefore, we decide not to treat this transaction as fraudulent transaction.**

- xi. Our findings and observations in respect of payment made to Shivam enterprises and Sun enterprises and written off as stock, amount Rs.2.23 Crores:** Applicant submits that during financial year 2016-17, the Company has made a payment of Rs.1 Crore to Sun Enterprises and Rs.1,13,09,293/- to Shivom Enterprises from Corporation Bank which is a non-consortium bank. That considering the above and in the absence of any supporting documents, payments made to Sun Enterprises and Shivom Enterprises can be considered as Diversion of funds. Respondent No.1 contended that the amount pertain to the transactions entered in the ordinary course of business by the company. Respondent further submitted that it was explained to the Forensic Auditor, that after declaration of company's account as NPA and consequently freezing of the Bank accounts of the company all the projects got disrupted and the company could not execute the same. The explanation given by respondent is convincing and can be accepted and applicant has also not submitted any such proof which proves that these transactions are not done in the ordinary course of business.

Therefore, we decide not to treat this transaction as fraudulent transaction.

- xii. Our findings and observations in respect of payment made to KAPL from which no economic benefits were derived amounting to Diversion of Funds, amount Rs.1.20 Crores:** The applicant submits that Kanakadhara Avenues Private Limited (KAPL) is a company in which Mr. B V Subbarao and Mr. P.Venkateshwara Rao were directors up to 25.07.2015 and Rs.1.20 Crores is receivable from KAPL as on 30.11.2019. Respondent no.1 & 2 accepted that M/s. Kanakadhara Avenues (P) Ltd (“KAPL”) was incorporated in the year 2008 by the promoters of Corporate Debtor (“KVPL”) to cater to the Residential Development Arm of KVPL and an amount of Rs. 1 Crore was transferred by KVPL for the working capital requirements in KAPL after intimating to consortium lenders. The projects could not be implemented and the company failed to take off, defaulted in filing Annual Returns and ROC had struck off the company. Respondent No 2 further stated that there are no dues from KAPL to KVPL as appearing in the Books of Accounts and the amount is appearing as books of accounts are not updated and not audited. **Based on the above facts and submission and in the absence of any proof to treat the transaction as fraudulent, we decide not to treat this transaction as fraudulent.**

- 18.** Based on the above findings and observations, we hold that out of 12 transactions as described at point no 5 (viii), page nos. 10-12 of the application undertaken by respondents, six transactions listed at Sr. nos.

1, 2, 6, 7, 8 and 9 are of the nature of fraudulent trading and thus attract Section 66 of IBC, 2016. However other six transactions listed at Sr.nos. 3, 4, 5, 10, 11 and 12 are not treated as fraudulent transactions. Thus, the point raised is answered and accordingly following directions are issued.

19. The application is partially allowed and disposed of with the following directions:

- (I) We order total recovery of Rs. 23.45 crores from the respondents and direct respondent no.1 to respondent no.6 to contribute an amount of Rs.23.45 crores jointly and severally towards the assets of the Corporate Debtor for the 6 transactions covered under Section 66 of IBC, 2016 within a period of 30 days.
- (II) Respondent No.15 is also directed to contribute Rs.7.02 crores towards the assets of the Corporate Debtor for transaction listed at Sr.no.7.
- (III) The amount to be recovered from respondents 1-6 will reduce to the extent, the amount is recovered from respondent No.15 in respect of transaction listed at Sr. No.7.
- (IV) Respondent no.1 to 6 and respondent no 15 are directed to disclose on oath all assets movable and immovable to this Tribunal.

-SD-

Charan Singh
Member Technical

-SD-

Dr. N.V. Ramakrishna Badarinath
Member Judicial

Sridher/pavani