



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
IA/1064(AHM)2024 in
C.P.(IB)/123(AHM)2022

Order under Sections 66,67 & 60(5) of IBC

IN THE MATTER OF:

Vinod Tarachandra Agrawal RP for Jay Formulation Ltd.
V/s
Rakshit Ashwinbhai Patel & Ors.

.....Applicant

.....Respondents

Order delivered on: 21/04/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

- Sd -

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

- Sd -

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT- I, AHMEDABAD**

**IA/1064(AHM)2024
IN
C.P.(IB)/123(AHM)2022**

[An application under Section 66, 67 and 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of NCLT Rules, 2016]

In the matter of: Jay Formulations Limited.

Vinod Tarachand Agrawal,

Resolution Professional of Jay Formulation Ltd.,
Reg. No. IBBI/IPA-001/P00641/2017-18/11090
Having office at:
204, Wall Street-1, Near Gujarat College,
Ellisbridge, Ahmedabad-380006.

.... Applicant/RP

VERSUS

- 1. Rakshit Ashwinbhai Patel**
(Suspended Director of Jay Formulations Limited)
Having his residence at
B-74 Orchidwood, Opp. Vodafone,
Corporate Road, Prahladnagar,
Ahmedabad – 380015

Also having address at
C-6 Mayur Pankh Society,
Nr. Umiya Vijay Bus Stop,
Satellite Road, Ahmedabad-380015.
- 2. Mrs. Komal Rakshit Patel**
(Suspended Director of Jay Formulations Limited)



Having her residence at
B-74 Orchidwood, Opp. Vodafone,
Corporate Road, Prahladnagar,
Ahmedabad – 380015

Also having address at
C-6 Mayur Pankh Society,
Nr. Umiya Vijay Bus Stop,
Satellite Road, Ahmedabad – 380015

3. **Aarjav Maheshbhai Patel**
(Suspended Director of Jay Formulations Limited)
Having his residence at
B-74 Orchidwood, Opp. Vodafone,
Corporate Road, Prahladnagar,
Ahmedabad – 380015.

Also having address at:
C-6 Mayur Pankh Society,
Nr. Umiya Vijay Bus Stop,
Satellite Road, Ahmedabad – 380015.

.... Respondents

Order Pronounced On: 21.04.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/RP : Mr. Saurabh Rachchh Adv. a.w.
Mr. Vinod Agarwal RP in Person
For the Respondents : Mr. Laxman Desai, Adv. R-1 to R-3



ORDER
[Per: Bench]


1. The is an application being IA/1064(AHM)2024 filed on 25.06.2024 by the Applicant/Resolution Professional of Jay Formulations Ltd., under Sections 66, 67 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short “**Code**”) read with Rule 11 of the NCLT Rules, 2016 seeking the following prayers: -

- 1) Your Lordship may be pleased to allow the present application.
- 2) Your Lordship may kindly declare that the transactions mentioned in paragraph no. 7A to 7D are fraudulent trading as provided under section 66 read with section 67 of the Insolvency and Bankruptcy Code, 2016
- 3) Your Lordship may kindly issue order requiring any money/benefits transferred fraudulently by the Corporate Debtor in favour of other parties to be restored back to the Corporate Debtor; and or
- 4) Your Lordship may kindly issue order for initiating appropriate proceedings against directors of the suspended management as well as the beneficiaries under the said transactions as provided under the Insolvency and Bankruptcy Code, 2016 for fraudulent/wrongful trading with the intention to defraud the creditors; and/or
- 5) Your Lordship may be pleased to grant any other relief as may deem fit in the interest of justice.



2. In support of the application, it is stated that: -

- i) Jay Formulations Limited – Corporate Debtor under CIRP is a company having registered address at 13, 1st Floor, Hari-Krishna Complex, Behind City Gold, Ashram Road, Ahmedabad-380009.
- ii) An application was filed under Section 7 of the Code by State Bank of India vide CP(IB) No. 123 of 2022 which was allowed by the order of this Adjudicating Authority dated 26.09.2023. The applicant was appointed as Interim Resolution Professional (for short “**IRP**”) and, thereafter, he was appointed as Resolution Professional (for short “**RP**”) for carrying out the whole Corporate Insolvency Resolution Process.
- iii) On 28.09.2023, the applicant carried out the Public Announcement in Form A for attention of all creditors of the Corporate Debtor i.e., Jay Formulations Ltd.
- iv) The applicant came to know that the suspended management had an account in the Sarvoday Commercial Cooperative Bank Ltd., and, hence, received on 26.10.2023. Thereafter, on 20.11.2023 the applicant issued the Expression of Interest (for short “**EoI**”) in Form.
- v) Even after taking the handover of the premises of the Corporate Debtor (now suspended management), the applicant had no information available with him of the Corporate Debtor. Hence, on 24.11.2023 the applicant filed an Interlocutory Application before this Tribunal under Section 19(2) of the Code seeking directions against the suspended management to cooperate with the applicant and provide information. The suspended management on 14.04.2024 provided the tally data and the



Interlocutory Application No. 1366 of 2023 was disposed accordingly.

- vi) During the on-going CIRP of the corporate debtor, the applicant on 10.01.2024 appointed Mr. Mukeshkumar Jain and Co., assigning them the task of doing the transaction audit of Jay Formulations Ltd. Thereafter, on 14.06.2024 the applicant received the transaction audit report from Mukeshkumar Jain and Co., wherein detailed analysis has been done on various transactions done by the suspended management. In analysis of such transactions, the transaction auditor was successful in finding many transactions which can be considered as Fraudulent Transaction as per section 66 of the Insolvency and Bankruptcy Code, 2016 and hence appropriate order has to be passed by this Hon'ble Tribunal with regard to the same.
- vii) The applicant submitted the details of the transactions which have been found fraudulent by the transaction auditor determined by resolution professional: -

A. Transaction of Jay Formulations Ltd. with DMP Healthcare: -

- 1) On 26.02.2024 the suspended management provided few details/information of the Corporate Debtor to the applicant and further the applicant has provided the same to the transaction auditor.
- 2) The transaction auditor on going through the data made available observed that for the year ending on 31.03.2021, DMP Healthcare is one of the main debtors of the Corporate Debtor i.e. Jay Formulations Ltd. It is further pertinent to note that DMP Healthcare in the year ending



on 31.03.2021 has an outstanding amount of Rs 36.22 crores.

- 3) Further, it is pertinent to note that as per the observations made in the audit report dated 14.06.2024, firm DMP seems to be the short version of Dilipbhai M. Patel (Husband of Proprietor of the Firm). Further, Mr. Dilipbhai M. Patel is also a shareholder in Jay Formulations Ltd. having shareholding of 0.07% i.e. having 1480 shares of Jay Formulations Ltd. Along with his wife Rekhaben Dilipbhai Patel (Proprietor of DMP health care) having shareholding of 0.01% i.e. having 120 shares of Jay Formulations Ltd.
- 4) As per Board Resolution of EGM of Jay Formulations Ltd dated 25.04.2013, Dilipbhai M. patel is a relative of the Director/Promoter.
- 5) The applicant submitted that an amount of Rs 36.22 crores is outstanding as on 31.03.2021. The transaction auditor has attached the ledger account for the year ending on 31.03.2021 and Jay Formulations Ltd. has written off Bad Debt of Rs 3.40 crores on 01.03.2022 in the ledger of DMP Healthcare without any proper justification, which reduced the outstanding from DMP healthcare to 32.82 Crore.
- 6) Hence, as per the submissions made above, the transaction amounted to Rs.36,21,91,872.60 done by Jay Formulations Ltd. And is liable to be classified as fraudulent transaction which effect the other stakeholders of Jay Formulations Ltd.

B. Status of Fixed Assets:

- 1) The applicant submitted that as per the information made available from the Audited Balance Sheet for the year ending 31/03/2021, the Value of the Fixed Assets of Jay Formulations Ltd. was Rs. 23.35 Crores. That vide mail dated 26th February, 2024 the suspended management was asked for arranging the status of the Fixed Assets as on date however no reply has been received from the Suspended Management to the stated observation shared on 26/02/2024 as on the date of the transaction report.
- 2) Further, it is pertinent to note that following are the cars which are even though being recorded in the books of the accounts of Jay Formulations Ltd., the said are not in the possession of the applicant as the below mentioned cars are in the name of the Directors of Jay Formulations Ltd. and that Jay Formulations Ltd. is the co-applicant in the said loan. Further, it is pertinent to note from the available records and repayment loan statement made available by the State Bank of India, Jay Formulations Ltd. has made the repayment of the said car loan and the same is ought to have been received/receivable from the directors.

The applicant submits the summary of loan repayment (principal plus interest) available from the loan statement: -



Sr. No.	Particulars	Loan Account Number	Period of the loan statement	Loan Repayment
1	BMW Car - Rakshit Patel	State Bank of India BMW Loan 37126978440	31/08/2017 to 18/03/2024	Rs. 1,23,00,872.22
2	I20 car - Aarjav bhai	State Bank of India- I20 Loan 36975597782	29/06/2017 to 18/03/2024	Rs. 13,11,667.02
3	Mercedes - Benz GJ 01 KX 1926 - (Aarjav bhai car)	Daimler Financial Serv. India Pvt. Ltd.- Mercedes Loan	19/12/2019 to 18/3/2024	Rs. 27,48,621.00

4	Staff Bus - Eco Car	State Bank of India EECO Loan A/c 39358623055	29/05/2020 to 18/03/2024	Rs. 8,13,614.00
			Total	Rs. 1,71,74,774.24

- 3) The applicant further submits that following the initiation of the CIRP, a physical inspection of Jay Formulation Ltd.'s fixed assets revealed that certain vehicles listed in the Audited Balance Sheet for the year ending on 31.03.2021, are not in the possession of the applicant. These vehicles, apart from those for which Jay Formulations Ltd. has already made car loan repayments, have not been physically available and were not handed over by the suspended management. The specific vehicles in question, which remain unavailable for despite being recorded in the Jay Formulations Ltd.'s audited financial statements, are detailed below:



Motor Vehicles	Closing Balance as on 31.03.2021 as per Tally Data	WDV on as per Tally Data	Assets in the Possession of the Resolution Professional	Remarks
Maruti Esteem	513577.18		No	Classified as fraudulent under Section 66 of the Insolvency and Bankruptcy Code, 2016, due to the inclusion of these assets in the Audited Balance Sheet for the year ending 31/03/2021 and the Resolution Professional's confirmation that they were not transferred by the previous management of the Company.
Maruti Zen	278013.67		No	
Passion Pro Bike	61091.00		No	
Verna 7351 (Aarjav)	985531.00		No	
Total	1838212.85			

- 4) The applicant further also submits that during the Transaction audit of Jay Formulation Limited, it was observed that Jay Formulations Ltd. has been making repayments of car loans that are registered in the names of their directors and they being co-applicant in loan. These transactions have significant implications and raise several red flags such as:
- 5) Improper Treatment under Income Tax Act, 1961: The applicant humbly submits that the repayments of the car loans have not been reported as perquisites to the directors as required under the Income Tax Act, 1961. According to the details provided, there is no record of these repayments being treated as taxable benefits. This omission constitutes a serious violation of tax regulations and suggests an attempt to evade proper tax treatment.



- 6) Further, it is also submitted that the action of providing repayment of car loan purchased by directors it is nothing but advancing company funds to directors: The repayments made by Jay Formulations Ltd. for these personal car loans effectively represent advances to the directors. This practice is highly irregular, as the directors have not reimbursed the company for these payments. This use of company funds for personal benefit, without repayment, is a misuse of corporate resources.
- 7) Further, it is pertinent to note that Jay Formulations Ltd. has also conducted a fraudulent financial management: The nature of these transactions indicates fraudulent behaviour which is using company funds to pay off personal liabilities without proper disclosure or reimbursement, the directors have acted against the interests of the company and its stakeholders. This mismanagement of funds is considered fraudulent as it directly benefits the directors at the expense of the company's financial health.
- 8) Moreover, the applicant also submits that missing vehicle assets are impacting resolution efforts since, during the physical inspection conducted by the applicant, it was discovered that certain assets, specifically vehicles and cars, listed in the Audited Balance Sheet for the year ending March 31, 2021, were not physically present. Despite being recorded as assets in the audited financial statements, these vehicles were not handed over and are not currently in the possession of the applicant. The absence of these assets reduces the available resource pool, thereby hindering efforts to maximize the value for creditors and other stakeholders.
- 9) Hence, it appeared that Suspended Management conducted transaction of fraudulent nature by paying 1,71,74,774/- for personal assets and misappropriated assets having WDV of Rs.18,38,213/-.

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C. **Transaction of Jay Formulations Ltd. With M/s. Sukrut Pharma: -**

- 1) The applicant humbly submits that the transaction auditor as per the information shared by the applicant, found Jay Formulations Ltd. had opened the Bank account with Sarvodaya Commercial Bank Limited dated 02.04.2021 without obtaining prior permission or intimation to secured lenders.
- 2) After going through the bank statements made available period 02.04.2021 to 29.09.2023, it was revealed that Jay Formulations Ltd. had made payments to M/s Sukrut Pharma. Further, from the bank account statement available it was observed that for the period 02.04.2021 to 29.09.2023, the company has made payment of Rs. 14,37,14,242.00/- (Net) during the above-mentioned period to M/s Sukrut Pharma.
- 3) The applicant further submitted that as per the information made available from the GSTR Return for the Financial Year 2021-2022, 2022-2023 & 2023 2024, the following are the transactions of purchase and sales recorded in the GSTR Return with Sukrut Pharma:

Financial Year	Purchase from Sukrut Pharma (with GST)	Sale to Sukrut Pharma (with GST)	Payment made during the Financial Year	Receipt during the Financial Year
2021-22	-	-	9,95,55,324.00	30,30,001.00
2022-23	6,41,128.00	1,03,47,645.00	4,77,42,754.00	5,53,835.00
2023-24	-	-	-	-
Total	6,41,128.00	1,03,47,645.00	14,72,98,078.00	35,83,836.00



- 4) The applicant further submits that from the tally data made available it has been observed that the company has not accounted for the bank statement of Sarvodaya Commercial Co-Op. Bank Ltd A/c No: 805013101000133 Current Account. As the current account of Sarvodaya Bank has not been accounted for, payment made to Sukrut Pharma which is shown as per the Bank statement of Sarvodaya Commercial Bank is not appearing in the tally data.
- 5) Also, in the tally data that has been made available, journal entries have been passed debiting and crediting the ledger of Sukrut Pharma. No documents and supporting information have been provided for the said entries in the tally data for the period 01.04.2021 to 09.12.2023.
- 6) The applicant further submits that one of the major observations in the transaction audit is that Jay Formulations Ltd. has made a total transfer of Rs. 14,37,14.242.00 (Net) from the Sarvodaya Bank Account, which has not been accounted for in the tally data. Further, no details have been made available for the payment of Rs. 14.37 Crores made to Sukrut Pharma, and for which purpose the payments have been made to Sukrut Pharma.
- 7) The applicant submits that the contact person for Sukrut Pharma is listed as Bharat Tiwari, who is an employee of Jay Formulation Ltd. This connection suggests that Sukrut Pharma is either a related party or controlled by the same management.
- 8) Moreover, the applicant submits that in the transaction audit there are irregularities found in the ledger entries. The ledgers for Sukrut Pharma, covering the period from 01.04.2021 to 9.12.2023, show numerous debit and credit journal entries. However, no explanations or supporting details have been provided by the suspended management to justify these entries. The lack of transparency and detailed records for



these transactions is highly irregular and raises suspicions of financial manipulation.

- 9) Hence, the applicant, as per the transaction audit dated 14.06.2024, humbly concluded that the payments made to Sukrut Pharma, totalling Rs. 14.37 Crores, and the manner in which these transactions have been handled, strongly suggest fraudulent activity.

D. Transaction of Jay Formulations Ltd. with Khodal Pharmaceuticals: -

- 1) The applicant submits that, as per the information shared, the Company opened an account with Sarvodaya Commercial Cooperative Bank Limited on 02.04.2021. From the Bank statements made available for the period from 02.04.2021 to 29.09.2023, Jay Formulations Ltd. made payments to M/s Khodal Pharmaceuticals.
- 2) Further it is submitted that as per the Information made available from the Sarvodaya Bank statement for the period 02.04.2021 to 29.09.2023, Jay Formulations Ltd. has made payment of Rs. 4,26,13,434.00 (Net) during this period to M/s Khodal Pharmaceuticals.
- 3) As per the information made available from the GSTR Return for the Financial Year 2021-2022, 2022-2023 & 2023 2024, the following are the transactions of purchase and sales recorded in the GSTR Return with Khodal Pharmaceuticals:

Financial Year	Purchase from Khodal Pharma (with GST)	Sale to Khodal Pharma (with GST)	Payment made during the Financial Year	Receipt during the Financial Year
2021-22	-	70,48,928.00	-	-
2022-23	71,14,279.00	-	3,58,65,853.00	5,61,823.00
2023-24	-	-	76,89,404.00	3,80,000.00
Total	71,14,279.00	70,48,928.00	4,35,55,257.00	9,41,823.00



- 4) From the tally data made available for the period 01.04.2021 to 09.12.2023, journal entries have been passed debiting and crediting the ledger of Khodal Pharmaceuticals. No information and supporting's have been provided for the entries passed in the ledger of Khodal Pharmaceuticals.
- 5) The applicant further humbly submits that it has been observed from the tally data shared that Jay Formulations Ltd. has not accounted for the Bank account maintained with Sarvodaya Commercial Bank. As per the bank statement, the company made a payment of Rs. 4.26 Crores during the period 02.04.2021 to 26.10.2023. No details have been made available for what purpose the payments have been made to Khodal Pharmaceuticals.
- 6) The applicant hence humbly submits that Jay Formulation Ltd. made payments totalling Rs. 4.26 Crores to M/s Khodal Pharmaceuticals, which is a proprietorship firm owned by Ramilaben Ashwinbhai Patel, who is the mother of Mr. Rakshit A. Patel, a director of Jay Formulation Ltd.
- 7) Additionally, it is submitted by the applicant that Mrs. Ramilaben Patel holds a significant shareholding in the company, with 5,46,413 shares. The relationship between Ramilaben Patel and the company's director, combined with her substantial shareholding, classifies M/s Khodal Pharmaceuticals as a related party.
- 8) Thereafter, it is pertinent to note that there is a lack of documentation and explanation with regard to various entries. It is submitted that despite a formal observation



being shared on February 26, 2024, requesting details and the purpose of these payments, no response or supporting documentation has been provided by suspended management. The ledger entries for M/s Khodal Pharmaceuticals from 01.04.2021 to 09.12.2023, contain numerous debit and credit journal entries without any accompanying explanations or documentation from suspended management. This lack of transparency and the failure to provide adequate explanations further indicate potential financial misconduct.

- 9) Further it is humbly submitted that there is a potential conflict of interest and fraud since the payments to M/s Khodal Pharmaceuticals, combined with the non-disclosure and absence of supporting documentation, suggest that these transactions were intended to benefit the directors' related parties improperly. The failure to record these payments in Jay Formulations Ltd.'s official financial records and the use of trade receivables for these payments point towards deliberate financial manipulation and fraudulent behaviour.
- 10) Hence, as per the aforementioned submissions it can be concluded that the payments made to M/s Khodal Pharmaceuticals, amounting to Rs. 4.26 Crores, and the handling of these transactions indicate significant fraudulent activity. The lack of response from management, the relationship between the parties involved, and the absence of proper financial recording strongly suggest intentional financial misconduct.

A copy of the transaction audit report dated 14.06.2024 is herein marked and annexed as Annexure A.

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viii) The applicant thus has a humble submission that aforementioned submissions are formed on the basis of the available books of accounts and transaction audit report dated 14.06.2024. The applicant humbly submitted that the submission made by the applicant is nothing but a genuine analysis and finding from the data made available to him by the suspended management. Hence, the same may kindly be taken into consideration in the interest of justice.

ix) The applicant has further submitted that as per Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the applicant as Resolution Professional has made the following determination on fraudulent transactions as under section 66 of the Insolvency and Bankruptcy Code, 2016:

A. On transaction with **M/s DMP Healthcare** (receivable of Rs.36,21,91,872.60 as per opening balance as on 01.04.2021).

1. DMP Healthcare is a related party to Jay Formulations Ltd.
2. Jay Formulations Ltd. has not made any efforts for recovery from DMP Healthcare, the debtor which shows malafide intentions of the suspended management.
3. The transaction between Jay Formulations and DMP Healthcare does not seem to be in the normal course of business
4. The suspended management has provided no justification for the payment made.
5. Hence, even though having a significant receivable amount, Jay Formulations Ltd. has not made any efforts for the recovery of the same. This will give disadvantage to the creditors of Jay Formulations Ltd. which implies



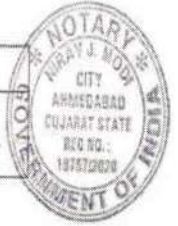
that section 53 of The Insolvency and Bankruptcy Code, 2016 is not adhered.

6. Thus, as per the aforementioned submissions the same will be treated as Fraudulent in nature.

B. The Transaction of the car and loan amount along with the period is mentioned herein:

Details of the car and loan amount alongwith the period is mentioned herein:

Sr. No.	Car and Loan Amount	Period
1	(BMW Car Loan-37126978440)	31/08/2017



	Rs. 1,23,00,872.22	to 16/12/2024
2	(I20 Car - 36975597782) Rs. 13,11,667.02	29/06/2017 to 29/02/2024
3	(Mercedes -Benz - 10140056) Rs. 27,48,621.00	18/01/2020 to 24/01/2024
4	(EECO CAR - 39358623055) Rs. 8,13,614.00	30.05.2020 to 09.02.2022

1. The applicant humbly submits that suspended management was aware regarding ownership of the cars and repayment of personal car loan from the account of Jay Formulations Ltd. hence *malafide* intension is clearly shown.
2. The applicant further humbly submits that on the date of payment, Jay Formulations Ltd.'s account was declared a Non-Performing Asset, and payment to secured creditors was overdue. Thus, Section 53 of the



Insolvency and Bankruptcy Code, 2016, is violated, and the waterfall mechanism would not be adhered to; hence, such transactions do not give fair treatment to the stakeholders.

3. The transaction between Jay Formulations Ltd. and its directors does not seem to be in the normal course of business
4. The suspended management has provided no justification for the payment made.
5. Hence, the payment made towards the personal loan from the funds of the company i.e. Jay Formulations Ltd. the same will not be treated as fair treatment of the funds of Jay Formulations Ltd. and thus the same will be treated as Fraudulent in nature.

C. Non-availability of Fixed Assets (Cars/Vehicles as on 31.03.2021 amount Rs.18,38,212.85)

1. The applicant humbly submits that the mentioning of vehicles is missing in the assets of Jay Formulations Ltd. even though Written Down Value is reflecting in the tally records of Jay Formulations Ltd.
2. The applicant further humbly submits that the physical handover of the assets to the applicant was not given by the suspended management. Further, it is pertinent to note that till the date of initiation of the Committee of Creditors, physical control of assets was with suspended management only.
3. The suspended management has provided no justification for the payment made.
4. Hence, it is humbly submitted that misrepresentation of the assets of the company is not a fair practice opted by Jay Formulations Ltd. and in this way, it will not give

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advantage to the stakeholders of Jay Formulations Ltd. while distribution under the waterfall mechanism as per Section 53 of the Code. Thus, the same will be treated as Fraudulent in nature.

D. Transaction of Jay Formulations Ltd. with Sukrut Pharma during 02.04.2021 to 29.09.2023 amounting to Rs 14,37,14,242/-

1. The applicant humbly submits that the payment made to Sukrut Pharma is omitted from the tally records of Jay Formulations Ltd.
2. The records show that there is a relation between Sukrut Pharma and suspended management of Jay Formulations Ltd.
3. Further, it is humbly submitted that on the date of payment, Jay Formulations Ltd.'s account was declared a Non-Performing Asset, and payment to secured creditors was overdue. Thus, Section 53 of the Insolvency and Bankruptcy Code, 2016, is violated, and the waterfall mechanism would not be adhered to, which does not give fair treatment to the stakeholders.
4. The suspended management has provided no justification for the payment made.
5. Hence, it is humbly submitted that utilization of receipts of sales against the payment to Sukrut Pharma and the same is not represented in the records of Jay Formulations Ltd., which will thus be treated as fraudulent in nature.


E. Transaction done by Jay Formulations Ltd. with Khodal Pharmaceuticals 02.04.2021 to 29.09.2023 amounting to Rs 4,26,13,434/-



1. The applicant further humbly submits that the payment made to Khodal Pharmaceuticals is a payment made to a related party of Jay Formulations Ltd.
 2. The applicant humbly submits that the payment made to Khodal Pharmaceuticals is omitted from the tally records of Jay Formulations Ltd.
 3. Further, it is humbly submitted that on the date of payment, Jay Formulations Ltd.'s account was declared a Non-Performing Asset, and payment to secured creditors was overdue. Thus, Section 53 of the Insolvency and Bankruptcy Code, 2016, is violated, and the waterfall mechanism would not be adhered to, which does not give fair treatment to the stakeholders.
 4. The suspended management has provided no justification for the payment made.
 5. Hence, it is humbly submitted that utilization of receipts of sales against the payment to Khodal Pharmaceuticals and the same is not represented in the records of Jay Formulations Ltd. which will thus be treated as fraudulent in nature.
- x) The applicant craves leave of this Hon'ble Tribunal to kindly add, amend and alter this application as and when found necessary.



- xi) The applicant submits that requisite fee amounting to Rs.1,000/- is paid by the applicant online and receipt of the same is made part of this application.
3. During the hearing on 09.12.2024, learned counsel for the Applicant/RP sought indulgence to file an additional affidavit in support of the present IA along with certain documents. In compliance with the said order, the Applicant filed an additional affidavit a.w. certain document on 18.12.2024 vide inward diary no. 9091 stating that: -
1. The captioned interlocutory application was listed before this Hon'ble Tribunal on 09.12.2024 wherein this Hon'ble Tribunal has been pleased to hear the matter for final consideration. However, during the submission, this Hon'ble Tribunal with regard to the fraudulent transactions mentioned in para 7A, 7C and 7D of the captioned interlocutory application raised queries on proof of steps of recovery and proof of the working of the amount receivable from the related parties of the corporate debtor for the relevant period mentioned in the transaction audit report submitted by the Forensic Auditor on 15.06.2024. Hence, this affidavit is filed to bring on record the appropriate proof to substantiate the claim of the applicant as mentioned in the captioned interlocutory application.
 2. The applicant humbly submits that in the audit report, the first fraudulent transaction mentioned as per para 7A is of the transaction of the corporate debtor with DMP Healthcare which is a related party of the corporate debtor. Further, it is humbly submitted that at the financial year ending on 31.03.2021, the



corporate debtor has an amount of Rs 36.22 crores receivable from DMP Healthcare. Further, as on 01.03.2022, the corporate debtor has written off bad debt of DMP Healthcare for an amount of Rs 3.40 crores.

3. In furtherance to the same, it is humbly submitted that when such transaction was found by the applicant, the applicant intimated In furtherance to the same, it is humbly submitted that when such transaction was found by the applicant, the applicant intimated
4. Thereafter, the third fraudulent transaction mentioned in para 7C is of the transactions entered by corporate debtor with Sukrut Pharma. It is humbly submitted that the corporate debtor has made payment of Rs 14,37,14,242.00/- to Sukrut Pharma during the period 02.04.2021 to 29.09.2023. Further, it is pertinent to note that such transactions are found from the statement of account of Sarvodaya Commercial Cooperative Bank Ltd. which is having mention in form of debit and credit in the tally data available with the applicant but there are no documents to substantiate such transactions. Hence, such transactions suggest of fraudulent activities. Hence, the total working of amount transferred from corporate debtor account to Sukrut Pharma is herein marked and annexed as Annexure B.
5. Further, the fourth fraudulent transaction mentioned in para 7D is of the transactions entered by corporate debtor with Khodal Pharmaceuticals. It is humbly submitted that the corporate debtor has made payment of Rs.4,26,13,434.00/- to Khodal Pharmaceuticals during the period 02.04.2021 to 26.10.2023. Further, it is pertinent to note that such transactions are found from the statement of account of Sarvodaya Commercial Cooperative Bank Ltd. which is having mention in form of debit



and credit in the tally data available with the applicant but there are no documents to substantiate such transactions. Hence, such transactions suggest of fraudulent activities. Hence, the total working of amount transferred from corporate debtor account to Khodal Pharamceuticals is herein marked and annexed as Annexure C.

6. The applicant in order to substantiate the submission of debit and credit entries done by the corporate debtor with Sukrut Pharma as well as Khodal Pharmaceuticals is hereby marking and annexing the copy of the statement of account of corporate debtor maintained with Sarvodaya Commercial Cooperative Bank Ltd. as Annexure D.
4. No reply was filed by R-1 to R-3 until 08.01.2025. However, this Tribunal, vide its order dated 08.01.2025, granted seven days' time to file a counter affidavit, subject to the cost of Rs.10,000/—to be deposited in the Prime Minister National Relief Fund within seven days.
5. As recorded in the daily order dated 03.02.2025, a physical copy of the reply of R-1 to R-3 was filed on 21.01.2025 under the inward diary no. D-366. The daily order dated 03.02.2025 records as under: -

“Now the physical copy of the Reply of R-1 to R-3 is available which was filed vide Diary No. D-366 on 21.01.2025.

Further, the Applicant as well as R-1 to R-3 have filed their written submissions.



On perusal of reply of R-1 to R-3, reflects that this reply has been filed by R-1 for self and on behalf of R-2 and 3. But no supporting documents / affidavit on oath qua adoption of reply of the R-1 by R-2 and R-3 has been filed.

Ld. Counsel for R-1 to R-3 undertakes to file within 03 days affidavit / declaration on oath of R-2 and R-3 qua adoption of the reply filed by R-1.

Ld. Counsel for R-1 to R-3, during the course of submissions, made a statement that there are certain documents which are in possession of R-1 to 3 being in voluminous. However, these documents could not be annexed with the reply but are unnecessary for referring in defence in reply, Therefore, they may be permitted to place on record those documents by way of additional affidavit in continuation of reply filed by them with advance copy to the opposite side.

The same be filed within 03 days subject to deposit of cost of Rs. 10,000/- each by the Respondents in the Prime Minister's National Relief Fund.

Ld. Counsel for the Applicant / RP is at liberty to rebut the same within 03 days thereafter.

R-1 to R-3 is directed to remain physically present on the next date of hearing.

Re-list on 05.03.2025.”

6. In the reply filed under the inward diary no. D366, the R-1 to R-3 states as under: -

1. The respondents have deposited the cost of Rs. 10,000/- in Prime Minister National Relief Fund as directed by the court vide order dated 08.01.2025. A copy of proof of payment is annexed as Annexure-A to the reply.
2. At the outset, the transactions as mentioned in the present application filed by the Resolution Professional does not fall under the ambit of section 66 of the Code and therefore the application is liable to be rejected as it is filed without application of mind and proper due diligence.



3. The entire contents of the aforesaid application are untrue and suffer from suppression veri, suggestio falsi as the applicant has suppressed many material facts and stated false things to mislead this Hon'ble Tribunal.
4. With regard to the contents of para 3 of the affidavit in respect to the allegations raised by the R.P for the transactions between Corporate Debtor and DMP Healthcare, the respondents deny the same and humbly submits that: -
 - i. The respondents company i.e. Corporate Debtor and DMP Healthcare have been in business terms since 2015 and in all these years Corporate Debtor have raised multiple invoices to DMP Healthcare which have been paid in full.
 - ii. That from April 2020 to March 2021 Corporate Debtor had supplied goods worth crores to DMP Healthcare and transactions for the same are reflected in the ledger. A copy of Ledger has been annexed as ANNEXURE- B.
 - iii. This is an undisputed fact that the amount in question i.e. 36.22 crore are outstanding and the same is reflecting in the ledger account of Corporate Debtor. There is a common practice that payments are receivable 120 days after date of delivery. Hence the amount mentioned by the R.P was pending receivable in the books.
 - iv. The respondents humbly submit that for the goods supplied the Corporate Debtors have raised various invoices in the name of DMP Healthcare and paid GST for the same. A copy of proof of payment of GST has been annexed as ANNEXURE- C.
 - v. That the bank used to conduct stock audits on regular intervals and in last 30 years the bank had never found any discrepancies in any of the stock audit conducted by them. The last stock audit was done on 31.03.2021.



- vi. In the month of December DMP Healthcare had disputed and raised concern with respect to the quality of the goods, damaged goods and excess material supplied other than purchased order and after numerous communications exchanged a certain percentage of discount was given on the goods supplied and hence an amount of 3.40 crores was written as bad debts in the ledger books of Corporate Debtor. Even after such an amount of 2.28 crores in the month of January and 4.33 crores in the month of February was received from DMP Healthcare for earlier orders.
- vii. That because of second wave of covid-19 in the month of April Respondent No.1 & Respondent No.2 both were infected and were treated for about 40-45 days because of which we could not take care of day-to-day operation of the company hence there was a communication gap regarding the pending payment which was receivable from DMP Healthcare as well as other debtors. The same was also communicated to the bank for their delay in repayment of the loan, i.e. SBI vide letter dated 19th May 2021. A copy of letter dated 19th May 2021 has been annexed as ANNEXURE- D.
- viii. Thereafter Corporate Debtor had demanded the payment of pending dues from DMP Healthcare for which they had informed us that because of the second wave of covid-19 the day-to-day business activities have been affected because of which payment got delayed and asked us to grant extra time for payment of pending dues. Considering the current situation of the market which was affected due to covid-19 we extended some time for payment. Since then, Corporate Debtors had repeatedly reminded DMP Healthcare for payment of pending invoices/dues.

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- ix. That in around May 2022 DMP Healthcare informed us that the material supplied by Corporate Debtor expired and the material was disposed by them.
5. The Respondents do hereby humbly submit that the transactions made were not made with intent to defraud creditors of the corporate debtor or for any fraudulent purpose but were made in regular course of business as per law. Hence the respondents do not fall under the preview of section 66 of The Insolvency and Bankruptcy Code 2016.
6. With regard to the contents of para 5 and 6 of the affidavit in respect to the allegations raised by the R.P for the transactions of Corporate Debtor with Sukrut Pharma and Khodal Pharmaceuticals the respondents deny the same and humbly submits that: -
- i. In March 2021 the account of Corporate Debtor became irregular. Because of the same the Corporate Debtor faced lot of issues in terms of receiving pending payments. Hence in April 2021 Corporate Debtor had no other option but to open a new account in Sarvoday Commercial Cooperative Bank Ltd. to keep the company as a going concern and meet its day-to-day expenses. And on 30.06.2021 the account of the Corporate Debtor was declared NPA by SBI.
 - ii. That, to keep the company as a going concern Corporate Debtor undeniably took help from Sukrut Pharma and Khodal Pharmaceuticals and the amounts which were receivable to Corporate Debtor were transferred into the Account of Sarvodaya Commercial Cooperative Bank Ltd. and were further transferred to Sukrut Pharma and Khodal Pharmaceuticals.
 - iii. For the amount in question Rs 14,37,14,242.00/- and Rs 4,26,13,434.00/- respectively, each transaction has been taken on record and same is reflecting in the bank statement



which was provided to R.P. Each amount which was transferred to Sukrut Pharma and Khodal Pharmaceuticals was only for the payment of the day-to-day operational expense i.e. Salary, Legal & Professional charges, electricity bills, suppliers etc, which occurred in the course of time till CIRP admission order.

iv. All such transactions and the amount can be accounted for since they are reflecting in the statement of Corporate Debtors, hence the final closing balance of Corporate Debtor with Sukrut Pharma and Khodal Pharmaceuticals is NIL and ledger reflecting the same was provided to the R.P and may be verified by R.P.


7. The application under section 66 of The Insolvency and Bankruptcy Code 2016 Read with Rule 11 Of the National Company Law Tribunal Rules, 2016 for Fraudulent Transaction is ambiguous in nature and is baseless, not true and is filed with malafide intentions without any conclusive supporting evidence.

7. The R-1 to R-3 had filed an application being IA/381(AHM)2025 seeking condonation of delay of 25 days in filing the affidavit a.w. additional documents. The same was allowed and disposed of vide order dated 25.03.2025.

The order dated 25.03.2025 records as under: -

"Ld. Counsel for the respondent Nos. 1 to 3 has filed an additional affidavit with the additional documents on 05.03.2025, vide inward diary No. D-1499, for which an IA has also been filed being IA/381(AHM) 2025 in IA/1064(AHM) 2024, which is listed today in the Board seeking condonation of delay of 25 days in filing the affidavit along with additional documents.

We have heard the Ld. Counsel for the respondent Nos. 1 to 3 as well as Counsel for the applicant and perused the records.



In view of the above, IA/381(AHM) 2025 is allowed and disposed of, and the delay is condoned.

Accordingly, the affidavit along with additional documents filed on 05.03.2025, vide inward diary No. D-1499, is taken on record.

Further, the applicant has also filed an affidavit in reply to the further affidavit of the respondent Nos. 1 to 3 on 24.03.2025, vide inward diary No. D-1976. The same is also taken on record.

The appearing Counsel for the parties' states that now the pleadings in this IA is also complete.


Let the revised written submissions along with Convenience Compilation Chart in Tabular Form along-with relevant pages of Annexures with page No. forming part of pleadings, mentioning the facts, considering the reply, rejoinder, various issues involved, and point of law therein, citation, if any, in support of their submissions within three working days not more than five pages, with exchanging each other through both modes.

Re-list IA/ 1064(AHM) 2024 on 02.04.2025.”

8. Further, the applicant filed an affidavit in reply to the further affidavit of the respondent nos. 1 to 3 on 24.03.2025 vide inward diary no. D1976. In the said affidavit, it is stated that; -


i. **TRANSACTION WITH KHODAL PHARMACEUTICALS AND SUKRUT PHARMA;**

A. The respondents with regard to transactions with Khodal Pharmaceuticals and Sukrut Pharma has merely provided ledger details with regard to both the parties which are generated from the tally data of Jay Formulations Ltd. The same ledger details are also provided by the applicant in the application filed before this Hon'ble Tribunal. Hence, nothing substantial is submitted primarily in the ledgers provided by



the respondents with regard to transactions with Khodal Pharmaceuticals and Sukrut Pharma.

- B. Further, the respondents have provided the vouchers which are also from the books of Jay Formulations Ltd. However, the same are incomplete and improperly formatted, lacking essential elements such as signatures and stamps, which significantly undermines their authenticity and reliability as supporting evidence. Furthermore, critical third-party documents such as the Bank Statements of Khodal Pharmaceuticals and Sukrut Pharma for the stated periods have not been provided, which are essential for verifying financial transactions.
- C. Further, in addition to the above, no ledger of Jay Formulations Ltd. in the books of third-party Khodal Pharmaceuticals and Sukrut Pharma have been submitted, which would have been crucial to establish the accuracy and completeness of the financial records.
- D. Moreover, no third-party documents have been provided that would substantiate actual payments made on behalf of Jay Formulations Limited.
- E. Hence, taking into consideration the aforementioned circumstances as per the documents submitted by the respondent no. 1 to 3. The opinion of the applicant has been formed that the further documents has been submitted for merely hard copy print from books of accounts. Hence, no legitimate document is submitted by the respondent no. 1 to 3 which can be sufficient to consider that an expense has been on a particular date to a particular party in a particular mode for a particular person. Hence, in absence of sufficient evidences against the transactions entered with Khodal Pharmaceuticals as well as Sukrut Pharma, the applicant humbly submits that the transactions entered by Jay




Formulations Ltd. with Khodal Pharmaceuticals as well as Sukrut Pharma has to be classified as fraudulent transactions in the interest of justice.

TRANSACTION WITH DMP HEALTHCARE

F. Further, with regard to the transactions entered with DMP Healthcare, the respondents have submitted various letters and even response of DMP Healthcare against the same wherein DMP Healthcare has raised concerns regarding the quality of supplies, delayed deliveries, and instances of supply being made without any order. Documents supporting these claims have been shared. However, since these transactions occurred before CIRP, and there are no documents evidencing the actual mode of correspondence like email copy/post receipt. Hence, an opinion on such letter or documents cannot be formed.


STATUS OF FIXED ASSETS

- G. The respondent themselves has stated in the further affidavit that the cars were in name of respondents and that the payments were paid by corporate debtor i.e. Jay Formulations Ltd. as director perquisites. Hence, the respondents have themselves submitted about the status of fixed assets.
- ii. The applicant hence humbly submits that the documents submitted vide the further affidavit are insufficient to prove that the transactions entered by Jay Formulations Ltd. with Khodal Pharmaceuticals, Sukrut Pharma and DMP Healthcare were genuine. Moreover, the missing of essential things in a document showcases that the documents submitted are not genuine and have less evidentiary value to take into consideration as a proof




that the transactions entered with aforementioned parties are genuine and not fraudulent.

9. The written submissions were filed by both the parties in terms of the last order dated 25.03.2025 through inward diary no. D2161 and D2188 on 01.04.2025. The same were taken on record.
10. We have heard Ld. Counsels from both sides and perused the documents produced on record. The following are the observations of this Tribunal.
11. That, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP), vide an order dated 26.09.2023 passed by this Tribunal in CP(IB) No. 123 of 2022.
12. That the present Application is filed by the Resolution Professional (RP) of the Corporate Debtor for the purpose of declaring certain transactions entered into by the Corporate Debtor as Fraudulent Transactions within the meaning of Section 66 of IBC, 2016 and passing necessary directions in



light thereof. Following are the transactions which are prayed to be declared as Fraudulent Transactions:

- A. To declare the transaction entered by the Corporate Debtor with M/s. DMP Healthcare as a Fraudulent Transaction, through which an amount of Rs. 36,21,91,872.60 due from the Corporate Debtor to DMP Healthcare was not collected. The same is being shown as receivable. The corporate debtor had supplied goods to M/s DMP Healthcare.
- B. To declare the transaction entered by the Corporate Debtor amounting to Rs. 1,72,00,000.00, through which the loan instalments in respect of cars were paid out of the funds of the Corporate Debtor, and the said cars were owned in the name of the Directors of the Corporate Debtor.
- C. For directing the Suspended Management to handover possession of certain automobiles, for which written down value amounts to Rs. 18,38,212.85 to the Resolution Professional as the written down value of said automobiles is recorded in the books of the Corporate Debtor but the physical possession of the said automobiles is not vested with the Resolution Professional.
- D. To declare the transaction entered by the Corporate Debtor with M/s. Sukrut Pharma as a Fraudulent



Transaction, through which a payment of Rs. 14,37,14,242.00 was made by the Corporate Debtor to M/s. Sukrut Pharma and the accounting entry of the said payment is not incorporated in the books of the Corporate Debtor.

E. To declare the transaction entered by the Corporate Debtor with M/s. Khodal Pharmaceuticals as a Fraudulent Transaction, through which a payment of Rs. 4,26,13,434.00 was made by the Corporate Debtor to M/s. Khodal Pharmaceuticals and the accounting entry of the said payment is not incorporated in the books of the Corporate Debtor.

13. The following issues arise for adjudication: -

- (a) Whether the transactions identified by the RP with DMP Healthcare, Sukrut Pharma, Khodal Pharmaceuticals, and those related to car loan repayments and missing fixed assets constitute fraudulent transactions under Section 66 of the Code?
- (b) Whether the Respondents, as suspended directors, knowingly carried on the business of the Corporate Debtor with the intent to defraud creditors or for any fraudulent purpose?
- (c) Whether the reliefs sought by the RP, including restoration of funds and initiation of proceedings against the Respondents, are justified under the provisions of the Code?



14. **Section 66 of the IBC** addresses fraudulent or wrongful trading by the directors or management of a corporate debtor. It provides: -

Section 66(1): If, during CIRP, it is found that the business of the corporate debtor was carried on with intent to defraud creditors or for any fraudulent purpose, the Adjudicating Authority may direct any person who knowingly carried on such business to make contributions to the assets of the corporate debtor.


Section 66(2): If the directors were knowingly party to carrying on the business in a manner that caused wrongful trading, knowing that insolvency was inevitable, they may be directed to make contributions.

15. **Section 67 of the IBC** empowers the Adjudicating Authority to direct the recovery of property or money transferred fraudulently to prevent undue enrichment.

16. **Section 60(5) of the IBC** grants the NCLT jurisdiction to entertain applications arising out of or in connection with the CIRP.

17. **Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** mandates the RP to form an opinion on preferential, undervalued, extortionate, or fraudulent transactions and






file an application with the Adjudicating Authority if such transactions are identified.

18. The Tribunal has carefully examined the pleadings, documents, and arguments presented by both parties regarding all the transactions determined as fraudulent by the Resolution Professional.

19. Regarding the alleged fraudulent transaction in respect of the Transaction of the Corporate Debtor with M/s. DMP Healthcare, following are the observations of this Tribunal: -


- (i) As per the Transaction Audit Report, that for the year ending 31.03.2021 the Corporate Debtor had M/s. DMP Healthcare, as one of its Debtor which had an outstanding amount of Rs. 36,21,91,872.60.
- (ii) That, the proprietor i.e, Rekhaben Dilipbhai Patel of M/s. DMP Healthcare and the husband of the proprietor i.e, Dilipbhai M. Patel, both are shareholders of the Corporate Debtor, Holding 120 Shares and 1480 Shares respectively.
- (iii) Further, as per the Board Resolution of the Corporate Debtor dated 25.04.2013, Mr. Dilipbhai M. Patel is a



relative of the Director/ Promoter of the Corporate Debtor.

- (iv) That, on 01.03.2022, the Corporate Debtor had written off an amount of Rs. 3.40 Crores as a bad debt, out of the receivable amount of Rs 36,21,91,872.60 from M/s. DMP Healthcare, without proper justifications.
- (v) The Respondent in their reply to this transaction has stated that, the Corporate Debtor had business relations with M/s. DMP Healthcare since 2015 and since then has raised multiple invoices which are paid in full by M/s. DMP Healthcare. Further, the Respondent has admitted that an amount of Rs. 36.22 Crores is due from M/s. DMP Healthcare and the reason for the same is stated to be because of a 120-day credit cycle from the date of delivery, which is given to the purchaser for making the payment as a common norm in the industry.
- (vi) Further, for writing off an amount of Rs. 3.40 Crores as a bad debt, it has been stated that in the month of December, the purchaser i.e, M/s. DMP Health care has raised various concerns as to the quality of goods and damage in the goods and excess material supplied other than the purchase order and after numerous communications between the parties, certain percentage of discount was given and in result of which the said

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amount of Rs. 3.40 Crores was written as bad debt by the Corporate Debtor.

(vii) Further, in the month of May 2022, M/s. DMP Healthcare had informed that the material supplied by the Corporate Debtor had expired, and hence, the said material was disposed of by them.


20. That, in respect of the Transaction of the Corporate Debtor in respect of the payment of loan instalments of the automobiles which are owned by the Directors in their own name, the following are the observations of this Tribunal:

(i) That, there are four automobiles which are recorded in the books of the Corporate Debtor but, the same are not in the possession of the Corporate Debtor, as such automobiles are in the names of the Directors of the Corporate Debtor and the Directors and the Corporate Debtor are the co-applicant in the loan account through which the said automobiles are being purchased. Following is the list of the automobiles registered in the name of the Directors:

Sr. No.	Model of the Car	Registered in the name	Loan paid by the Corporate Debtor
1.	BMW Car	Rakshit Patel	Rs. 1,23,00,872.22

2.	I20 Car	Aarjav bhai	Rs. 13,11,667.02
3.	Mercedes Car (GJ01-KX-1926)	Aarjav bhai	Rs. 27,48,621.00
4.	Eco Cars	Staff Purpose	Rs. 8,31,614.00
Total			Rs.1,71,74,774.24

- (ii) Further, from the records, it is seen that the said loan instalments are paid by the Corporate Debtor, and no instalment is paid by the Directors to the lender or repaid to the Corporate Debtor.
- (iii) That, the repayment of the car loans has not been reported as perquisites to the directors as required under the Income Tax Act, 1961 and no records are there on record to show that these repayments are treated as taxable benefits.
- (iv) Further, there are four automobiles/ vehicles which are recorded as the assets in the Audited balance Sheet of the Corporate Debtor for the year ended 31.03.2021 but these automobiles are not handed over by the suspended management to the Resolution Professional. Following are the automobiles which are though being recorded as the assets of the Corporate Debtor but are not in the physical possession of the Resolution Professional:



Sr. No.	Motor Vehicles	WDV as on 31.03.2021
1.	Maruti Esteem	5,13,577.18
2.	Maruti Zen	2,78,013.67
3.	Passion Pro Bike	61,091.00
4.	Verna	9,85,531.00
Total		18,38,212.85

- (v) In the additional affidavit filed by the Respondent before this Tribunal it is mentioned the following in respect of the cars:

“The cars mentioned in the present application are in the name of the respondents and the instalments were paid by the Corporate Debtor as Directors Perquisites.”

21. That, in respect of the Transaction of the Corporate Debtor with M/s. Sukrut Pharma, the following are the observations of this Tribunal: -


- (i) That the Resolution Professional, upon inquiry, found that the Corporate Debtor has one current account in Sarvodaya Commercial Bank Limited bearing current account number 805013101000133.



- (ii) In the bank statement for the period of 02.04.2021 to 29.09.2023, it was found that during the said period the Corporate Debtor had made a payment to M/s. Sukrut Pharma amounting to Rs. 14,37,14,242.00.
- (iii) Mr. Bharat Tiwari, an employee of the corporate debtor, is the contact person for M/s Sukrut Pharma.
- (iv) Further, it was noted that the transactions which are executed from the said current account of the Corporate Debtor are not being accounted for in the books of the Corporate Debtor, and no explanation or documents are available to support this payment made to M/s. Sukrut Pharma.
- (v) To counter these contentions, the Respondent in its Reply has stated that, in March 2021, the account of Corporate Debtor became irregular, and to manage the day operations of the Corporate Debtor, the suspended management has opened the current account in Sarvodaya Commercial Bank Limited. It is further stated that the amounts which were to be received by the Corporate Debtor were rather diverted to the current account and the amount when received in the current accounts were transferred to the account of M/s. Sukrut Pharma and M/s. Khodal Pharmaceuticals.

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- (vi) It has been contented by the Respondent that the said amount of Rs. 14,37,14,242.00 which was transferred to M/s. Sukrut Pharma was being paid on behalf of the Corporate Debtor in respect of salaries, legal and professional fees, electricity bills, payments to the suppliers, etc.

22. That, in respect of the Transaction of the Corporate Debtor with M/s. Khodal Pharmaceuticals, the following are the observations of this Tribunal: -

- (i) That the Resolution Professional, upon inquiry, found that the Corporate Debtor has one current account in Sarvodaya Commercial Bank Limited bearing current account number 805013101000133.
- (ii) In the bank statement for the period of 02.04.2021 to 29.09.2023, it was found that during the said period, the Corporate Debtor had made a payment to M/s. Khodal Pharmaceuticals amounting to Rs. 4,26,13,434.00.
- (iii) That, M/s. Khodal Pharmaceuticals is a proprietor concern of Ms. Ramilaben Ashwinbhai Patel, who is the mother of Mr. Rakshit Patel, who is the Director of the Corporate Debtor. Further, Ms. Ramilaben Ashwinbhai Patel holds 5,46,413 Shares in the Corporate Debtor.



- (iv) Further, it was noted that the transactions which are executed from the said current account of the Corporate Debtor are not being accounted for in the books of the Corporate Debtor and no explanation or documents are there to support this payment made to M/s. Khodal Pharmaceuticals.
- (v) To counter these contentions, the Respondent in its Reply has stated that, in March 2021 the account of Corporate Debtor became irregular and to manage day to day operations of the Corporate Debtor the suspended management has open the current account in Sarvodaya Commercial Bank Limited. It is further stated that the amounts which were to be received by the Corporate Debtor were rather diverted to the current account, and the amount, when received in the current accounts, was transferred to the account of M/s. Sukrut Pharma and M/s. Khodal Pharmaceuticals.
- (vi) It has been contented by the Respondent that the said amount of Rs. 4,26,13,434.00 which was transferred to M/s. Khodal Pharmaceuticals was being paid on behalf of the Corporate Debtor in respect of salaries, legal and professional fees, electricity bills, payments to the suppliers, etc.

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- (vii) Further, the ledger account of M/s. Khodal Pharmaceuticals for the period of 01.04.2021 to 09.12.2023 contains numerous debit and credit entries without any accompanying explanations or documentations from the suspended management, even after a formal objection raised by the Resolution Professional on 26.02.2024, no response, explanation or supporting document is provided by the suspended management.

Directions of this Tribunal:


- 23.** On the basis of the above-mentioned observations, we are of the opinion that, in the interest of justice, the following directions are necessary to be passed under sections 66 and 67 of the Insolvency and Bankruptcy Code, 2016.

Following are the directions of this Tribunal: -

A. In relation to **M/s. DMP Healthcare:**

- i. The evidence establishes that M/s DMP Healthcare is a related party under Section 5(24) of the IBC, given the shareholding of Mr. Dilipbhai M. Patel and Mrs. Rekhaben Dilipbhai Patel in the Corporate Debtor and the familial relationship acknowledged in the Board Resolution of 25.04.2013. Transactions with related parties require heightened scrutiny under the IBC.

- ii. The Applicant has demonstrated that no significant



efforts were made to recover the Rs. 36.22 crore receivable, even after the Corporate Debtor's account was declared a Non-Performing Asset (NPA) by the State Bank of India on 30.06.2021. The Respondents' claim of a communication gap due to COVID-19 is insufficient, as the outstanding amount remained unrecovered for over two years, including post-CIRP initiation.

- iii. The write-off of Rs. 3.40 crores on 01.03.2022 lacks supporting documentation, such as correspondence with DMP Healthcare, quality dispute records, or board approval for the write-off. The Respondents' reliance on letters and responses from DMP Healthcare is undermined by the absence of verifiable evidence, such as email copies or postal receipts, as noted by the Applicant in the affidavit dated 24.03.2025.
- iv. The failure to pursue recovery, combined with the write-off of a significant amount without justification, suggests an intent to benefit a related party at the expense of creditors. The timing of the write-off, when the Corporate Debtor was already in financial distress, further supports this inference.
- v. The Respondents' claim that the transactions were in the ordinary course of business is not substantiated, as the scale of the outstanding amount and the lack of recovery efforts are inconsistent with prudent business practices, especially during financial distress.



- vi. The transaction with M/a DMP Healthcare, involving an outstanding receivable of Rs.36,21,91,872.60 and the write-off of Rs.3.40 crores, is fraudulent under Section 66 of the IBC. The Respondents, as suspended directors knowingly allowed the non-recovery of a substantial amount owed by a related party, causing loss to creditors and violating the waterfall mechanism under Section 53 of the IBC, 2016.
- vii. Therefore, the outstanding receivable of Rs.36,21,91,872.60 from M/s DMP Healthcare is declared a fraudulent transaction under Section 66(1) of the IBC, 2016. The Respondents, as suspended directors, are jointly and severally liable to restore this amount to the Corporate Debtor's assets. The write-off of Rs. 3.40 crore is set aside, and the full amount is to be recovered.
- viii. Hence, the Respondents are directed to contribute **Rs. 36,21,91,872.60** to the assets of the Corporate Debtor under Section 66 of the IBC, 2016 within **thirty days** from the date of order.
- B. In relation to **Automobiles owned in the name of the Directors: -**
- i. It is an admitted fact that four cars are registered in the Directors' names, but the loan instalments are being paid out of the Corporate Debtor's funds.




- ii. The Respondents' admission that the cars were registered in their names and repayments were made by the Corporate Debtor confirms the Applicant's allegations.
- iii. The failure to report these repayments as perquisites under the Income Tax Act, 1961, constitutes a violation of tax laws and suggests an intent to conceal the personal benefits derived by the directors.
- iv. The use of company funds for personal liabilities, especially during financial distress, is a misuse of corporate resources and prejudicial to creditors.
- v. The Directors' continued use of the said vehicles even after the initiation of CIRP and not handing them over to the RP strongly suggests that the CD funds have been used for the personal gains of the Directors.
- vi. Therefore, these transactions / payments of **Rs. 1,71,74,774/-** are declared fraudulent under Section 66(1) of the IBC, 2016 as they were conducted to benefit the directors at the expense of the Corporate Debtor's stakeholders.
- vii. Hence, the Respondents are directed to contribute **Rs.1,71,74,774/-** to the assets of the Corporate Debtor under Section 66 of the IBC, 2016 within **thirty days** from the date of order.



C. In relation to **Automobiles** which are **recorded in the assets of the Corporate Debtor** but are not in physical possession of the Resolution Professional:

- i. The Vehicles listed in the audited balance sheet were not handed over to the RP, despite being recorded as assets. The suspended management provided no justification for their absence.
- ii. No specific defence was provided regarding the non-availability of these assets.
- iii. The non-availability of vehicles recorded in the books, without any explanation from the suspended management, constitutes a misrepresentation of the Corporate Debtor's assets.
- iv. This misrepresentation hinders the RP's ability to maximize value for creditors, violating the objectives of the CIRP.
- v. The failure to hand over these assets suggests an intent to deprive the Corporate Debtor of its resources, making the transaction fraudulent under Section 66(1) of the IBC, 2016.
- vi. Hence, the Respondents are directed to handover possession of these vehicles to the RP within **fifteen**



days or, failing that, contribute **Rs.18,38,213/-** (as per written down value of said automobiles recorded in the books of the Corporate Debtor) to the assets of the Corporate Debtor under Section 66 of the IBC, 2016 within **thirty days** from the date of order.

D. In relation to the Transaction with **M/s. Sukrut Pharma:**


- i. It is observed by this Tribunal that the Receivables of the Corporate Debtor were intentionally diverted to a subsidiary account in Sarvodaya Commercial Bank Limited and the said amounts were transferred to M/s. Sukrut Pharma, which is the intentional wiring of funds so that the lender bank cannot utilise such amount towards the loan repayment if it were normally received in the principal account of the Corporate Debtor.
- ii. Further the contention of the Respondent that all the day to day expenses of the Corporate Debtor was incurred by M/s. Sukrut Pharma, on behalf of the Corporate Debtor, does not substantiate, and it appears to be a moonshine defence for a reason that the Respondent has attached a hefty 3080-page annexure without properly explaining any transaction so made in the affidavit.

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- iii. The opening of a bank account without informing secured lenders and omitting these transactions from the tally data indicate a lack of transparency.
- iv. Money deposited in the bank account of M/s Sukrut Pharma was out of sales made by the Corporate Debtor and legally belonged to it.
- v. The relationship between Sukrut Pharma and the Corporate Debtor, through an employee, suggests a potential related-party transaction.
- vi. The absence of supporting documents, such as invoices or third-party bank statements, undermines the Respondents' claim that the payments were for operational expenses.
- vii. The payments, made during the NPA period, prejudiced the rights of secured creditors, violating Section 53 of the IBC.
- viii. Therefore, these transactions / payments of **Rs. 14,37,14,242/-** are declared fraudulent under Section 66(1) of the IBC, 2016 due to their opaque nature and apparent intent to siphon funds.
- ix. Hence, the Respondents are held jointly and severally liable and directed to pay **Rs.14,37,14,242/-** to the assets of the Corporate Debtor under Section 66 of the IBC, 2016 within **thirty days** from the date of order.



E. In relation to the Transaction with **M/s. Khodal Pharmaceuticals:**

- i. It is observed by this Tribunal that the Receivables of the Corporate Debtor were intentionally diverted to a subsidiary account in Sarvodaya Commercial Bank Limited and the said amounts were transferred to Khodal Pharmaceuticals, which is intentional wiring of funds so that the lender bank cannot utilize such amount towards the loan repayment if it were normally received in the principal account of the Corporate Debtor.
- ii. Money deposited in the bank account of M/s Khodal Pharmaceuticals was out of sales made by the Corporate Debtor and legally belonged to it.
- iii. Further the contention of the Respondent that all the day to day expenses of the Corporate Debtor was incurred by M/s. Khodal Pharmaceuticals on behalf of the Corporate Debtor does not substantiate and it appears to be a moon shine defect for a reason that the Respondent has attached a hefty 3080 pages annexure without properly explaining any transaction so made in the affidavit.

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- iv. M/s. Khodal Pharmaceuticals is a related party under Section 5(24) of the IBC due to the familial relationship and significant shareholding of Ramilaben Ashwinbhai Patel.
 - v. The lack of documentation and omission from tally data, similar to the Sukrut Pharma transactions, indicate fraudulent intent.
 - vi. The payments during the NPA period, without justification, prejudiced creditors' rights.
 - vii. Therefore, these transactions / payments of **Rs.4,26,13,434/-** are declared fraudulent under Section 66(1) of the IBC, 2016 due to their opaque nature and apparent intent to siphon funds.
 - viii. Hence, the Respondents are held jointly and severally liable and directed to pay **Rs.4,26,13,434/-** to the assets of the Corporate Debtor under Section 66 of the IBC, 2016 within **thirty days** from the date of order.
- 24.** Any failure to comply with this order shall attract penal consequences under the Code, including reference to the Insolvency and Bankruptcy Board of India (IBBI) for further action against the Respondents.



25. In terms of above, Interlocutory Application i.e. **IA/1064(AHM)2024** in C.P.(IB)/123(AHM)2022 is allowed and disposed of.

26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

- Sd -

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

SEN/Rishabh LRA

- Sd -

SHAMMI KHAN
MEMBER (JUDICIAL)