THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

Under Section 66 of Insolvency & Bankruptcy Code, 2016

I.A. 1373 OF 2021 IA 3237 OF 2024

IN

C.P. (IB) 3419/MB/2019

Modilal Pamecha (Liquidator)

...Applicant

Vs.

Prince Goyal and 17 Others

...Respondent(s)

And

Prince Goyal and 17 Others

...Applicants

Vs.

Modilal Dhanraj Pamecha

 $\dots Respondent$

In the matter of

C.P. (IB) 3419/MB/2019

Esszee Manufacturing Pvt. Ltd.

... Petitioner/

Operational Creditor

Vs.

SPG Multi Trade Pvt. Ltd.

... Respondent/

Corporate Debtor

I.A. 1373 OF 2021 IA 3237 OF 2024 IN C.P. (IB) 3419/MB/2019

Order delivered on: 08.08.2024

Coram:

Shri Prabhat Kumar

Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Manoj Mishra

For the Respondent : Adv. Abhishek Salian

ORDER

Per: Prabhat Kumar, Member (Technical)

- 1. The present Interlocutory Application IA 1373 of 2021 is filed in Petition CP No. 3419 of 2019 by Mr. Modilal Pamecha (Liquidator) in terms of Section 66(5) of the Insolvency and Bankruptcy Code, 2016 in the matter of SPG Multi Trade Pvt. Ltd. seeks following relief;
 - a) To condone the delay of 241 days for making this application under Saction 60(5) of Insolvency and Bankruptcy Code, 2016.
 - b) To allow withdrawal of previous Interlocutory Application No. 296/2021 in view of Present Revised Interlocutory Application under Saction 60(5) of Insolvency and Bankruptcy Code, 2016.

- c) To require Respondent No. 1 to 5 Respondent No. 6 to restore the amount of Rs. 90,00,00,000/- (Ninety Crore Only) to the Corporate Debtor in respect of cheque received by the Corporate Debtor, wherein Respondent No. 1 to 5 failed to deposit the same in the fraudulent manner.
- d) To Respondent No. 1 to 5 and Respondent No. 7 to restore a sum of Rs. 2,56,65,280/- (Two Crores Fifty Lacs Sixty Five Thousand Two Hundred Eighty Only) for eliminating receivables from Respondent No. 7 with adjustment of Respondent No 14 in a fraudulent manner.
- e) To require Respondent No. 1 to 5 and Respondent No. 8 to restore a sum of Rs. 46,80,25,000/- (Forty Six Crores Eighty Lacs Twenty Five Thousands Only) for eliminating receivables from Respondent No. 8 with adjustment of Respondent No. 9 in a fraudulent manner.
- f) To require Respondent No. 1 to 5 and Respondent No. 9 to restore the sum of Rs. 4,71,68,009/- (Four Crores Seventy One Lacs Sixty Eight Thousand Nine Only) for eliminating receivables from Respondent No. 9 with adjustment of Respondent No. 8 in a fraudulent manner.
- g) To require Respondent No. 1 to 5 and Respondent No. 9 to restore the sum of Rs. 5,82,330/- (Five Lacs Eighty Two Thousand Three Hundred Thirty Only) for eliminating receivables from Respondent No. 10 with adjustment of Respondent No. 15 in a fraudulent manner.
- h) To require Respondent No. 1 to 5 and Respondent No. 9 to restore the sum of Rs. 40,40,332/- (Forty Five Lacs Forty Thousand Three Hundred Thirty Two Only) for the eliminating receivables

- from Respondent No. 11 with adjustment of Respondent No. 15 in a fraudulent manner.
- i) To require Respondent No. 1 to 5 and Respondent No. 12 to restore the sum of Rs. 5,91,172/- (Five Lacs Ninety One Thousand One Hundred Seventy Two Only) for eliminating receivables from Respondent No. 12 with adjustment of Respondent No. 15 in a fraudulent manner.
- j) To require Respondent No. 1 to 5 and Respondent No. 13 to restore the sum of Rs. 27,14,361/- (Twenty Seven Lacs Fourteen Thousand Three Hundred Sixty One Only) for eliminating receivables from Respondent No. 15 with adjustment of Respondent No. 15 in a fraudulent manner.
- k) To require Respondent No. 2 to restore a sum of Rs. 25,22,833/(Twenty Five Lacs Twenty Thousand Eight Hundred Thirty Three
 Only) for causing loss to the corporate debtor in a fraudulent
 manner by purchase of BMW car in its own name and by selling
 the same in cash without any parallel deposit with IDBI Bank.
- I) To require Respondent No. 1 to 5 to restore a sum of Rs. 21,29,342/-(Twenty One Lacs Twenty Nine Thousand Three Hundred forty Two Only) for causing loss to the corporate debtor by doling out cash in the guise of transportation charges without any valid reasons.
- m) To require Respondent No. 1 to 5 and Respondent No. 15 to restore a sum of Rs. 20,55,718/- (Twenty Lacs Fifty Five Thousand Seven Hundred Eighteen Only) for causing loss to the corporate debtor by giving processing fee and interest charges to the Respondent No. 15 without obtaining prior approval from the Financial Creditor.

- n) To require Respondent No. 1 to 5 and Respondent No. 6 to restore a sum of Rs. 103,98,04,594/- (One Hundred Three Crores Ninety Eight Lacs Four Thousand Five Hundred Ninety Four Only) for causing loss to corporate debtor for sale of this amount to Respondent No. 6 without any actual movement of goods.
- o) To require Respondent No. 1 to 5 Respondent No. 16 to restore a sum of Rs. 1,21,06,386/- (One Crore Twenty One Lacs Six Thousand Three Hundred Eighty Six Only) for causing loss to corporate debtor for sale of this amount to Respondent No. 16 without any actual movement of good.
- p) To require Respondent No. 1 to 5 and Respondent No. 17 to restore a sum of Rs. 4,12,55,757/- (Four Crores Twelve Lacs Fifty Five Thousand Seven Hundred Fifty Seven Only) for causing loss to corporate debtor for sale of this amount to Respondent No. 17 without any actual movement of good.
- q) To require Respondent No. 1 to 5 and Respondent No. 9 to restore a sum of Rs. 21,46,73,440/- (Twenty One Crores forty Six Lacs Seventy Three Thousand Four Hundred Forty Only) for causing loss to corporate debtor for sale of this amount to Respondent No. 9 without any actual movement of goods.
- r) To require Respondent No. 1 to 5 and Respondent No. 7 to restore a sum of Rs. 4,20,34,503/- (Four Crores Twenty Lacs Thirty Four Thousand Five Hundred Three Only) for causing loss to corporate debtor for sale of this amount to Respondent No. 7 without any actual movement of goods.
- s) To require Respondent No. 1 to 5 and Respondent No. 8 to restore a sum of Rs. 75,12,79,157/- (Seventy Five Crores Twelve Lacs Seventy Nine Thousand One Hundred Fifty Eight Only) for

- causing loss to corporate debtor for sale of this amount to Respondent No. 8 without any actual movement of goods.
- t) To require Respondent No. 1 to 5 and Respondent No. 7 to restore a sum of Rs. 8,89,74,738/- (Eight Crores Eighty Nine Lacs Seventy Four thousand Seven Hundred Thirty Eight Only) for causing loss to corporate debtor for sale of this amount to Respondent No. 7 without any actual movement of goods.
- u) To require Respondent No. 1 to 5 to restore a sum of Rs. 3,75,484/- (Three Lacs Seventy Five Thousand Four Hundred Eighty Four Only) for causing loss to corporate debtor for payment of godown rent without any lease agreement.
- v) To pass such other or further orders, against the Respondents or in favour of the Applicant for the benefit of the Corporate Debtor as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.
- 2. Another Interlocutory Application IA 3237 of 2024 under Company Petition 3419 of 2019 is filed by the Mr. Prince Goyal & Ors. (Respondent in IA 1373 of 2021 in terms of Rule 11 of the National Company Law Tribunal Rules, 2016 in the matter of SPG Multitrade Pvt. Ltd. seeking following relief;
 - a. Dismiss the Interlocutory Application No.1373 of 2021 filed by the Respondent under Section 66 of IBC on account of maintainability;
 - b. Pass any such further order(s) as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to grant justice to the Applicant.
- 3. There are two applications before one filed by the Liquidator seeking orders in terms of Section 66 for direction to the Respondents to pay such sums as stated in this Application in respect of benefits received by them

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from the Corporate Debtor, and another application by one of the suspended director seeking dismissal of first application.

Prior to filing of IA 1373 of 2021, the Liquidator filed Interlocutory Application No. 296 of 2021 under Sections 43 and 45 of IBC, after a delay of 336 days, relying on the identical material, Transaction based Audit Report and impugning identical transactions as relied upon and impugned in Interlocutory Application No. 1373 of 2021 filed by the Respondent / Liquidator under Section 66 of IBC. On 29.07.2021, the Liquidator withdrew Interlocutory Application No. 296 of 2021 filed under Sections 43 and 45 of IBC, without any express liberty of the court to file a fresh proceeding. Hence, it is pleaded in IA 3237 of 2024 by the Applicants, who are some of Respondent in IA 1373 of 2021, that the Interlocutory Application No. 1373 of 2021 filed by the iquidator, under Section 66 of IBC, is not maintainable having been filed without withdrawing the said Interlocutory Application No.296 of 2021 and without express liberty of the court to file a fresh proceeding, on the same facts and cause of action. The very basis of IA/1373/2021 is that transaction audit report used in IA/1373/2021 is amended audit report. However, by the bare perusal of the both audit report would make it clear that the transactions, amounts, documents, exhibits are same.

- 4. It is the case of Suspended Directors that the RP has not only violated the basic principle of law by filing a subsequent proceeding on the same cause of action and the same facts, without withdrawing the previous proceedings, but has also attempted to mislead this court to believe that a revised/amended transaction based audit report was submitted, which warranted the filing of the captioned Interim Application IA 1373 of 2021, post filing of Interim Application number 296 of 2021.
- 5. We have perused the records and are of considered view that the plea of delayed filing of application has no substance in view of settled

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proposition that the period of 135 days provided in the Code is directory in nature. We further find that the Liquidator had sought withdrawal of IA 296 of 2021 in IA 1373 of 2021 vide prayer 'b' which specifically was for "withdrawal of previous Interlocutory Application No. 296/2021 in view Present Revised Interlocutory Application under section 60(5) of Insolvency and Bankruptcy Code, 2016". This Tribunal allowed the withdrawal stating in interim order dated 29.7.2021 that "Applicant applies for withdrawal of the application and the same is allowed to be withdrawn". It is pertinent to note that the withdrawal as permitted by this Tribunal was sought 'in view of revised IA (1373 of 2021)' and this led this Tribunal to allow the withdrawal and this Tribunal took into consideration the prayer of the Liquidator, which in our opinion was the whole prayer. The Respondent in IA 1373 of 2021 have sought its dismissal on the ground that "express liberty was not granted by this Tribunal in filing a fresh proceeding". In view of this, we do not find any merit in the contention of the Applicant in IA 3237 of 2024, as this Tribunal had allowed the withdrawal of IA 296/2021 on the ground of filing of revised application in IA 1373 of 2021. This Tribunal was conscious of this fact, as specifically being brought before it, and IA 1373 of 2021 was already on record before this Tribunal which didn't necessitate specific liberty in the facts and circumstances of the case. Hence, IA 3237 of 2024 is dismissed. Now this takes us to consideration of IA 1373 of 2021 on its merits.

6. Written Submission of Liquidator in IA 1373 of 2021.

- a. Fraudulent Transaction No. 1 to the tune of Rs. 90,00,00,000/- by Respondents No. 1 to 5 with collusion of Respondent No. 6 & 7
- i. Tej Commodities Pvt. Ltd. (Respondent No. 6) is a major buyer of the Corporate Debtor from whom Rs. 111.56 Crores is pending to be recovered as on date. The Corporate Debtor, under the management

- of the Respondents No. 1 to 5, has portrayed in its books that a payment of Rs. 90 Crores has been received from the Respondent No. 6 vide Cheque No. 1702, 1707, 1708, 1709, 1710 and 1711 of Rs. 15 Crores each.
- ii. However, these Cheques totalling to Rs. 90 Crores were never deposited in the Bank Account for clearance, as is evidenced by the Bank Statements. It is apposite to note that this arrangement was carried out with a fraudulent motive to cheat and perpetrate fraud upon the stakeholders of the Corporate Debtor. Proceeds with crime with respect to this fraudulent credit rest with the suspended directors and Tej Commodities Pvt. Ltd. It is worth to note that had this cheque been deposited by the Corporate Debtor with its bank, then the Corporate Debtor would have benefitted with this recovery of Rs. 90 Crores, which would have resulted in avoidance of corporate insolvency resolution process for the Corporate Debtor and would not have resulted into the defraud of its various stakeholders, such as banks, government dues and various other creditors. Further, to state that credit of Rs. 90 Crores reduced the net receivable from Tej Commodities Pvt. Ltd. from a whopping amount of Rs. 146 Crores to mere Rs. 56 Crores.
- iii. It is further worth noting that to exacerbate the said fraud, after almost one year, the Corporate Debtor passed bogus payment entries totalling to Rs. 90 Crores in favour of Esszee Manufacturing Pvt. Ltd. (Respondent No. 7), in the absence of any corresponding bank entry. Certain cheques are on record of Rs. 15 Crores each totalling to Rs. 90 Crores was issued to the Respondent No. 7, which has nothing to do with the debit entries with Respondent No. 6.
- iv. This arrangement was done with intention of availing drawing power from the Financial Creditor and to defraud the creditor, especially,

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IDBI Bank, by artificially inflating receivables. Thus, an intent of *mens rea* i.e., intention to commit the crime here, fraud is evidently seen in the said fraudulent transaction to the tune of Rs. 90 Crores.

v. This fraudulent transaction falls in contravention of general accounting practice, Accounting Standards, Companies Act, 2013, Income Tax Act, Insolvency and Bankruptcy Code, 2016 and is made with *mala fide* intent, in order to cheat the stakeholders of the Corporate Debtor and is done to falsify the accounts of the Corporate Debtor. Therefore, the said transaction is liable to reversed with exemplary costs awarded.

b. Fraudulent Transaction No. 2 to the tune of Rs. 54,87,86,484/- by Respondents No. 1 to 5 with collusion of Respondents No. 7 to 15

Various journal entries (JV) were passed by the Corporate Debtor to adjust balance in various debtors/ creditors namely, Respondents No. 7 to 15, amounting to Rs. 54,87,86,484/-, which were in the absence of any actual payment by debtor or any cogent explanation for the said JV Entry and thus, falls in the category of fraudulent transactions carried out with intention of cheating.

c. Fraudulent Transaction No. 3 to the tune of Rs. 25,22,833/- by Respondent No. 2

The Corporate Debtor had borne the cost for purchase of a BMW Car No. MH04EQ3500 in November, 2010 at the cost of Rs. 25,22,833/-, which was registered in the name of Mr. Madanlal J. Goel (Respondent No. 2). However, the car was sold at a throw away price of only Rs. 5 Lakhs in cash to one Santosh U P Motoron 31.07.2019. It is worth noting that there is no documentary evidence of the sale and further, as per Vahan 4 and Car Info Portal, the said car is still reflecting in the name of Mr.

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Madanlal J. Goel. Further, the cash amount of Rs. 5 Lakhs on sale of said car is shown as Receipt in Cash Book towards payment to Advocate Anjali, Salary, payment to consultant, office expenses, etc. Therefore, the Corporate Debtor has been fraudulently deprived of its assets of Rs. 25,22,833/-, which is liable to reversed in the interests of all its stakeholders.

d. Fraudulent Transaction No. 4 to the tune of Rs. 21,29,342/- by Respondents No. 1 to 5

Respondents No. 1 to 5 have in the guise of Transportation Charges doled out cash to certain beneficiaries in the absence of any documentary evidence.

e. Fraudulent Transaction No. 5 to the tune of Rs. 20,55,718/- by Respondents No. 1 to 5 and Respondent No. 15 (Observation by Auditor @ 84 of IA 1373/2021)

The Corporate Detor had obtained an overdraft facility of Rs. 15 Crores from Infinity Fin Corp Solutions Pvt. Ltd. during April, 2018 to September, 2018, without obtaining NOC from IDBI Bank. Further, the Corporate Debtor paid Interest of Rs. 13,44,612/- and Processing fees of Rs. 7,11,106/- aggregating to Rs. 20,55,718/- to Infinity Fin Corp towards overdraft facility, which had the effect of placing Infinity Fin Corp ahead of the Secured Creditor and amounts to fraud.

- f. Fraudulent Transaction No. 6 to the tune of Rs. 2,19,01,28,577/-
- i. Sales accounted without actual movement of goods: Rs. 1,34,98,74,681/- by Respondents No. 1 to 5 with collusion of Respondents No. 6, 7, 9, 16 and 17 -The Corporate Debtor carried out various sales without actual movement of goods with

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Respondents No. 6, 7, 9, 16 and 17, which is in clear violation of the Accounting Standards issued by ICAI and Section 132(1)(b) and 132(1)(c) of CGST Act.

ii. Purchase accounted without actual movement of goods: Rs. 84,02,53,896/- by Respondents No. 1 to 5 with collusion of Respondents No. 7 and 8 - The Corporate Debtor carried out various purchase without actual movement of goods with Respondents No. 7 and 8, which is in clear violation of the Accounting Standards issued by ICAI and Section 132(1)(b) and 132(1)(c) of CGST Act.

g. Fraudulent Transaction No. 7 to the tune of Rs. 3,75,484/- by Respondents No. 1, 3, 4 & 5

It has also been observed in the books of the Corporate Debtor that godown rent to the tune of Rs. 3,75,484/- has been paid by the Corporate Debtor, with the payee show as Mr. Akshay Anant Kadam, with respect to the Godown located at 'B-13, G7, Parasnath Complex, Owali Village, Bhiwandi, Thane'. However, it is worth noting that the said payment of go down rent is in the absence of existence of any lease agreement. Further, Mr. Akshay Anant Kadam is not the owner of any Godown at Bhiwandi and per contra, the caretaker of the said godown had informed the auditor that he had neither heard the name of the Corporate Debtor nor kept any goods of the Corporate Debtor at any point of time.

7. Written Submission of Respondent No. 1-5

a. Pleadings of fraud are mandatory for an application under Section 66 of the IBC and in the IA 1373/2021 there is not even a single pleading of fraud, leave alone proving the same against the present answering Respondents. The Hon'ble Supreme Court in the case of Jaypee Infratech, Interim Resolution Professional vs Axis Bank reported in

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(2020) 8 SCC 401 has held that specific material facts are required to be pleaded and brought on record if a transaction is challenged under Section 66 of the Code. The law that allegation of a transaction being fraudulent, with respect to a company in winding up, is required to be pleaded and proved is long settled by the Hon'ble Supreme Court and has been repeatedly followed by Various Hon'ble High Courts, it cannot be on basis of mere suspicion 6.

- b. The transactions which are sought to be impugned in the captioned Interim Application for all the transactions which have been carried out with the knowledge of the financial creditor. None of the transaction appears to have been conducted so as to cause wrongful gains to the Respondents and/or wrongful loss is to the financial creditor. In fact, the Respondents herein who are suspended directors, involved in the management of the Corporate Debtor and/or have given personal guarantees, in good faith, have settled the entire amounts due and payable by the Corporate Debtor with respect to the financial creditors., therefore, there is no question of Respondents carrying out transaction to defraud the creditor of the Corporate Debtor.
- c. The Respondent has made issue specific submission also as follows :
 - i. Tej Commodities was in regular and continuous business with the Corporate Debtor ("CD"). The Cheque for 90,00,000,000/- was a PDC given by Tej Commodities to the CD. A perusal of the cheques at Pg 96 and 97 would show that the cheques have been issued prior to 01.04.2018. After the said date, the CD has done continuous business and has received over 120 crores from Tej Commodities Pvt Ltd. The CD used to purchase material and stock from Esszee Manufacturing and was in continuous business with Esszee

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Manufacturing. As a part of business, against placing an order, the CD had given cheques of 90 crores to Esszee. Thereafter, the CD was in continous business with Esszee and has duly paid the said 90 crores. Therefore, Esszee has not deposited the cheque. It is pertinent to note that Esszee has not even filed a claim in the CIRP proceedings of the CD in relation to the said alleged 90 crores. It is the case of the Applicant that the said transaction is carried out to increase drawing power. A perusal of the alleged transaction would show that the CD had a Debtor (Tej Commodities) for 90 crores as well as a creditor for 90 crores (Esszee Manufacturing). Therefore, there is no question of increase in drawing power. It is pertinent to note that the parties have provided confirmation for the JV Entries (Copy of Sample Authority annexed as Ex C page 28 of Affidavit in Reply). JV Entries are a regular and common accounting practice, the same is permitted as per the Indian Accounting Standards as well as the Income Tax Provisions. The genuineness of such JV entries is not challenged by any of the parties, no claim is made in the CIRP of the CD and the same has not been disqualified in the ordinary course of assessment. Therefore, the allegation made by the Applicant is completely baseless, contrary to the facts and imaginary.

ii. The BMW car was purchased in the year 2010 for an amount of Rs 25,22,833/-. As per market standards, a luxury car depreciates about 80-85 % after 9 years from purchase. The case was sold in the year 2019 for an amount of Rs 5,00,000/-. The said amount has been duly brought into the Company. Therefore, the allegation that the transaction is undervalued is completely baseless, false and imaginary.

- iii. It is well established market practice that all the transporters in the market (Truck Drivers) are paid in Cash. Every Trip Cost about 5000/- and the same is paid in cash as and when there is requirement as the Truck Drivers do not accept cheque or RTGS. The CD has accounted for all such payments and has shown the same in its accounting books.
- iv. Infinity Fincorp Solution had provided for a transaction specific loan facility with respect to the commodity of sugar. The said facility was only for the purpose of warehousing of Sugar. The charge was created on the sugar which was proposed to be warehouse. The CD has made a profit of about four crores from this transaction and therefore there is no question of the same being qualified as a preferential transaction. It is pertinent to note that prior to granting the facility, Infinity Fincorp Solution has duly attempted to take NOC from the financial creditor.
- v. The applicant has made completely vague and baseless allegations with respect to sale and purchase without movement of goods. The financial creditor, at regular intervals, carried out, stock audit, site, inspection and inspection of the books of accounts of the CD. Only on being satisfied about the actual business done by the CD, the financial creditors have provided financial facility to the CD regularly, for over 10 times. It is pertinent to note that there is not even an iota of evidence to even suggest that there has been sale or purchase made without movement of goods. It is pertinent to note that the alleged sale and purchase made without movement of goods do not tally with each other, in fact, the sale is more than the purchase, which effectively means that monies have come into CD. It is pertinent

- to note that the GST department have raised regular demands only after confirming the actual movement of goods.
- vi. The allegation of non-payment of rent Completely imaginary in nature. The CD was in continuous business, regular site, inspection, stock audit, audit of the bank accounts of the CD was carried out by independent agencies appointed by the financial creditor. Therefore, the said allegation of withdrawing money on account of lease agreement, without there being a godown is false and frivolous as the same is made on the sole ground of their not being lease agreement. There has been lease agreements executed by the CD.
- 8. Heard the learned Counsel and perused the material available on record.
- 9. Section 66(1) of the I B Code provides that "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".
- 10. The Respondent has contended that the Applicant has failed to make out independent satisfaction and has filed this Application mechanically on the basis of findings contained in Forensic Audit Report. On careful reading of Section 66(1), we find that the Section does not require the Resolution Professional to be satisfied before filing of an application in terms of Section 66 of the Code. Instead, the Section requires that if any transaction is found in course of Corporate Insolvency Resolution Process of Liquidation Process meeting the criteria as laid down in

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Section 66(1) of the Code, the Resolution Profession of the liquidator as the case may be can file an application under Section 66(2) of the Code. Accordingly, we do not find any merit in the contention of Respondent in this regard.

- 11. The Respondent No.2 also pleaded that the debt of financial creditor has been settled by the erstwhile management hence nothing remains in this Application. We note that it is not only the Financial Creditor but the operational creditor and other debt are required to be settled out of the money is available with the Corporate Debtor and the debts of operational creditor and other creditors may require to be settle out of the proceeds of avoidance application.
- 12. Now coming to the transactions impugned in the Application before us, we find that applicant has demonstrated that cheques of Rs. 90 crores were found to be credited in the account of Respondent No.6 and these cheques were not presented for payment. Instead the Respondent Suspended Board allowed to pass another entry with the books of account for a sum of Rs.90 crores on account of cheques claimed to have been issued to ESSZEE Manufacturing Private Limited Respondent No. 7 to neutralized the affect of cheques in hand in the books of Corporate Debtor this resulted into under statement of money receivable from Respondent No.6 and money payable to the Respondent No.7 by the equitable amount. Respondent No.2 has pleaded that these cheques were deposited as the cheques were taken as per the securities. However, we are unable to accept this contention as the security in cheques ought not to have resulted into credit to the account of Respondent No.6. This clearly shows that the debtors and creditors however under stated and proof here to suppress the reflection of true and fair view of the affairs of the Corporate Debtor. Accordingly, we set aside these two entries which resulted into under statement of balances of Respondent No.6 and 7. The

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Respondent is directed to take appropriate step for recovery of amounts receivable from Respondent No.6 after setting aside of the credit of Rs.90 crores to their account.

13. The second transaction pertains to various journal entries (JV) passed by the Corporate Debtor to adjust balance in various debtors/ creditors namely, Respondents No. 7 to 15, amounting to Rs. 54,87,86,484/-. The Respondent submitted that following journal entries were passed after obtaining confirmation from each party.

Date	IVNo	Account Debited	Account Credited	Amount (Rs)	Remarks
31-12-2018		Agrasen Trade Merchant Pvt ltd	Esszee Mfg Pvt Ltd (Other than LC)	2,56,65,280	
30-04-2018		Himalaya Trade Link	Reliable Multi Trading	35,38,50,000	See Note 1
31-05-2018	200	Himalaya Trade Link	Reliable Multi Trading	11,41,75,000	See Note 1
31-08-2018		Reliable Multi Trading	Himalaya Trade Link	4,71,68,009	
25-03-2019	1110	Infinity Fin Corp Solution Pvt Ltd	P.P.Maheshwari & Brothers	5,82,330	
17-08-2019	2	Infinity Fin Corp Solution Pvt Ltd	Zeel Steel Tubes	5,00,000	
20-05-2019	3	Infinity Fin Corp Solution Pvt Ltd	Zeel Steel Tubes	5,00,000	
20-05-2019	3	Infinity Fin Corp Solution Pvt Ltd	Zeel Steel Tubes	5,00,000	
24-05-2019	2	Infinity Fin Corp Solution Pvt Ltd	Zeel Steel Tubes	5,50,000	
24-06-2019	200	Infinity Fin Corp Solution Pvt Ltd	Zeel Steel Tubes	10,10,000	
28-05-2019	1	Infinity Fin Corp Solution Pvt Ltd	Zeel Steel Tubes	9,80,332	
25-03-2019	1110	Infinity Fin Corp Solution Pvt Ltd	Bajarangbali Steel	5,91,172	
30-03-2019	1099	Infinity Fin Corp Solution Pvt Ltd	Swastik Heavy Structurals Pvt Ltd	27,14,361	
Total				54,87,86,484	1

This Journal entry was passed by adjusting the balance receivable from the another party without any justification. The Respondents have also failed to substantiate how such adjustment can be said to be in ordinary course of business. After consideration of these evidences we note that the Applicant has termed these transactions to be fraudulent in nature simply because these transactions had taken place by passing a Journal entry without any actual payment by debtor and any other authority from any party. The Respondent have also not placed on record any document demonstrating confirmation of the parties to the entries except ledger account of Esszee Private Limited Respondent No.6 in his books of

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account. It is interesting to note from perusal of the account that the closing balance of Respondent No.6 is stated to be 71,14,56,390.92 (credit) as on 31.3.19 as per said confirmation and if a sum of Rs. 90.00 crores, stated to be credited to this account for cheques received but not encashed, there shall be a debit balance of Rs. 18,85,43,609.08 /- besides this a further credit of Rs. 256665280 was passed to the Account of Respondent No.7 by debit to Respondent No.14. If this amount is also eliminated there shall be a debit of more than 21 crores, instead of claimed credit of Rs. 71,14,56,390.92. We note that the CIRP commenced in the case of Corporate Debtor upon an application filed by Respondent No.6 claiming itself to the creditor however, this reinstated numbers clearly suggest that the original petitioner was not a creditor of the Corporate Debtor, but instead is a debtor of Corporate Debtor. These facts lead us to irresistible conclusion that even the Insolvency Resolution of Process of the Corporate was fraudulent and appropriate action against Respondent No.6 as well as Respondent No. 1 to 5 needs to be taken. The Applicant is directed to place these facts before IBBI for appropriate action.

14. Now coming to the merits of the second transactions, as described in the preceding para, the books of accounts of the Corporate Debtor does not appear to be credible. In case of Respondent No.9 the Forensic Auditor has commented that the account of Respondent No.9 was credited by a sum of Rs.46 crores on account of cheques received not encashed. Further, in the absence of confirmation from the relevant parties being placed on record by Respondent No.1 to 5 or available on record of Corporate Debtor, we do not find the contention of the Respondent that these adjustment were in normal course. To us, these adjustments appear to have been made to fudge the actual balance of Debtors and Creditors and to give a untrue picture of its debtors and creditors to the

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stakeholders. Accordingly, we set aside these journal entries which resulted into incorrect statement of balances of Respondent No.6 to 15. The Respondent is directed to take appropriate step for recovery of amounts receivable from Respondent No.6 to 15, if there is any after setting aside of the journal entries for a sum of Rs. 54,87,86,484.

- 15. The third transaction pertains to a BMW Car No. MH04EQ3500 owned appearing in the books of the Corporate Debtor stated to have been purchased in November, 2010 at the cost of Rs. 25,22,833/-, though the car was registered in the name of Mr. Madanlal J. Goel (Respondent No. 2). The Respondent No.2 has pleaded that this car was sold for Rs.5 lacks on 31.07.2019 and the consideration received in cash was duly accounted in the books of account of the Corporate Debtor. We note that the car was sold after 9 years and the Applicant has not placed on record any evidence to suggest the probable market price of the car. Further, the Applicant does not plead that the said amount of 5 lakhs was not found recorded in the cash book of the Corporate Debtor, instead the Applicants case is that this amount is shown to have been neutralized for meeting expenses i.e. advocate payments and salary etc., The Applicant has not pleaded that said expenses are not genuine and really merely represents the entry. The Applicant has only made a bald assertion that the car was sold at lower price. In view of these facts, accordingly, we do not find any merit in the allegation of Applicant that this transaction par take the character of fraudulent transaction in terms of Section 66.
- 16. The fourth transaction pertains to Transportation Charges stated to be paid in cash without any valid reason of documentary evidence. The Respondent has contended that local and small scale transporters work on advance cash payment module and allow the loading of the material after payment of the freight. As far as reasons for making payment is concerned we find substance

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on the submission of Respondent that payment of transporters is required to be made in cash. However, we find that Applicant has failed to bring out on record whether the payment of such freight amount was not begged by the sale / purchase of the materials. At this juncture we note that the Applicant has also alleged transaction of fictitious sale and purchase having been recorded in the books of account of the Corporate Debtor actual without movement of book. We note that Section 66 deal with carrying out the business for the fraudulent purpose. In these circumstances, we can only infer, in the absence of evidence to the contrary, that these transportation charges are also fictitious entries as payment were made in cash to certain beneficiaries and there is no documentary evidence., but such inference cannot satisfy the ingredients of fraud so as to bring within the scope of section 66, unless a detail inquiry is carried out. Hence, we are not inclined to pass any order in relation to these transactions.

17. The fifth transaction pertains to availment of an overdraft facility of Rs. 15 Crores from Infinity Fin Corp Solutions Pvt. Ltd. during April, 2018 to September, 2018, without obtaining NOC from IDBI Bank, whereunder the Corporate Debtor paid Interest of Rs. 13,44,612/- and Processing fees of Rs. 7,11,106/- aggregating to Rs. 20,55,718/- to Infinity Fin Corp towards overdraft facility, which had the effect of placing Infinity Fin Corp ahead of the Secured Creditor. The Respondent have submitted that the said facility was taken for warehousing of sugar on which the Corporate Debtor made a profit of Rs.4 crores. It is further submitted that infinity Solutions Respondent No.15 had duly sought for NOC of the Financial Creditor prior to extending of the facility. The Applicant has not disputed this fact. Accordingly, we cannot hold this transaction to be fraudulent simply because the NOC from the Financial Creditor was not obtained. It is pertinent to note that the Respondent No.15 was at its own risk in the absence of such NOC and no adverse

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inference can be drawn from absence of NOC. Accordingly, the pleadings in this regard does not satisfy the ingredients of fraud so as to bring within the scope of section 66, unless a detail inquiry carried out. Hence, we are not inclined to pass any order in relation to these transactions.

- 18. The sixth transaction pertains to sale purchase transaction alleged to be in violation of Section 132 of CGST Act and the basis for such allegation is absence of movement of goods pursuant to these transactions. We note that these transactions were with the Respondent No.6, 7, 8, 9, 16 and 17. We note that these transactions of sale and purchase, if fictitious, have the affect on the balance of these on the books of the Corporate Debtor. The Applicant has made bald assertion in relation to sale and purchase. Nonetheless, if sale as well as purchase are claimed to be fictitious, it does not cause any cause to the Corporate Debtor. In the present case we find that the total sales alleged to be fictitious are more than the total purchase alleged to be fictitious. Accordingly, no loss is caused to the Corporate Debtor, even if these allegedly fictitious sale purchase had the affect of fudging the actual financial position of the Corporate Debtor to mislead other stakeholders. Hence, we are not inclined to pass any order in relation to these transactions in terms of Section 66.
- 19. The seventh transaction pertains to payment of godown rent to the tune of Rs. 3,75,484/- to Mr. Akshay Anant Kadam, with respect to the Godown located at 'B-13, G7, Parasnath Complex, Owali Village, Bhiwandi, Thane'. It is a case of the Applicant that Mr. Akshay Anant Kadam is not the owner of any Godown at Bhiwandi and per contra, the caretaker of the said godown had informed the auditor that he had neither heard the name of the Corporate Debtor nor kept any goods of the Corporate Debtor at any point of time. The Respondents submitted that the financial creditor conducted yearly stock audit at the godown of the

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Corporate Debtor and has verified that the goods lying therein. The pleadings in this regard does not satisfy the ingredients of fraud so as to bring within the scope of section 66, unless a detail inquiry carried out. Hence, we are not inclined to pass any order in relation to these transactions.

20. In view of the above IA 1373 of 2021 is partly allowed, and IA 3237 of 2024 is dismissed. Both IA's are disposed of accordingly.

Sd/- Sd/-

PRABHAT KUMAR MEMBER (TECHNICAL) JUSTICE V.G. BISHT MEMBER (JUDICIAL)

/Neeraj/