



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1006/KB/2022

In

Company Petition (IB) No. 972/KB/2018

***An application under Sections 43 and 66 of the Insolvency and
Bankruptcy Code, 2016***

IN THE MATTER OF:

Bell Finvest (India) Limited.

... Financial Creditor.

Versus

Duckbill Drugs Private Limited (in Liquidation)

... Corporate Debtor.

And

IN THE MATTER OF:

**CA Santanu Brahma, Liquidator of Duckbill Drugs Private Limited,
having Registration No.: IBBI/IPA-001/IP-P01482/2018-
2019/12251, Liquidator of Duckbill Drugs Private Limited.**

... Liquidator/ Applicant.

Versus

1. Mr. Swapan Mukherjee

... Respondent No. 1.

And

2. Mr. Arjun Mukherjee, sole proprietor of Duckbill Pharma

... Respondent No. 2.

And

3. Mrs. Poulami Mukherjee

... Respondent No. 3.

And

4. M/s. Sanjeev Prakash Lal

... Respondent No. 4.

Date of Pronouncement: June 19, 2024.



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CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

For Liquidator:

Mr. Shaunak Mitra, Adv.

Ms. Debaleena Ganguly, Adv

For R-1, R-2 in I.A. (IB)/1006(KB)2022 & CONT. A. (IBC)/5(KB)2023:

Mr. Ramesh Chandra Prusti, Adv.

Ms. Alisha Kar, Adv.

Ms. Mahuya Ghosh, Adv.

Ms. Sunita Kabi, Adv.

Mr. Sanjib Das, Adv.

For R-4 in I.A. (I.B.C)/1006(KB)2022:

Mr. Binay Kr. Upadhyay, Adv.

ORDER

Per D. Arvind, Member (Technical):

1. This is an application preferred by CA Santanu Brahma, the Liquidator of Duckbill Drugs Pvt Ltd (hereinafter referred to as "Applicant"/Liquidator") against Mr. Swapan Mukherjee, Mr. Arun Mukherjee, Mrs. Poulami Mukherjee and Mr. Sanjeev Prakash Lal (hereinafter referred to as "Respondents 1, 2, 3 & 4 respectively") under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code".



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- 2.** Respondents Nos. 1, 2, and 3 are suspended members of the Corporate Debtor's board of directors. Respondent No. 4 is a related party carrying on proprietorship business in the names and style of a) Profile Pharma and b) Profile Distributors.
- 3.** The Application seeks the following reliefs:
- a.** *Order be passed directing the Respondent No. 1 & 2 jointly and/or severally to pay the following sums to the liquidation estate of the Corporate Debtor.*
 - i.** *Rs. 50,96,018/- as stated in Paragraph V (15)(I)(k) of the application.*
 - ii.** *Rs. 4,96,19,742/- as stated in Paragraph V(15)(IV) of the application.*
 - iii.** *Rs. 41,936/- as stated in Paragraph V(15)(V) of the application.*
 - b.** *Order be passed directing the Respondents No. 1, 2 & 3 jointly and or severally to pay sums of Rs. 50,05,584/- and Rs. 39,81,973/- as a contribution to the liquidation estate as stated in Paragraph (V)(15)(I)(q) of the application.*
 - c.** *Order be passed directing the Respondent No. 1 & 2 to pay a sum of Rs. 42,21,655/- to the liquidation estate of Corporate Debtor as stated in Paragraph (V)(15)(II) of the application.*
 - d.** *Order be passed directing the Respondent 1, 2 & 4 jointly and / or severally to pay a sum of Rs. 5,77,55,727 as contribution as stated in Paragraph V(15)(III) of the application.*



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- e. Order of injunction be passed restraining the Respondents from dealing with, transferring or encumbering, any of the assets or properties within disposal of this application.*
- f. Cost of the application be borne by the Respondents.*
- g. Such further orders or directions be passed as this Adjudicating Authority may deem fit and proper.*

Factual Matrix:

- 4.** Duckbill Drugs Pvt Ltd, i.e the Corporate Debtor herein, was admitted into the Corporate Insolvency Resolution Process (CIRP) in terms of Order CP No. 972/KB/2018 dated 17.12.2019, and one Mr. Bhupendra Singh Narayan Singh Rajput was appointed as Interim Resolution Professional in terms of the said order.
- 5.** In the absence of any Resolution Applicant, upon resolution passed by the Committee of Creditors of the Corporate Debtor in its meeting dated 17.12.2020, an application was filed for liquidation of the Corporate Debtor before this Tribunal.
- 6.** On 13.04.2021, this Tribunal passed an order for liquidation of the Corporate Debtor.
- 7.** With the Resolution Professional's immense efforts and the intervention of this tribunal, the suspended board ultimately handed over the possession of factory premises to the Liquidator only on 01.02.2022, nearly 25 months after commencement of CIRP



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and 10 months after this Adjudicating Authority passed the order of liquidation.

8. Ultimately, the Corporate Debtor was sold as a going concern through an E-Auction conducted by the Liquidator on 09.05.2022.
9. The Liquidator received a sale consideration of Rs. 500 Lacs on 11.05.2022, and on the same date, possession of the Corporate Debtor's factory at Behala Industrial Estate, West Bengal, was handed over to the successful bidder, Paul Brothers.
10. The Corporate Debtor's Stakeholders Consultation Committee has authorised the Liquidator to pursue this Application filed under Sections 43 and 66 of the I&B Code.

11. Allegations levelled by the Liquidator:

11.1 Misconduct on the part of the suspended board in the course of CIRP.

11.1.1. The operations of the Corporate Debtor were under the control of erstwhile management.

- a) Throughout the CIRP and liquidation proceedings, it is alleged that the Corporate Debtor's operations were under the control of the previous management. It is further alleged that the erstwhile management refused to hand over the factory and office premises to the Resolution Professional and the Liquidator. Additionally, they failed to cooperate in providing necessary documents on time, leading to an



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application being filed under Section 19(2) of the IBC Code. After numerous hearings and directions from the tribunal, the Liquidator finally gained possession and control of the premises only on 12th February 2022, while CIRP began on 17th December 2019, and the liquidation commenced on 13th April 2021.

- b)** Only upon the directions of the Adjudicating Authority pursuant to applications made under Section 19(2) of the I&B Code, the Liquidator was able to obtain most, if not all, of the documents around Feb 2022.
- c)** In light of the above facts and circumstances, the learned counsel for the Liquidator submits that this is a fit case for invoking Section 70 of IBC, which deals with punishment for misconduct in the course of CIRP.

11.2 Falsification of Accounts.

- a)** There were significant discrepancies between management's Tally software-based accounts for the period 2017-18 to 2021 and the corporate debtor's audited financials for the same period.
- b)** When the Liquidator approached the statutory auditor MGSK & Associates, they discovered that the trial balance provided by the suspended board to the applicant was significantly different from the trial balance and balance sheet that the statutory auditors had audited for the same period.



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- c) After receiving such clarification from the statutory auditor, the Liquidator has forwarded to Respondents 1 and 2, but no reply was received.
- d) The audited trial balance shows that the current account of suspended board members Mr Arjun Mukherjee and Mr Swapan Mukherjee has a balance of Rs. 49,34,311.74, due to the Corporate Debtor whereas the trial balance provided by the suspended board indicates a balance of **NIL** for the same account and period. This allegation is presented in the form of a table reproduced below:

Ledger Account	As per Audited Trial Balance for FY 2019-2020 (in Rs.)	As per purported Trial Balance for FY 2019-20 provided by R1 and R2 on 10.2.2022 (in Rs.)
Mr. Arjun Mukherjee Current A/c	18,45,745.24	NIL
Mr. Swapan Mukherjee Current A/C	30,88,566.50	NIL
TOTAL:	49,34,311.74	NIL

- e) The Ld. Counsel for the Liquidator asserts that the receivable from the suspended board, as indicated in the audited financials, is recoverable. However, such dues were allegedly



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fraudulently deleted from the accounts maintained in Tally by the Respondent. Furthermore, accounting entries were purportedly made during the CIRP period, to perpetuate fraud on the corporate debtor, at a time when the suspended board was expected to have **no** control over the operations of business and books of accounts of the Corporate Debtor.

- f)** Thus, it is the case of the Liquidator that a total of Rs. 49,34,311 should be recovered from the suspended board. This amount includes Mr. Arun Mukherjee's liability of Rs. 18,45,745 to the liquidation estate and Mr. Swapan Mukherjee's liability of Rs. 30,88,566/-.

11.3 Mishandling of cash resulting in loss to the company.

- a)** According to the records provided by the suspended board, the initial balance as of 01.04.2020 was Rs. 86,29,583. They conducted cash transactions and ultimately deposited Rs. 1,99,125, resulting in a purported final balance after accounting for all the cash transactions.
- b)** If the opening balance as of 01.04.2020, as provided by the suspended board as per the tally software is taken into consideration, then the net payable by them is the sum of Rs. 144.29 lacs after including the cash withdrawal from ICICI bank to the tune of Rs. 51.99 lacs.
- c)** However, they deposited only 1.99 lacs, claiming that cash payments had been made to Mr. Ram Avtar Mascara for



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business purposes. Later, they denied making any payment to Ram Avtar Maskara in cash and claimed that the said entry in the books of accounts was due to errors committed.

- d)** Further, the suspended board claimed that the actual opening balance was Rs. 96,874/— and not Rs. 86,29,583/— as mentioned in the books provided by them.
- e)** The Liquidator, having noted the closing balance in the audited financials as of 01.04.2020 to be Rs. 96,874/-, admitted the claim of the suspended board, recast the cash that should have been available and deposited it into the liquidation account.
- f)** The said re-casted cash in hand as of 2021-22 is reproduced in the form of table below:

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Cash-in-Hand Ledger Accounts				(In INR Lacs)
Particulars	CASH Book	Factory Remittance	Sales Office Remittance	Total
Opening Balance as on 01.04.2020	86.18	0.12	-	86.30
<u>Add: Inflows</u>				
• Withdrawal from ICICI Bank, Gariahat Branch	50.48	1.51	-	51.99
<u>Less: Outflows</u>				
• Expenses paid (net of misc. receipts)	(4.70)	(1.60)	-	(6.30)
• Amount paid to Mr. Ram Avtar Maskara	(130.00)	-	-	(130.00)
Closing Balance as on 12.02.2022	1.96	0.03	-	1.99

- d. On scrutinizing the ledger account named 'Cash Book,' 4 (four) accounting entries were identified aggregating to INR 1,30,00,000/- (Indian Rupees One Crore and Thirty Lacs Only) which represented 'CASH PAYMENTS' made to 'Mr. Ram Avtar Maskara.' The copy of the accounting entries is enclosed as Annexure - O (Pages 363-366) and is detailed hereunder for sake of brevity -

Voucher / Payment Date	Voucher Type & No.	Paid to	Amount (INR)	Reference of Page No
22.04.2020	Payment #53	Ram Avtar Maskara	10,00,000	363
25.08.2020	Payment #573	Ram Avtar Maskara	50,00,000	364
25.10.2020	Payment #932	Ram Avtar Maskara	50,00,000	365
12.12.2020	Payment #1107	Ram Avtar Maskara	20,00,000	366
Total			1,30,00,000	

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Assets to Liquidator) is as follows -

Particulars	Cash In Hand		Remarks
	(In INR Lacs)	(In INR)	
Opening Balance as on 01.04.2020	0.97	96,874	Considered as per Audited Financial Statement for the year ended 31.03.2020
Add: Inflows			
• Withdrawal from ICICI Bank, Gariahat Branch	51.98	51,98,269	As evident from ICICI Current Account statement
Less: Outflows			
• Expenses paid (net of misc. receipts)	-	-	Expenses incurred by CD without consent of RP and approval from CoC
• Amount paid to Mr. Ram Avtar Maskara	-	-	CD admitted that the entries were wrongly posted
Closing Balance as on 12.02.2022 (Re-casted)	52.95	52,95,143	
Less: Amount deposited by CD in Liquidation designated A/c	(-) 1.99	(1,99,125)	
Asset (being Cash-In-Hand) in possession of CD	50.96	50,96,018	

- g)** In view of the above, he submits that Rs. 50,96,080 should be recovered from the suspended board on account of illegal withholding of balance cash, as per the re-casted cash in hand account, as per the table mentioned above.

11.4 Transactions with related parties:

- a)** The Ld. counsel for Liquidator submits that it is evident from the audited financials for the financial year 2019-20 of the

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Corporate Debtor, receivables from related parties are as per the table below:

Facts:	
a. As evident from the Audited Balance Sheet for the FY 2019-20 of the Corporate Debtor the receivables from related parties are as follows -	
i) Receivable from Swapan Mukherjee	: INR 30,88,567
ii) Receivable from Arjun Mukherjee	: INR 18,45,745
iii) Receivable from Poulumi Mukherjee	: INR 21,242
iv) Receivable from Duckbill Pharma	: INR 50,000
Total Receivable from Related Parties as on 31.03.2020 : INR 50,05,554	

- b) Recoverable from Swapan Mukherjee and Arjun Mukherjee has already been dealt with in Para 11.2 (f) of this order; the counsel for Liquidator submits that the receivables from Poulami Mukherjee and Duckbill Pharma to the tune of Rs. 71,242 will have to be recovered.
- c) He further submits that during CIRP and liquidation period from 01.04.2020 to 12.02.2022, an amount aggregating to Rs. 39,81,973/- was transferred to the bank account of the related parties, from the current account of the Corporate Debtor with the ICICI Bank, Gariahat Branch, as detailed hereunder:



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i)	Amount transferred to the Bank Account of Mr. Swapan Mukherjee (erstwhile Promoter / Director of CD)	: INR 10,29,320
ii)	Amount transferred to the Bank Account of Mr. Arjun Mukherjee (erstwhile Promoter / Director of CD)	: INR 9,01,369
iii)	Amount transferred to the Bank Account of Mrs. Poulami Mukherjee (erstwhile Shareholder and wife of Mr. Arjun Mukherjee, erstwhile Director of CD)	: INR 18,81,284
iv)	Amount transferred to the Bank Account of M/s. Duckbill Pharma (Associate concern of CD where the erstwhile Promoters of CD are the Owners)	: INR 1,70,000
Total Amount transferred to 'Related Parties' during CIRP and Liquidation Proceedings		: INR 39,81,973

- d)** The entire amount transferred between 01.04.2020 and 12.02.2022 during CIRP/liquidation proceedings will have to be recovered, and consequently, the Liquidator pleads recovery of 39,81,973/—in terms of Section 43 of the Code.

11.5 Sale of goods to Duck Bill Pharma (Associate Concern):

- a)** During the pendency of liquidation proceedings, erstwhile directors transferred goods amounting to Rs. 42,21,625 to M/s. Duck Bill Pharma which is an associate firm where the directors of the Corporate Debtor are beneficial owners.
- b)** Details of such transfer that took place during the liquidation period are given in the form of a table below:



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Invoice No. and Date	Sale Invoice raised to	Total Invoice Amt (INR)
D/GST-0262/21-22 dtd. 24.01.2022	Duckbill Pharma GST No. 19ALOPM9680K1Z2 Barulpur Station Road (West), Kanchanalaya, 24 Parganas (South) PO & PS: Barulpur, Kolkata 700144	20,96,038
D/GST-0263/21-22 dtd. 28.01.2022		7,31,919
D/GST-0264/21-22 dtd. 29.01.2022		13,93,698
Total Sales to M/s. Duckbill Pharma by CD		42,21,655

- c) During the liquidation period, the Corporate Debtor arbitrarily sold/transferred the residual quantity of goods before handing over the factory's possession to the Liquidator.
- d) Thus, the entire invoice amount totalling to Rs. 42,21,625/- is a transaction of fraudulent trading liable to be recovered. In fact, the suspended board, vide its e-mail dated 23.02.2022 has admitted the sale of goods but has tried to justify non-receipt of the sale proceeds by the Corporate Debtor on the ground that they have utilised it against several payments on account of payment of GST, ESIC, Provident Fund, Professional Tax, Electric Charges and consultancy expenses.
- e) The learned counsel submits that the Corporate Debtor has contravened Section 14(1)(b) of the I&B Code. The transferred assets to related parties will have to be recovered, and appropriate steps will have to be taken to invoke Section 74(1) of the I&B Code.



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11.6 Receivable from Profile Group- Profile Pharma and Distributors:

- a)** Profile Pharma and Profile Distributors are major customers of the Corporate Debtor. These entities are owned by one Mr. Sanjeev Prakash Lal.
- b)** Nearly 85 to 90% of the Corporate Debtor's turnover comes from these two entities. These two entities were making payments to Corporate Debtor through banking channels till June 2021. Thereafter, the payment mode was converted into cash, and it was directly paid to the suspended board, by these two entities. As per the books of accounts of the Corporate Debtor a sum of Rs. 5,77,25,727/- was receivable as on 31.03.2021 against the sales made to Profile Pharma and Profile Distributors by Corporate Debtor.
- c)** When the Liquidator sent an e-mail on 10.03.2022 to Mr. Sanjeev Prakash Lal to pay the sum due to the Corporate Debtor to the tune of Rs. 5,77,25,727/- he sent a statement wherein he has unilaterally set off certain amounts by passing accounting entries. Details of which are given in the form of a table below:

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(Amounts in INR)			
	Prolife Pharma	Prolife Distributor	Total
Cash Paid to 'Welfare Committee of Duckbill Drugs Pvt. Ltd. (WCDDPL) during the period 01.04.2021 to 08.04.2022	27,10,000	33,00,000	60,10,000
Bank Transfer to HDFC Bank Account without any Payee's details	7,50,000	-	7,50,000
Debit Note bearing no. 22 dtd. 14.01.2022 without GST details	-	12,12,747	12,12,747
Good Return under Debit Note. bearing no. DN No. PR-01/21-22; DN No. PR-02/21-22; DN No. PR-03/21-22 and DN No. PR-04/21-22, without any GST details	-	38,83,283	38,83,283
Sales Commission for FY 2017-18; FY 18-19; FY 19-20; FY 20-21 booked on 01.03.2022 (pertains to period prior to 13.04.2021 i.e. Liquidation commencement date)	-	2,83,34,368 (61,30,192 + 67,33,500 + 70,74,195 + 83,96,481)	2,83,34,368
Additional Interest cost on the above Sales Commission	-	5,42,064	5,42,064
Sales Commission for FY 2021-22 booked on 01.03.2022 (pertains to period after commencement of Liquidation)	-	67,42,545	67,42,545
TOTAL			4,74,75,007

- d) The aforementioned Mr. Sanjeev Prakash Lal also stated in response that the Profile Group was authorized to make cash payments against the Corporate Debtor's obligations to a separate entity known as the welfare committee of Duckbills Pvt Ltd. For adjusting sales commission, he has no GST-compatible invoice to the extent of Rs. 3.56 Cr but claims that he has an agreement with the Corporate Debtor to that effect,



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- e)** Liquidator claims that upon repeated correspondence, it came out that accounting entries made by Sanjeev Prakash Lal are an afterthought to the Liquidator's email dated 10.03.2022.
- f)** Thus, the learned counsel submits that Rs. 4,74,75,007/- adjusted unilaterally by the Profile Group after the commencement of CIRP of the Corporate Debtor against the payable to the Corporate Debtor, is covered by Section 66 of IBC and recoverable as fraudulent diversions/adjustments against the payables to Corporate Debtor.

11.7 Receivables from other parties:

- a)** Liquidator further submits that with reference to receivables from other parties, the same modus operandi has been followed, resulting in unauthorized diversion/adjustment of sums due to the Corporate Debtor, and the same is reproduced in the form of a table.

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communication received from such parties are as under -

Sl. No.	Name of Debtors	Amount Receivable by CD	Remarks / Observations
1	Ashirbad Station Road, Begampur, P.S. Chanditala, Hoogly - 712201, West Bengal	67,32,644	<ul style="list-style-type: none"> M/s. Ashirbad responded to Liquidator through email on 26.03.2022 (hard-copy received on 13.04.2022) denying any instances of outstanding payment to CD. On the contrary, M/s. Ashirbad provided documents, duly signed by Mr. Swapan Dasgupta (Ex-MD of CD), whereby the management of Duckbill Drugs has agreed to pay Ashirbad an amount of INR 1.54-Cr by way of a minimum monthly installment of INR 3 Lacs. On request from Liquidator, M/s. Ashirbad submitted the information along with supporting documents, under cover of an Affidavit dated 11.04.22, duly notarized. The copy of such representation made along with supporting documents is enclosed herewith as Annexure - AA (pages 521-560).
2	B.G. Enterprises H-201, Behind Harmu Power Station, Harmu Housing Colony, Ranchi - 834002, Jharkhand	25,94,415	<ul style="list-style-type: none"> M/s. B G Enterprises made a written representation to the Liquidator received by the latter on 20.04.2022. M/s. B G Enterprises stated that there is no such outstanding payable to Duckbill Drugs Pvt. Ltd. rather a residual amount of around INR 2,760/- is receivable by them. Supporting documents including Bank Statement, Ledger Accounts, etc were also submitted to substantiate the statement made by B G Enterprise. The copy of such representation made along with supporting documents is enclosed herewith as Annexure - AB (pages 561-604).

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3	<p>Paul Brothers 3 Kali Prasanna Chatterjee Lane, Kolkata 700034</p> <p>Sundry Debtors (West Bengal) A/C</p>	<p>1,34,78,530</p> <p>1,42,03,242</p>	<ul style="list-style-type: none"> • CD in its email dtd. 22.03.2022 (already enclosed as Annexure P, page 367) stated that the Ledger Account 'Sundry Debtors (West Bengal) A/c' is represented by the amount receivable from M/s. Paul Brothers in addition to the outstanding receivable against ledger a/s "Paul Brothers (Super Stockist)" • M/s. Paul Brothers made written representation (covered under an Affidavit, duly notarized) to the Liquidator whereby M/s. Paul Brothers denied the payable amount and also provided an account statement duly signed by Mr. Swapan Mukherjee (Ex-Director of CD) to substantiate the same. • The copy of such representation made along with supporting documents is enclosed herewith as Annexure - AC (pages 605-622).
4	<p>Indecorus Consultant AA 267, AA Block, Sector 1, Bidhannagar, Kolkata, West Bengal 700064</p>	<p>11,33,690</p> <p>-</p>	<ul style="list-style-type: none"> • Liquidator received a written representation dtd. 19.04.2022 from Indecorus Consultants, on 26.04.2022. • As per the said representation, Indecorus Consultants not only denied the amount payable to Duckbill Drugs Pvt. Ltd. but also went to the extent of stating that there was never any business relationship with the CD and hence the question of payable does not arise • The copy of such representation made along with supporting documents is enclosed herewith as Annexure - AD (pages 623-625).
5	<p>Shree Narayani Pharma Sushila Niketan, Ratu Road P.O. - Heal, P.S. - Sukhdad Nagar, Ranchi 834005</p>	<p>31,31,051</p>	<ul style="list-style-type: none"> • The liquidator received a written representation from Narayani Pharma on 23.04.2022 under cover of an Affidavit duly notarized. • As per the said representation, it was informed to the Liquidator that M/s. Narayani Pharma discontinued all business relationships with Duckbill Drugs Pvt. Ltd. since 2016. The stock of Duckbill Drugs Pvt. Ltd., (lying at the closure of the business arrangement with CD) was transferred to M/s. B. G. Enterprise under instruction from erstwhile management of CD and a full

Ghosh & Associates
Chartered Accountants

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			<p>• A final amount of INR 77,144/- receivable by Shree Narayani Pharma has also been received. Thus there is no receivable or payable from the CD.</p> <p>• Shree Narayani Pharma provided supporting documentary evidence in support of their representation under cover of an Affidavit.</p> <p>• The copy of such representation made along with supporting documents is enclosed herewith as Annexure - AE (page 626-637).</p>
6	<p>Purbanchal Drugs Hospital Complex, G.M.C.H. Complex, GMC Hospital Rd, Bhangagarh, Guwahati, Assam 781032</p>	13,54,893	<p>• Liquidator received a letter dtd. 25.04.2022 from M/s. Purbanchal Drugs, on 29.04.2022.</p> <p>• As per representation made in the said letter, M/s. Purbanchal Drugs denied any business relationship with the CD and thereby refuted the claim of any amount by the Liquidator of the CD.</p> <p>• The copy of such representation made along with supporting documents is enclosed herewith as Annexure - AF (page 638-640).</p>
7	<p>Sundry Debtors (Assam) A/c</p> <p>Sundry Debtors (Orissa) A/c</p> <p>Candida Enterprise (Assam) 11/B, Motilal Nehru Rd, Pan Bazaar, Guwahati, Assam 781001</p>	<p>13,34,652</p> <p>11,89,485</p>	<p>• CD in its email dtd. 23.03.2022 (already enclosed as Annexure P, refer page 367) stated that the Ledger Accounts of 'Sundry Debtors (Assam) A/c' and 'Sundry Debtors (Orissa) A/c' is represented by the amount receivable from M/s. Candida Enterprise.</p> <p>• Liquidator sent a communication through speed post bearing consignment no. EW228489425IN which was also delivered to the address (as provided by CD) on 18.04.2022. However, there has been no response from M/s. Candida Enterprise.</p> <p>• Further, it is observed that such receivable is appearing in the Audited Trial Balance for the year ended 31.03.2020 as provided by the Statutory Auditors (refer sl. No. 958 in Annexure J at page 255).</p> <p>• Such outstanding is being carried in the books of account of CD since long (prior to 31.03.2020) with no efforts for recovery of such balance. Rather CD has attempted to cover-up the receivable amount by falsifying the</p>

Ghosh & Associates

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		Audited Financial Statement as have been discussed in detail in clause 6.2, above.	
8	Vasundhara Enterprises Jamuna Bazar, Samara Road Gopalganj - 841441, Bihar	32,90,878	<ul style="list-style-type: none"> • CD in its email dtd. 23.03.2022 (already enclosed as Annexure P, refer page 367) stated that the Ledger Account 'Sundry Debtors (Bihar) A/c' is represented by the amount receivable from M/s. Vasundhara Enterprise in addition to the outstanding of INR 32,90,878 against Ledger A/c "Sundry Debtors Vasundharaentp." • Liquidator sent a communication through speed post bearing consignment no. EW228506296IN which was also delivered to the address (as provided by CD) on 28.04.2022. No response from M/s. Vasundhara Enterprise have been recd. • Further, it is observed that such receivable is appearing in the Audited Trial Balance for the year ended 31.03.2020 as provided by the Statutory Auditors. • Such outstanding is being carried in the books of account of CD since long (prior to 31.03.2020) with no efforts for recovery of such balance. Rather CD has attempted to cover-up the receivable amount by falsifying the Audited Financial Statement as have been discussed in detail in clause 6.2, above. Refer sl. No. 959 in Annexure J at page 255.
	Sundry Debtors (Bihar) A/c	11,76,262	
TOTAL:		4,98,19,742	



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- b) Thus, the Liquidator claims that the Corporate Debtor has been involved in siphoning of funds from the business of the Corporate Debtor, which is prejudicial to interest of creditors and therefore argues that a sum of Rs. 4,96,19,742/- have been defrauded and consequently the same would fall within the ambit of provision of Section 66 of IBC and recoverable.

11.8 Assets in possession of the next promoter:

- a) Learned Counsel further submitted that the promoter failed to hand over two cars owned by Corporate Debtor. Upon persuasion and demand, the promoters handed over one car, but they have not released the other car to date.
- b) Thus, a sum of Rs. 41,936 attributable to the depreciated value of the car in possession of the suspended board will have to be recovered and made good to the liquidation estate.

11.9 In view of above submissions, the total sum due and recoverable in terms of avoidance transactions is **Rs. 12,56,92,635/-** as per details mentioned in the relief sought.

12. Learned counsel for the Respondents:

- 12.1.** The learned counsel for the Respondents submits that the application is barred by limitation, the principles of res-adjudicata, and res sub-judice. He submits that the instant application is not maintainable on facts and law.
- 12.2.** He submits that the Liquidator has filed this instant application based on presumptions and assumptions, relying on the report of



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the transaction auditor, who has not properly reviewed the corporate debtor's books of accounts.

- 12.3.** He submits that the suspended board has provided several documents to the applicant through e-mails, which have not been considered.
- 12.4.** He further submits that the valuation of the Corporate Debtor during liquidation has been done in the most unreasonable manner and has been undervalued on the basis that sundry debtor data provided by the suspended board of directors are fake and baseless.
- 12.5.** The Ld. Counsel further submits that the Liquidator, in collusion with the successful buyer M/s. Paul Brothers, sold the Corporate Debtor as a going concern at an undervalued price for reasons best known to them.
- 12.6.** He further submits that no steps have been taken to recover dues from M/s. Paul Brothers and Ashirwad traders, from whom the Corporate Debtor is likely to get 1.31 Cr, and no steps have been taken to realise a sum of Rs. 69.6 lacs from Vedanth Marketing.
- 12.7.** Learned counsel submits that the I&B Code casts upon the Liquidator to personally examine the documents to arrive at a conclusion about whether PUF transactions were carried out or not, and he cannot, based on the transaction auditors report, file this application. On this ground alone, it is submitted that this application is not maintainable.



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- 12.8.** The learned counsel submits that due to the ill health of Respondent No. 1 and Respondent No. 2 was busy looking after their maternal uncle, Mr. Arunava Dutta, who was a bachelor and was staying with Respondents 1 & 2, they made an MoU on 1.4.2019 with the employees of the Corporate Debtor to run the day-to-day operations of the Corporate Debtor. He submits that, for this purpose the employees had formed an entity in the name and style of “Welfare committee of Duckbill Drugs Pvt Ltd” (herein after referred as “Welfare committee”)
- 12.9.** He submits that the welfare committee of Duckbill Drugs Pvt Ltd was looking after the accounts and day-to-day operations of the Corporate Debtor from 01.04.2019, and Respondent No. 1 & 2 are in no way connected with the maintenance of the books from that day onwards.
- 12.10.** The learned counsel further submits that Respondent No.1, for a very long time, was suffering from dementia and therefore entrusted the management of the Corporate Debtor to the welfare committee of the Corporate Debtor for the mere survival of the same and to the benefit of the family members of the employees /welfare committee.
- 12.11.** Hence, Respondents nos. 1 and 2 were unable to continue managing the company's affairs, and they were constrained to give digital signatures and blank cheques to the welfare committee so that company affairs could be carried on smoothly and worker's salaries paid regularly.



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- 12.12.** Learned Counsel submits that Respondent Nos. 1 & 2 later learned that the welfare committee, taking advantage of the trust imposed on them by Respondent Nos. 1 & 2, thoroughly mismanaged the company.
- 12.13.** This mismanagement and non-cooperation on the part of the Welfare Committee led to the company going into liquidation, as ordered by this bench on 13.04.2021, with Mr. Bhupinder Singh Narayan Singh Rajput appointed as the Liquidator.
- 12.14.** Thereafter the Liquidator, in collusion with the Paul brothers (Successful Resolution Applicant) sold the Corporate Debtor as a going concern, grossly undervalued to the successful bidder.
- 12.15.** Learned Counsel further submits that the Resolution Professional visited the factory premises on 18.01.2020 at 3 P.m. along with a team of advocates to take a physical position without showing any court order. Obviously, the welfare committee denied access and permission and also made a complaint before the police authorities in this regard.
- 12.16.** Thereafter, in view of the lockdown and other restrictions imposed by the Covid pandemic, handover proceedings could not take place.
- 12.17.** He relied on a police complaint dated 20.01.2020, which has been annexed as **Annexure E** in the reply.
- 12.18.** He further submits that Respondents 1 and 2 are in no way responsible for non-cooperation. The company's welfare



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committee defaulted, wilfully and contentiously violated the order passed by NCLT preventing the IRP from taking over the factory's possession.

12.19. The learned counsel further contends that the welfare committee controlled the company's operations by utilizing the digital signatures of Respondents Nos. 1 and 2. He also denied that Respondent No 2, using Duck Bill Pharma's instrumentality, indulged in any fraudulent and clandestine transactions.

12.20. Ld. Counsel also denies that the Respondents are required to make any contribution to the liquidation estate of the Corporate Debtor as they did not get involved in alleged fraudulent or preference transactions.

12.21. He also submitted that the Corporate Debtor made several attempts to take possession of the plant, machinery, and other records, but the members of the Corporate Debtor's welfare committee restrained them and the Liquidator from taking physical possession of the assets.

12.22. He submits that if there are irregularities, they cannot be attributable to Respondents No. 1 and 2 in as much as they are attributable to the welfare committee, which took over the running of company's affairs on 01.04.2019.

12.23. The welfare committee illegally transferred the company's registered office by using Respondents Nos. 1 & 2's Digital Signature Certificate ("DSC"), and therefore, no mala fide can be attributed to Respondents Nos. 1 & 2.



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12.24. Learned Counsel also further states that money transferred to the personal account of Respondent No. 1 & 2 by the Corporate Debtor has been made without the knowledge of Respondent No. 1 & 2.

12.25. The Ld. Counsel submits that the data provided by Duck Bills' welfare committee to the Resolution Professional and transactional auditor is inaccurate. He further states that most of the allegations are not corroborated by any other evidence.

12.26. Ld. Counsel submits that the report issued by the transactional auditor does not give the true picture of the alleged irregularities mentioned in the report, and in any event, the same is not attributable to Respondents No. 1 & 2 in as much as it is actually attributable to the welfare committee that was running the company when the company went into CIRP.

12.27. Thus, he submits that the Resolution Professional has not made a case to recover such huge sums on account of avoidance transactions, and therefore, this application is liable to be dismissed.

13. In counter as a rejoinder by the Applicant:

13.1. The Ld. Counsel for the Applicant asserts that Respondents No. 2 & 3 are seeking to wrongly disassociate themselves from the Corporate Debtor. According to the latest shareholders' list submitted with the annual returns, Respondent No. 3 is identified as a shareholder, and there exist no records to indicate that



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Respondent No. 3 ceased to be a shareholder thereafter, despite their claims of relinquishing day-to-day operations.

- 13.2.** Ld. Counsel submits that Respondent number 3, daughter-in-law of Respondent No. 1 and wife of Respondent No. 2, is intrinsically connected with the Corporate Debtor apart from admittedly drawing a salary for several years. She is also a beneficiary of all the fraudulent transactions, and therefore, her reply has to be outrightly rejected.
- 13.3.** Ld. Counsel submits that the Respondents have invented an absurd story as an afterthought by saying that control of the Corporate Debtor had been handed over to the so-called welfare committee, and the Respondents thereafter have proceeded to blame the welfare committee for any and all misdeeds.
- 13.4.** Learned counsel submits that directors cannot, under any circumstances, abdicate from their duties and obligations.
- 13.5.** He denies that the application is not maintainable or barred by limitation or res-judicate as stated in the reply.
- 13.6.** He further submits that the Application has been filed after forming an opinion and determination after considering all relevant facts and materials and not merely based on the transaction audit report, as alleged. He further states that the allegations regarding purported undervaluation are absurd and without any merits, as valuation has been done by two registered valuers registered with IBBI. It is relevantly pointed out that an application IA No. 412 of 2022 filed to challenge the valuation of



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the corporate debtor was squarely rejected by this tribunal by an order dated 09.05.2022.

- 13.7.** Regarding the allegations of purported dues from Paul Brothers and Ashirwad Traders, he submits that the Resolution Professional has contacted the debtors, and the debtors have given justification that no amount is payable by them. Such representations are supported by documentary evidence, including the signed confirmation of Respondent No. 1. In some cases, debtors are not contactable / traceable and hence the allegation that steps have not been taken to recover Corporate Debtors' dues is absolutely wrong and false.
- 13.8.** Learned counsel also alleged that no promoter would hand over the company to employees or to the so-called welfare committee to run without controlling/directing the management, and therefore, the question of passing on the blame to the welfare committee is out of the question. Even assuming that control of business has been handed over to the welfare committee, that is an internal arrangement, and the directors of the company cannot take shelter under such internal arrangements.
- 13.9.** Learned counsel further submits that Respondent no. 2 handed over the possession of assets and management control of the factory only on 12.02.2022, which is nearly 305 days after the commencement of liquidation proceedings (i.e., 13.04.2021) and 1168 days after commencement of CIRP (i.e., 17.12.2019).



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13.10. Furthermore, on examination of records, the Resolution Professional found that most of the transactions in the corporate debtor's current account with ICICI Bank were conducted electronically through NEFT or IMPS, and cheques were used very rarely.

13.11. Thus, the narrative about the alleged misuse of signed blank cheques by the welfare committee is a deliberate attempt to deceive the tribunal and shift blame on unrelated party.

13.12. He further submits that there is no justification or counter to the allegations made by the Liquidator directly, but instead denied without any support or the wrongdoings were shifted to the welfare committee.

13.13. Thus, this application merits consideration, and an appropriate order should be passed to recover the sums stated in the application.

14. Analysis and findings:

14.1. The principal defence of the Respondents herein is that the Corporate Debtor has been run by welfare committee of employees from the 1st April, 2019, and they are not responsible for conduct or misconduct, if any, in running the affairs of the Corporate Debtor, post the execution of the said MoU dated 1.04.2019.

14.2. The Respondent has relied on an insufficiently stamped unregistered memorandum of understanding made between Mr. Arun Mukherjee, one of the directors of the Corporate Debtor (son



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of Mr. Swapan Mukherjee), and the welfare committee of Duck Bill Drugs Pvt Ltd.

- 14.3.** The welfare committee of Duck Bill Drugs Pvt Ltd purportedly have been formed as an entity by the employees of Corporate Debtor.
- 14.4.** As per this document (MoU), the welfare committee will have to carry on and maintain the Corporate Debtor's day-to-day business activities and manage all statutory compliances.
- 14.5.** Mr Arjun Mukherjee, the suspended Director has agreed in the MoU that if the welfare committee faces any difficulties, he will always stand beside them relating to all the activities of the Corporate Debtor as and when required.
- 14.6.** It has been agreed in the MoU that Mr. Arjun Mukherjee will sign all the documents relating to the company's business, including balance sheets and bank cheques, for the welfare committee to run the day-to-day affairs of the Corporate Debtor.
- 14.7.** Since this MOU forms the foundation of the Respondents' reply to the Liquidator's allegations in this application, we feel it appropriate to reproduce it for convenience.

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भारतीय नैऋत्य न्यायिक

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INDIA NON JUDICIAL

पश्चिम बंगाल न्यायिक पेशवा, कोलकाता

WEST BENGAL

REGISTRY CALCUTTA

NOTARY PUBLIC

REG. NO. 5819

INDIA

MEMORANDUM OF UNDERSTANDING (MOU)

THIS MEMORANDUM OF UNDERSTANDING (MOU)

is made or entered into on this the 11th day of April, 2019 (11/04/2019);

BETWEEN

ARJUN MUKHERJEE, son of Sri Swapan Mukherjee, aged about 36 years, by faith-Hindu, occupation-Business, having its registered office at D/660 lake gardens Kolkata

TRUE COPY ATTESTED BY ME

T. HUSSAIN Notary

City Civil Court

Calcutta

Ord. No. 22/96 Govt. of

14 APR 2019

11 APR 2019

DIRECTOR

DURGA PRUDS PVT. LTD.

11/4/19

Arjun Mukherjee

11-4-19

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700045 being the director of Duckbill Drugs Private Limited,
hereinafter called the Party of the **FIRST PART.**

AND

THE WELFARE COMMITTEE OF DUCKBILL DRUGS PVT LTD having their office at D/660, LAKE GARDENS KOLKATA 700045 hereinafter called and referred to as the Party of the **SECOND PART.**

WHEREAS Duckbill Drugs Private Limited a manufacturing Units (Metals & Chemicals and Products thereof) and also engaged in sales and marketing of their products throughout eastern region of India.

AND WHEREAS in terms of the law one of the Directors has approached to the Well fare Committee for looking after the Company's Day-to-day's activities due to the fact that the said director is not getting time to look after everything due to his father's serious illness who is too one of the directors of this particular company.

DUCKBILL DRUGS PVT. LTD.

[Handwritten signature]

[Handwritten signature]



1 APR 2019

TRUE COPY
ATTESTED BY ME

MD. T. HUSSAIN Notary
City Civil Court
Calcutta
Hd. No. 22/96 Govt. of W.B.

IN THE NATIONAL COMPANY LAW TRIBUNAL
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AND WHEREAS in terms of the law there was an AGM has been made dated 10/04/2019 related to this particular subject made by one the Director and THE SECOND PART also interested to take the responsibility for running the Company's day-to-day activities.

DUTIES, RIGHTS, LIABILITIES AND OBLIGATIONS OF THE PARTIES TO THIS MEMORANDUM OF UNDERSTANDING (MoU): -

1. That the parties to this instrument have agreed that the Party of the **SECOND PART** will maintain all the responsibility for running the day-to-day Business activities as requested by the **FIRST PART**.
2. The Party of the **FIRST PART** shall give all the responsibilities to The **SECOND PART** regarding Provident Fund, ESIC, Professional Tax, GST, Rent and others statutory payment along with all legal payment within the stipulated time on each and every month.

TRUE COPY
ATTESTED BY ME

MD. T. HUOSAIN Notary
City Civil Court
Calcutta
Phone No. 22/33 GOVT. OF W.B.

1 APR 2019

DUCKBILL DRUGS PVT. LTD.
DIRECTOR

11.4.19



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3. The party of the **SECOND PART** will maintain all the sales activities along with purchase and payment related to production for each and every month.

4. The party of the **SECOND PART** will maintain regarding disbursement of salary and other expenses related to sales employees, factory workers, office staff and others on monthly basis in stipulated time.

5. The party of **FIRST PART** gave his word that if the **SECOND PART** faces any difficulties, then the **FIRST PART** will always stand beside them related to purchase of Raw Materials or facing any difficulties during maintaining the day-to-day function activities of the company if require over telephonic conversation.

6. The party of **FIRST PART** also requested the **SECOND PART** to provide some medical expenses regarding the treatment of another Director (father of FIRST PART) on day-to-day basis if require.

DUCKBILL DRUGS PVT. LTD.
DIRECTOR
11.4.19

TRUE COPY
ATTESTED BY ME
MD. T. HUSSAIN Notary
City Civil Court
Calcutta
No. 22/96 Govt. of W.B.

APR 2019

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7. Party of the **FIRST PART** also agree to sign any documents if require related to any documents such as Balance Sheet and also Bank Cheque for maintaining daily activities for running the organization.

IN WITNESS WHEREOF, the parties have executed these presents on this the 4th day of April, Two Thousand and Nineteenth (4/04/2019).

DUCKBILL DRUGS PVT. LTD.
Director

ADHUMITA KUNDU
NOTARY
REG. NO. 388/95
KOLKATA
OF INDIA

TRUE COPY
ATTESTED BY ME
MD. T. HUSSAIN Notary
City Civil Court
Calcutta
No. 22/55 Govt. of India

11 APR 2019

Kolkata
700 045

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NOTARY
GOVT. OF WEST BENGAL

MADHUMITA KUNDU
NOTARY, GOVT. OF INDIA

THE WELFARE COMMITTEE OF DUCKBILL DRUGS PVT. LTD.

SIGNED, SEALED AND DELIVERED
at Kolkata in the presence of :

1. *Kesava Das*
Kolkata 700 045

2. *Dipankar Das*
Kolkata 700 045

DUCKBILL DRUGS PVT. LTD.
Angu...
DIRECTOR 11/4/19

SIGNATURE OF THE FIRST PART

1. *Pratibha Mitra*
2. *Norisha Rajak*

SIGNATURE OF THE SECOND PART

Drafted by me:

Advocate

IDENTIFIED BY ME
...
ADVOCATE

TRUE COPY
ATTESTED BY ME
...
T. RUSSAIN Notary
City Civil Court
Calcutta
Govt. of W.B.

MADHUMITA KUNDU
NOTARY, GOVT. OF INDIA
S. C. C. BAR ASSOCIATION
2A3, KIRAN SANKAR BOY ROAD
CALCUTTA-700 001

11 APR 2019

11/4/2019



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14.8. It is relevant to note that an application under Section 7 of IBC was filed by the Financial Creditor to initiate CIRP of the Corporate Debtor on 28.05.2018. The CIRP commenced on 17.12.2019 pursuant to our Order dated 17.12.2019 in CP No. 972/KB/2018.

14.9. In between the date of application under Section 7 of IBC and the Order passed by us for initiating CIRP of the Corporate Debtor, the MoU has been purportedly executed on 11.04.2019, between the Director of the Corporate Debtor and the “welfare committee”. Therefore, knowing very well that Corporate Debtor will be put into Corporate Insolvency Resolution Process, the Directors has executed the MoU. They are aware that upon commencement of CIRP, they are required to extend full cooperation to the Interim/Resolution Professional in terms of Section 17(3) and Section 19 of IBC.

14.10. In fact, even after filing Section 19(2) application by the applicant, only after several rounds of hearing, even the control and possession of the Corporate Debtor was handed over effectively on 12.2.2022, leave alone the books of account and relevant documents.

14.11. Respondents have not placed anything on record to suggest that Mr. Arun Mukherjee the suspended Director has been duly authorised by the board to take such an important decision of handing over the day to day running of Corporate Debtor to the “welfare committee” of employees.



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14.12. Even assuming that the MoU has been executed validly the directors of the company remain responsible for the conduct and affairs of the business of Corporate Debtor. Even as per the MoU, the suspended director retains the responsibility and power of signing all the important documents relating to the company, including bank cheques and therefore, any claim that the blank cheques have been misused by the welfare committee cannot be accepted. A simple communication to the Bank, not to honour the cheques issued would have prevented the welfare committee to misuse any cheques as claimed by the Respondents. In the same manner, alleged fraudulent transactions said to have been committed by the welfare committee cannot be totally fastened on the welfare committee, even assuming that it is the welfare committee that is responsible for fraudulent transactions and wrongful trading. This is because a Corporate Debtor is run and controlled by directors, who can delegate some or all of their functions to senior management employees to run the company. In the same manner, instead of delegating to individuals, the Respondents have claimed that they have delegated the running of the day-to-day affairs of the company to a group of employees who have formed a Pvt ltd company in the style and name of the welfare committee of Drug Bills Drugs Pvt Ltd. But such delegation would not take have the responsibilities and duties of the directors of the Corporate Debtor.

14.13. Therefore, the Respondent's defence that they are not responsible for fraudulent activities carried out by the welfare committee is unsustainable and consequently rejected.



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14.14. The second biggest allegation is that the Corporate Debtor retained the control and possession of the Corporate Debtor even after the commencement of CIRP on 17.12.2019 to till 11-2-2022.

14.15. It is evident from records placed by the Corporate Debtor that the premises of the Corporate Debtor and its control were handed over to the Liquidator only on 12.02.2022, which is 305 days after the commencement of liquidation and 780 days after the commencement of CIRP. The defence taken by the Respondents for the inordinate delay to comply with this very basic and fundamental requirement in law is that they were unable to get back the management of day-to-day affairs of the company from welfare committee and they had initiated legal action in this regard against them.

14.16. As per Section 17 of the I&B Code, the management of the Corporate Debtor's affairs rests with the Interim Resolution Professional from the date of his appointment. From that date, the board of directors shall stand suspended, and all their powers shall be exercised only by the Interim Resolution Professional.

14.17. As per Section 17, the corporate debtor's officers and managers shall report to the Interim Resolution Professional and provide access to all corporate debtor records and documents as the latter may require from time to time.

14.18. The Interim Resolution Professional is vested with the management of the Corporate Debtor and acts and executes all deeds, receipts, and documents in the Corporate Debtor's name.



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He is entitled to make decisions as he may deem fit, subject to restriction (IBBI) during the course of CIRP/Liquidation.

14.19. As per Section 18 of the Code, he has to take control and custody of any asset over which the Corporate Debtor has ownership rights, as recorded in the balance sheet of the Corporate Debtor or with the information utility, the depository of securities, or any other registry that records the ownership.

14.20. As per Section 19 of the code, the promoters, personnel of the Corporate Debtor or **any other person** associated with the management of the Corporate Debtor shall extend all assistance/cooperation as required by the interim Resolution Professional in managing the affairs of the Corporate Debtor.

14.21. Thus, it is evident that from the date of commencement of CIRP, the suspended board has no role to play except to provide necessary assistance to the Resolution Professional in terms of furnishing documents, handing over assets, etc. and rendering assistance to the Resolution Professional in running the Corporate Debtor as a going concern.

14.22. In this case, apparently, the control and possession of the Corporate Debtor vested with the suspended board through the so-called welfare committee until 12.02.2022, though the CIRP commenced on 17.02.2019.

14.23. Transactions have been made from the commencement of CIRP at the back of the Resolution Professional by the Corporate Debtor through the welfare committee, which is evident from the records



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placed by the Liquidator. Whether the welfare committee mismanaged the affairs of the company at the back of the board of directors or not, is a dispute between the board of directors and the welfare committee, and that has nothing to do with responsibility of the board and duties and rights of the Interim Resolution Professional in terms of Sections 17, 18 and 19 of IBC during Corporate Insolvency Resolution Process.

14.24. The misconduct and fraudulent intentions of the Respondents is writ large and evident even before considering this IA 1006/KB/2022.

14.25. During CIRP / Liquidation proceedings, a purported deed of assignment dated 3.4.2017, transferring 7 trademarks owned by the corporate debtor was registered on 14th June 2022 in favour of Respondent 3 by the Respondent 1. When Respondent No. 3 went to the Hon'ble High Court at Calcutta, for enforcement of the deed. The Hon'ble High Court in its Judgement dated 23.6.2023 in FMAT 9 of 2023 (***Poulami Mukerjee vs Duckbill Drugs P Ltd & Ors***) records the following:

*"The trademark registry could not have registered the purported assignment on 14th June, 2022.
The involvement of the trademark registry in this fraud also needs to be investigated.*

Therefore, in my considered opinion, prima facie, the purported assignment appears to be non-est and a nullity.

Under Chapter V of the Trade marks Act, 1999 the right of assignment and transmission is vested in the registered proprietor. In case of these seven marks, the registered



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proprietor was Duckbill, the custodian of whose assets was the liquidator. So the real proprietor was the liquidator. First of all, on 18th January, 2022 the earlier management of the company could not act by presenting the purported 2017 deed of assignment for recording the assignment with the Registrar without the concurrence of the liquidator. The earlier management could not have in January, 2022 brought to life and assignment which was a dead letter. Furthermore, it could not do any act which would deprive the company of its valuable assets.

I am of the view that a deliberate attempt was made by Paulami and her father-in-law to divest Duckbill of its principal assets that is the trademarks and misappropriating them, by backdating a deed of assignment to 2017 and then filing it with the trademark registry five years later.

The Dating of the alleged deed of assignment that is 3rd April, 2017 raises eyebrows for another reason. It was more than two years before the commencement of insolvency proceeding on 17th December, 2019 so as to take it out of scanner and scrutiny under the 2005 Insolvency and bankruptcy code, 2016, as a fraudulent preference.

In those circumstances, the ultimate order passed by the learned trial Judge at the ad interim stage that he was not mined to pass an interim order of injunction was justified, though it should have been for the reasons given above.

Whether our interim order in appeal was obtained by suppression of material facts is redundant because we are ultimately setting aside our interim order on substantive grounds. It is true that if this suppression was not made the interim order may not have been passed at all.

This appeal is dismissed by vacating our interim order dated 24th January, 2023. The impugned judgment and order is affirmed by substituting therein the reasons given by us in this judgment and order. Nothing remains of the injunction application before the court below. It is disposed of by this order. The suit be expedited and disposed of within two years of communication of this order. On the basis of this order a necessary application be made before the court below to



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record disposal of the interim application and for expediting the suit.

The appeal and all connected applications are disposed of accordingly.

Our findings and observations are to be treated as prima facie in the suit. For suppressing the fact that Duckbill had not been served with copies of cause papers when the stay application/injunction application in appeal was moved, we express our greatest displeasure.”

(Emphasis added)

14.26. This Tribunal vide its order dated 02/08/2023, passed an order, holding that the 7 trademarks covered in the purported deed of assignment dated 3.4.2017, shall vest with the liquidator as an asset of the corporate debtor and directed the respondent 3 that no effect and or any further effect to the purported deed of assignment dated 3rd April 2017 should be given.

14.27. In spite of specific direction to the Respondent 3 in our order above, she continued to use the trademark and assigned such trademark for manufacture of drugs by third party as admitted by her Counsel at the bar. This violation resulted in our order dated 29th Feb 2024, which read as under:

“Ld. Counsel Mr.Ramesh Chandra Prusti admits at the bar in clear and unequivocal terms that a third party was assigned such trademark for manufacture of drugs and therefore , we find there is blatant and conscious violation of the directions of this Tribunal . We take serious note of this . Registry is directed to issue Rule nisi against the respondents, to show cause why action will not be taken for



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*such blatant and conscious violation of our order dated
16.1.2023”*

Thus, conduct of the Respondents in not handing over the records and possession of the corporate debtor's premises and blatant violation of our order meets all the Ingredients of Section 70 of IBC for punishment as contemplated in the said Section which is reproduced for ready reference.

Section 70: *Punishment for misconduct in course of corporate insolvency resolution process.*

(1) On or after the insolvency commencement date, where an officer of the corporate debtor—

(a) does not disclose to the resolution professional all the details of property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or

(b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or

(c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or

(d) fails to inform there solution professional the information in his knowledge that a debt has been falsely proved by any person during the corporate insolvency resolution process; or

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or

(f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve



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months immediately preceding the insolvency commencement date,

he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.

(2) If an insolvency professional deliberately contravenes the provisions of this Part the shall be punishable with imprisonment for a term which may extend to six months, or with fine which shall not be less than one lakh rupees, but may extend to five lakhs rupees, or with both.”

14.28. Now, dealing with the merits of the matter, we have summarised the allegations against the suspended board and other persons by the Resolution Professional and the response to those allegations by the Respondents in their reply in a tabular form for the sake of convenience:

Sl. No.	Allegations by Resolution Professional	Response by the Suspended Board
1.	As per audited financials for FY 2019-20, Respondent No.1 and Respondent No. 2 had a balance to be paid to the Corporate Debtor a sum of Rs. 30,88,566/- ad Rs.	The same cannot be attributable to Respondent no. 1 and 2 in as much as it may be attributable to the welfare committee which was running the company.



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Sl. No.	Allegations by Resolution Professional	Response by the Suspended Board
	18,46,745/- respectively. Whereas as per Tally data provided by the suspended board the payable is Nil. This is due to falsification of accounts in Tally data leading to a loss of a sum of Rs. 49,34,311 to the Corporate Debtor.	There was a change of auditor of the company. One Manas Das was appointed as an auditor of the welfare committee in place of usual auditor Mr. UK Goswami and the Respondent number 1 & 2 are not responsible for any falsification of accounts, if at all, as during the material period all the accounts were maintained by the auditors of welfare committee.
2.	As per re cast cash in hand account a sum of Rs. 52,95,143/- was to be handed over to Liquidator whereas only Rs. 1,99,125/- was handed over resulting in a loss of Rs 50,96,018/-	Audited balance sheet of 2019-20 is not correct. The Respondents were not managing the company affairs during the material period and hence cannot be made responsible for alleged cash shortage if at all.
3.	During CIRP/Liquidation process from 01.04.2020 to 12.02.2022 suspended board	Due to problem of operation of bank during the Covid pandemic situations, several



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Sl. No.	Allegations by Resolution Professional	Response by the Suspended Board
	of Corporate Debtor continued to forcefully manage the company and transfer a sum of Rs. 10,29,320/- to Respondent no.1, Rs. 9,01,369/- to Respondent number 2, Rs. 18,81,284/- to Respondent no. 3 and Rs. 1,70,000/- Duck Bill Pharma (Associate of CORPORATE DEBTOR). All such transfers are to related parties amounting to Rs. 39,81,973/- are part of avoidance transactions under Section 43 and 66 of IBC and hence the same should be recovered.	expenditure relating to staff salary, production overheads etc. were paid by the Respondent no. 1 & 2 during the financial year 2020-2021 up to February 2022 and the same was reimbursed/adjusted. It is not a case of fraudulent transfers as alleged. Reference is made to letter of 22.03.2022 by Arjun Mukherjee (one of the suspended board of directors) to the Liquidator of Corporate Debtor, which is in Page No. 44 of reply.
4.	During liquidation process, sale to Duck Bill Pharma for Rs. 42,21,655/- had been made and the receivable from Duck Bill Pharma has been adjusted against several payments claimed to have been made on account of GST, PF,	There was an agreement between Duck Bill Pharma, the proprietorship concern of Respondent No. 2 and the Corporate Debtor for purchase and sale of finished products, whereas Duck Bill pharma has lent money to the Corporate



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Sl. No.	Allegations by Resolution Professional	Response by the Suspended Board
	ESI, and PT on behalf of the Corporate Debtor without the knowledge of the Liquidator.	Debtor for statutory liabilities and as working capital. To compensate such infusion of funds by Duck Bill Pharma, the receivables have been adjusted.
5.	Arbitrary adjustments in receivables from Profile Pharma group have been made by Profile Pharma with reference to dues payable to Corporate Debtor A sum of Rs. 5,77,25,727/- was due from the group to the Corporate Debtor, whereas Profile Pharma sent an account statement adjusting several amounts to the tune of Rs. 4,77,75,207/- giving several reasons mentioned in the form of a table, forming part of application.	The applicant did not investigate the matter properly. Genuine adjustments have been made by Profile Pharma based on executed agreements have been ignored. The adjustments made by Profile Pharma against the receivables are well supported with agreements and documents.
6.	Receivable from other parties have also been denied by the parties concerned. When the	This allegation is denied. Respondent has handed over the account and ledger to the



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Sl. No.	Allegations by Resolution Professional	Response by the Suspended Board
	<p>Liquidator approached debtors for collecting the receivables, the due amount was denied by most stating several reasons out of which the major reason quoted by them is that they never had any business relationship with Corporate Debtor or they discontinued the relationship with Corporate Debtor long back after settling all dues. Therefore, the question of any due payable to Corporate Debtor does not arise.</p> <p>Total loss on account of such denials / irrecoverable amounting to Rs. 4,96,19,000/-, though the same is appearing in audited financials as receivables / recoverable.</p>	<p>Liquidator and the same requires proper examination which has not been done by the Liquidator.</p>
7.	<p>No effort has been made to recover admitted receivables to the tune of Rs. 1,19,36,554/-</p>	<p>Corporate Debtor was managed by welfare committee during the relevant period, and they</p>



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Sl. No.	Allegations by Resolution Professional	Response by the Suspended Board
		should have taken steps for the same and Respondent no. 1 and 2 are not responsible for such non recoveries.
8.	Suspended board is in possession of car of the Corporate Debtor and has not handed over it to the Liquidator. Value of the car is Rs. 41,936/-.	Car has been handed over to the Liquidator and he did not investigate the issue properly.

14.29. We will now deal with each, and every allegation based on the response given by Respondents.

14.30. Falsification of Books of Accounts:

- i.** It is admitted that through an E-Mail received from Arun Mukherjee (One of the directors of the suspended board of the Corporate Debtor), financials in Tally data format for the financial year 2017-18 to Financial Year 2021-22 have been provided, out of which financials for FY 2021-22 was incomplete.
- ii.** It is evident that upon comparing the same with audited financials, the Liquidator found several discrepancies and anomalies between the audited books of accounts and



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accounts recorded in tally data provided by Mr. Arjun Mukherjee.

- iii.** We see that the Liquidator approached the statutory auditor for the financial year ended 31.03.2020 to understand the reasons for discrepancies.
- iv.** We also note that the statutory auditor submitted a report on 24.02.2022 stating that the trial balance for FY 2019-20 provided by the company's suspended board to the Liquidator is not the same trial balance that the Chartered Accountant and Statutory Auditors have audited and signed.
- v.** The Statutory Auditor stated that the trial balance provided by the company is different from the audited trial balance for FY 2019-20.
- vi.** This report from the Statutory Auditor was communicated to promoters and directors seeking suitable directions.
- vii.** The liquidator claims that despite several follow-ups, no response was received from the erstwhile directors. To demonstrate this, he relies on communications made between them, which are in Annexure K to the application.
- viii.** On perusal of the report of the statutory auditor dated 24.02.2022, closing ledger account balance of the Respondent 1 and 2 for the year ended 31.03.2020 in the tally provided by the Corporate Debtor is significantly different from the audited financials for the year ended 31.03.2020. In the absence of



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any clarification on the matter, the difference between the closing balance found in audited financials for the year 2019-2020 and the opening balance as on 01.04.2020 found in the books/tally data with reference to Respondent 1 and 2, will have to be treated as dues that have been fraudulently removed by passing fake entries. The closing balance as on 31.03.2020 as per audited financials is Rs. 49,34,311/- together for suspended board, whereas credit balance as on 01.04.2020 is NIL.

ix. We have also perused the transaction auditors report in this context and also the response to this allegation by the suspended board. For sake of convenience, it is summarized as under.

x. Relevant extract of transaction auditors report:

Referred off SL No. Annexure A in the report dated 24.02.2022 by the statutory auditor	Ledger Account	As per Audited Trial Balance for the FY 2019- 20	As per the Trial Balance for the FY 2019-20 provided by the Corporate Debtor. (On 10.02.2022)
567(Refer page 248)	Mr Arjun Mukherjee Current Account	18,45,745.24	-



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574 (Refer Page 248)	Mr Swapan Mukherjee Current Account	30,88,566.50	-
	Total	49,34,311.74	

14.31. The response to the allegation by the suspended board:

- i.** The same cannot be attributable to Respondent no. 1 and 2 in as much as it is attributable to the welfare committee which was running the company. There was a change of auditor of the company. One Manas Das was appointed as an auditor of the welfare committee in place of the usual auditor, Mr UK Goswami, and the Respondents No 1 & 2 are not responsible for any falsification of accounts at all during the material period as all the data were provided by the auditors of welfare committee.
- ii.** We find that the suspended board has not disputed the fact that the closing balance with reference to the amounts owed by Mr Arjun Mukherjee and Swapan Mukherjee as per the audited financials ended on 31.03.2020 was Rs. 49,34,311/-. This amount is recoverable. It is not the case of the Respondent that the closing balance is incorrect, and there is also no justification provided explaining the reason for showing NIL amount as the opening balance of the accounts in tally data as of 01.04.2020 provided by them.
- iii.** The suspended board has not been able to provide any reconciliation or valid reason for this discrepancy. They only blamed the new auditor and the welfare committee, who were



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allegedly running the company during the disputed period and during CIRP/Liquidation proceedings.

- iv.** In the absence of any reason whatsoever for the account to become zero in respect of the accounts of both directors, we find that such write-offs of amounts due to the Corporate Debtor from the suspended board are fraudulent and deserve to be recovered in terms of Section 66 of the IBC. Accordingly, a sum of Rs. 49,34,311/— is recoverable.

14.32. Discrepancy in Cash:

- i.** As per the Tally data provided by the Corporate Debtor vide E-Mail dated 10.02.2022 the cash balance as on 01.04.2020 was Rs. 86,29,583/-.
- ii.** We have noted that the Corporate Debtor was engaged in large cash transactions involving sale and purchase, and therefore, such a huge cash balance as on 01.04.2020 is understandable.
- iii.** We have also noted that the Corporate Debtor had transactions in cash, and consequently, the closing cash-in-hand balance as on 12.02.2022 was INR 1,99,00,124/-.
- iv.** We find that when the Corporate Debtor was asked by Resolution Professional to deposit the said amount, they deposited 1,99,125/— only, to the designated Liquidator's account.

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- v. When asked for reason for deposit of Rs. 1,99,125 only as against Rs. 1,99,00,124/- which was due, the respondents provided reasons. After considering the same, cash balance is recast, as per which Rs. 50,94,018 is due. For ease of reference, the table provided by the respondents and the recast cash balance in the table form is reproduced below.

Cash-in-Hand Ledger Accounts				(In INR Lacs)
Particulars	CASH Book	Factory Remittance	Sales Office Remittance	Total
Opening Balance as on 01.04.2020	86.18	0.12	-	86.30
Add: Inflows				
• Withdrawal from ICICI Bank, Gariahat Branch	50.48	1.51	-	51.99
Less: Outflows				
• Expenses paid (net of misc. receipts)	(4.70)	(1.60)	-	(6.30)
• Amount paid to Mr. Ram Avtar Maskara	(130.00)	-	-	(130.00)
Closing Balance as on 12.02.2022	1.96	0.03	-	1.99

Voucher / Payment Date	Voucher Type & No.	Paid to	Amount (INR)	Reference of Page No
22.04.2020	Payment #53	Ram Avtar Maskara	10,00,000	363
25.08.2020	Payment #573	Ram Avtar Maskara	50,00,000	364
25.10.2020	Payment #932	Ram Avtar Maskara	50,00,000	365
12.12.2020	Payment #1107	Ram Avtar Maskara	20,00,000	366
Total			1,30,00,000	

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- vi.** We note that, as per the books provided, Rs. 1.3 Cr was paid to Mr. Ram Avatar Maskara on different dates ranging from 22.04.2020 to 12.12.2020, duly recovered with payment voucher numbers.
- vii.** We infer from the records placed that when asked by the Resolution Professional for the details and reasons for paying such huge amount in cash to Mr. Ram Avtar Maskara, the suspended board responded to it in a clarifying email dated 22.02.2022, that such payment entries are not correct, and it is due to human error.
- viii.** Accepting their contentions, Resolution Professional communicated to the Respondents that such cash payment vouchers were wrongly entered in the books of accounts due to human error; the cash-in-hand balance will have to be made by Rs. 1.3 Crore and the Corporate Debtor should immediately deposit the balance funds of Rs. 138.29 lac.
- ix.** We note that in response to this communication from Resolution Professional, the suspended board has responded that, as per the audited financials, the opening cash balance as of 01.04.2020 was only Rs. 96,124/—, whereas it was wrongly shown as Rs. 86,29,583/— in their tally data. Therefore, only a sum of Rs. 1.99 lac only is due.
- x.** This explanation appears to be incorrect, considering clear entries in the books of accounts with an opening balance of



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Rs. 86,29,583/— and payment vouchers mentioning payments of 1.3 Cr to Ram Avtar Maskara. However, in the absence of any other evidence other than the entries in the books provided by the suspended board, we take the opening balance as per the audited balance sheet as of 01.04.2020, which is 96,874/-.

- xi.** The Corporate Debtor has withdrawn Rs. 51,98,269/- from the current account maintained with ICICI bank and consequently re-cast cash in hand of an amount of Rs. 52,93,143/- out of which the suspended board has deposited only Rs. 1,99,125/- leaving Rs. 50,96,018/- pending to be deposited.
- xii.** The re-casted cash in hand as on 12.02.2022 i.e., till the date of handing over the possession of assets in liquidation to the Liquidator, is reproduced in the form of *table* for sake of convenience:

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j. In view of the above, the re-casted cash-in-hand as on 12.02.2022 (date of handover of possession of assets to Liquidator) is as follows -

Particulars	Cash In Hand		Remarks
	(In INR Lacs)	(In INR)	
Opening Balance as on 01.04.2020	0.97	96,874	Considered as per Audited Financial Statement for the year ended 31.03.2020
Add: Inflows			
• Withdrawal from ICICI Bank, Gariahat Branch	51.98	51,98,269	As evident from ICICI Current Account statement
Less: Outflows			
• Expenses paid (net of misc. receipts)	-	-	Expenses incurred by CD without consent of RP and approval from CoC
• Amount paid to Mr. Ram Avtar Maskara	-	-	CD admitted that the entries were wrongly posted
Closing Balance as on 12.02.2022 (Re-casted)	52.95	52,95,143	
Less: Amount deposited by CD in Liquidation designated A/c	(-) 1.99	(1,99,125)	
Asset (being Cash-In-Hand) in possession of CD	50.96	50,96,018	

xiii. To this, the Respondents in their reply contended that in view of contradictory statements on the opening balance with one suggesting an opening balance of 86,29,583/- and another suggesting 1,99,124/- itself proves that the investigation conducted by the Resolution Professional through the transaction auditor is confusing and not correct.

xiv. With regard to money drawn from ICICI Bank to the tune of 51,98,269/—, the Respondents submitted that they had no role to play, and it was only the welfare committee that managed the affairs of the Corporate Debtor, including handling all cash transactions from the date of the MoU



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between the welfare committee and the Corporate Debtor dated 11.04.2019.

- xv.** The Corporate Debtor further submitted that the welfare committee has used these cash withdrawals to run the company's affairs and pay salaries and other expenditures, to their knowledge.
- xvi.** We are not convinced by the response of the suspended board on this. The suspended board under the pretext of MoU made between the Corporate Debtor and welfare committee is only trying to shift the blame on the said committee. Whereas even as per the unregistered and unstamped MoU, suspended Board remained directors of the company and had agreed to handle any difficult issues relating to purchase of raw materials or any difficulties during maintaining the day-to-day functioning of the company in terms of Clause 5 of the said agreement.
- xvii.** As per Para 7 of the MoU, the suspended board agreed to sign all documents related to the company, such as the balance sheet and bank cheques, to manage daily activities and run the organisation.
- xviii.** Thus, the welfare committee has been delegated only for running day-to-day operations, whereas the responsibility and duty for overseeing and managing the company's affairs was always vested with the suspended board.



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- xix.** In the absence of proper justification as to how the entire amount of Rs. 50,96,018/—, which is supposed to be cash in hand as of 01.02.2022, was spent without proper details and supports based on the re-cast cash in hand account, we are of the considered view that the said amount has been fraudulently used, that too behind the back of the Resolution Professional, during the ongoing CIRP/Liquidation proceedings and consequently to be recovered.

14.33. Transactions with related parties:

- i.** We have perused the audited balance sheet of 2019-20 of Corporate Debtor and the receivables from related parties as on 01.04.2020.
 - (i) Receivable from Swapn Mukherjee: INR 30,80,567/-
 - (ii) Receivable from Arjun Mukherjee: INR 18,45,745/-
 - (iii) Receivable from Poulomi Mukherjee: INR 21,242/-
 - (iv) Receivable from Duck Bill Pharma: INR 50,000/-
- ii.** Total receivable from related parties as on 31.03.2020 is INR 50,05,554/-.
- iii.** Out of this amount, the first two entries relating to receivables from Swapn and Arun Mukherjee have already been dealt with under the heading falsification of books of accounts. Therefore, the balance receivable as of 31.03.2020 and shown as “zero” as opening balance as of 01.04.2020 has to be recoverable as their dues have been fraudulently removed by making fake entries.

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- iv.** Apart from the opening balance as on 01.04.2020, several transfers have been made to related parties as per the table mentioned at page 95 to the application, reproduced herein:

6.4 Transactions with Related Parties (ex-Directors, Promoters and their Relatives)	
<u>Facts:</u>	
a. As evident from the Audited Balance Sheet for the FY 2019-20 of the Corporate Debtor the receivables from related parties are as follows -	
i) Receivable from Swapan Mukherjee	: INR 30,88,567
ii) Receivable from Arjun Mukherjee	: INR 18,45,745
iii) Receivable from Poulami Mukherjee	: INR 21,242
iv) Receivable from Duckbill Pharma	: INR 50,000
Total Receivable from Related Parties as on 31.03.2020 : INR 50,05,554	
b. Further to the above, during the period from 01.04.2020 to 12.02.2022 (i.e., during the ongoing CIRP and Liquidation proceedings), an amount aggregating to INR 39,81,973 were 'transferred to the bank account of the related parties' from the Current Account of the CD bearing no. 627805017679 maintained with the ICICI Bank, Gariahat Branch, as detailed hereunder -	
i) Amount transferred to the Bank Account of Mr. Swapan Mukherjee (erstwhile Promoter / Director of CD)	: INR 10,29,320
ii) Amount transferred to the Bank Account of Mr. Arjun Mukherjee (erstwhile Promoter / Director of CD)	: INR 9,01,369
iii) Amount transferred to the Bank Account of Mrs. Poulami Mukherjee (erstwhile Shareholder and wife of Mr. Arjun Mukherjee, erstwhile Director of CD)	: INR 18,81,284
iv) Amount transferred to the Bank Account of M/s. Duckbill Pharma (Associate concern of CD where the erstwhile Promoters of CD are the Owners)	: INR 1,70,000
Total Amount transferred to 'Related Parties' during CIRP and Liquidation Proceedings	: INR 39,81,973



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- v.** We find that the Liquidator, vide an E-Mail dated 14.03.2022, requested the erstwhile directors of the Corporate Debtor to make the payment of outstanding receivables from related parties as on 21.03.2020.
- vi.** In response to this email, erstwhile directors of Corporate Debtor responded via E-Mail dated 23.02.2022 wherein the ex-directors have confirmed that the receivables have been adjusted against several payments made on account of directors' salary and as reimbursement of expenses incurred by the director on behalf of the company. The extract of such response is reproduced for ready reference:

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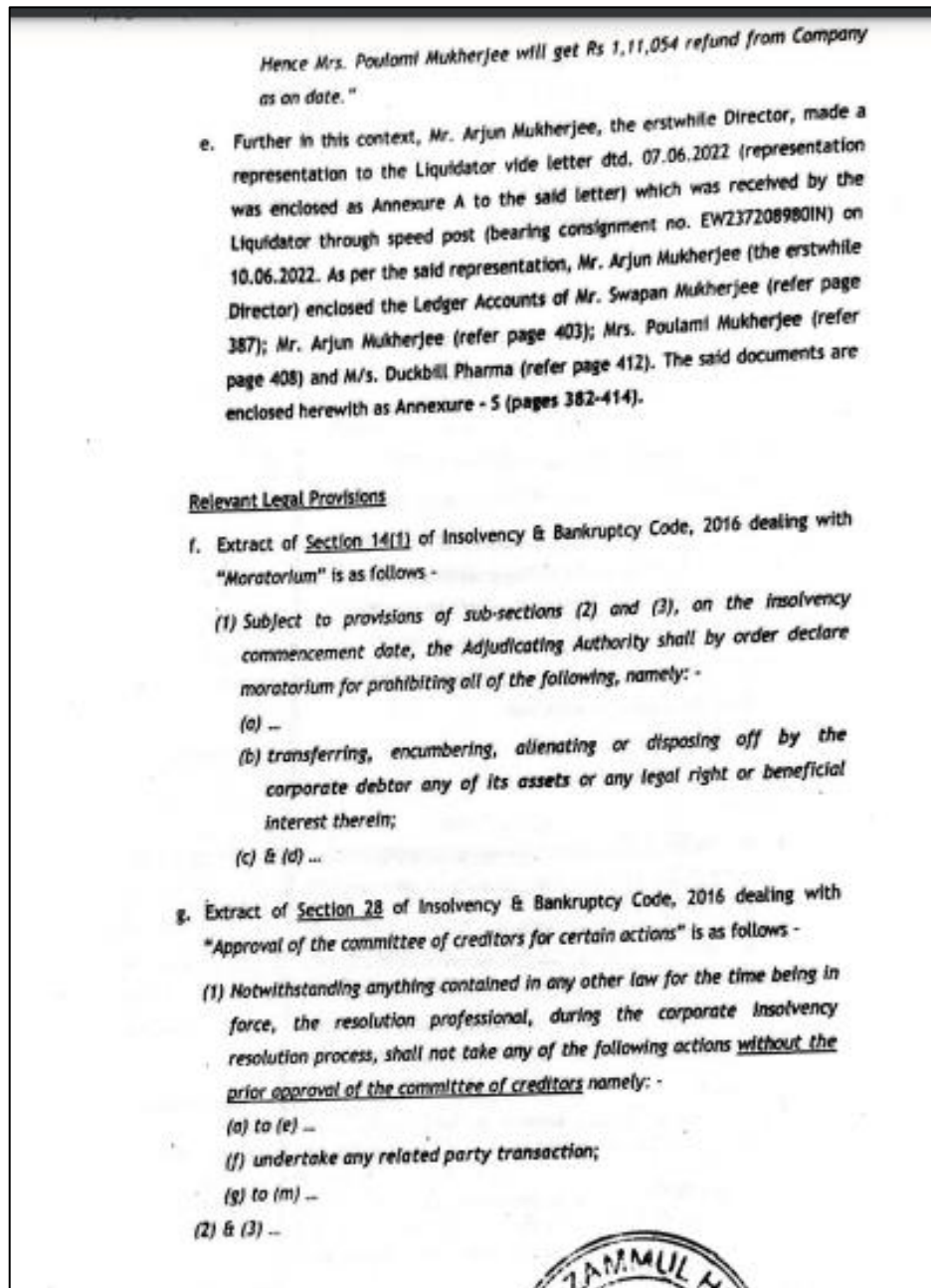
the bank account of the related parties are enclosed herewith as Annexure - R (pages 378-381).

- c. Liquidator vide email dated 14.03.2022 requested erstwhile Directors of the CD to make payment of the outstanding receivables from 'Related Parties' as on 31.03.2020 (Ongoing CIRP period) and in respect of funds transferred to the 'related parties' during the ongoing CIRP & Liquidation proceedings.
- d. In response to the email of Liquidator dtd. 14.03.2022, the erstwhile Directors of CD responded via email dated 23.02.2022 (already enclosed herewith as Annexure P) wherein the ex-Directors have confirmed the above receivables from related parties have been utilised / adjusted against several payments made by the erstwhile Directors on account of payment of Director Salary, production expenses and others. The extract of such response is reproduced below for ready reference -
- i) "Receivable from Swapn Mukherjee as on 12.02.2022: Rs 41,99,205/- That due to problem of operation Bank in Covid Pandemic Situation and also financial disturbance, Director Salary for Swapn Mukherjee FY 20-21 Rs 6,00,000/- Lakh adjusted, Director Salary for Swapn Mukherjee FY 21-22 up to Feb-22 Rs 5,50,000/- Lakh Adjusted, Rs 30,60,410/- for staff salary, Production overhead expenses and factory staff salary. Total Expenses incurred by director on behalf of Company Rs 42,10,410/- Hence Mr. Swapn Mukherjee will get Rs 11,205/- refund from Company as on date."
- ii) "Receivable from Arjun Mukherjee as on 12.02.2022: Rs 27,77,114/- That due to problem of operation Bank in Covid Pandemic Situation and also financial disturbance, Director Salary for Arjun Mukherjee FY 20-21 Rs: 6,00,000/- Lakh adjusted, Director Salary for Arjun Mukherjee FY: 21-22 up to Feb-22 Rs 5,50,000/- Lakh Adjusted, Rs 16,87,304/- for staff salary, Selling & Distribution expenses and factory staff salary. Total Expenses Incurred by director on behalf of Company Rs 28,37,304/- Hence Mr. Arjun Mukherjee will get Rs 60,190/- refund from Company as on date."
- iii) "Receivable from Poulomi Mukherjee as on 12.02.2022: Rs 19,02,526/- That due to problem of operation of Bank in Covid Pandemic Situation, Salary for Poulomi Mukherjee FY 20-21 Rs 2,10,580/- is adjusted, and Salary for Poulomi Mukherjee FY 21-22 Rs 1,93,000/- is adjusted, Office Maintenance Expenses and Selling overhead expenses for Rs 16,10,000/-

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- vii. As per IBC, upon commencement of CIRP, moratorium provided in the act kicks in and management of affairs of the Corporate Debtor is immediately vested with Interim Resolution Professional appointed by the Adjudicating



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Authority as per Section 17 of the code. In the case in hand, CIRP commenced on 17.12.2019, whereas as per the explanation given above, the receivable from Mr. Swapan Mukherjee has been adjusted towards salaries for the FY 2021 and 2021-22 apart from reimbursements of purported expenditure incurred on behalf of the company by way of production overheads and factory staff salary etc.

- viii.** First of all, the suspended board is not entitled to any salary for the period immediately after the commencement of CIRP, which is from 17.12.2019 and therefore adjustment of salary for FY 2020-21 and 2021-22 is per se illegal.
- ix.** With reference to the adjustment of reimbursement of expenses incurred, claimed to have been paid by Mr. Swapan Mukherjee, it is also illegal as no such expenditure can be incurred without the knowledge and approval of the Resolution professional as per Sections 17, 18, and 20 of the I&B Code.
- x.** The Suspended Board is required to extend only cooperation to the Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor as per Section 19 of the Code.
- xi.** On this ground alone, the entire adjustment for expenditure claimed to have been incurred on behalf of the Corporate Debtor by the suspended board during CIRP period is



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untenable and is rejected and the entire amount is recoverable.

- xii.** Even otherwise, not an iota of evidence in the form of vouchers, payment proof, nature of expenditure, reason for incurring the expenditure, etc., have been provided to even consider condoning such wrongful acts committed by the erstwhile directors.
- xiii.** Thus, salaries drawn during the period of CIRP, and expenditure claimed to have been incurred after CIRP, and adjustment of such expenditure incurred against the receivables is not acceptable in law and consequently, the entire amount of Rs. 39,81,973/- as provided in the table requires to be recovered as such payments to related parties will have to be treated as **preferential transactions if not fraudulent transaction** and accordingly, be recovered.

14.34. Sale of Goods to Duck Bill Pharma.

- i.** During the pendency of liquidation proceedings, the sale of goods amounting to Rs. 42,21,655/- has been made to Drug Bill Pharma, which is an associated firm where the erstwhile directors of the Corporate Debtor are the beneficial owners.
- ii.** The details of sales made has been captured in the form of a table:



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Invoice No. and Date	Sale Invoice raised to	Total Invoice Amt (INR)
D/GST-0262/21-22 dtd. 24.01.2022	Duckbill Pharma GST No. 19ALOPM9680K1Z2	20,96,038
D/GST-0263/21-22 dtd. 28.01.2022	Baruipur Station Road (West), Kanchanalaya, 24 Parganas (South)	7,31,919
D/GST-0264/21-22 dtd. 29.01.2022	PO & PS: Baruipur, Kolkata 700144	13,93,698
Total Sales to M/s. Duckbill Pharma by CD		42,21,655

- iii.** When the Liquidator requested the erstwhile directors of the Corporate Debtor to make payment of receivables from Drug Bill Pharma in respect of goods sold against three invoices mentioned in table above, the Liquidator got an e-mail from them dated 23.02.2022 that the above receivables have been adjusted/utilized against several payments made by them to erstwhile directors on account of payment of GST to the tune of 34,36,642/-, ESI to the tune of Rs. 1,50,822/-, Provident Fund for Rs. 5,89,135/-, Professional Tax for Rs. 14,120/-, electricity expenditure to the tune of Rs. 1,66,120/- and consulting fees to the tune of Rs. 50,000/- aggregating to Rs. 44,30,838/-.
- iv.** We find that sale transactions to the associate firm after the commencement of liquidation proceedings and the claim of adjustment of sales receivables against several expenditures/statutory payments purported to have been made on behalf of the Corporate Debtor during the liquidation proceedings without the knowledge of the Liquidator are legally not permissible.
- v.** Further, no document evidencing payment from Drug Bill Pharma to the Corporate Debtor in respect of the above



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transaction has been provided, nor has proof of any expenditures/statutory payments claimed to have been incurred/paid have been provided.

- vi.** The sales made to a related party are also open for challenge on account of undervaluation, which has not been examined by the liquidation professional, as all their transactions have been without the Liquidator's knowledge.
- vii.** Any payments during the liquidation period will have to be with the knowledge and consent of the Liquidator, who will decide whether the payments will have to be made to keep the company as a going concern or allow the claimants to lodge a claim and deal with such claim as per the code read with the regulations made thereunder.
- viii.** Therefore, we have no hesitation in stating that these adjustments/payments directly by the suspended board against the money received/receivable by them from Drug Bill Pharma should be treated as preferential transactions if not fraudulent transactions and the entire sum of Rs. 42,21,625/—is recoverable.

14.35. Receivable from Profile Group

- i.** Based on GST data available with the GST authorities, the Liquidator has retrieved the accounts/sales made to Profile Group owned by Mr. Sanjeev Prakash Lal.
- ii.** From the data retrieved and as per the documents placed on record, it is very clear that the said group is the major



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customer of the Corporate Debtor, contributing nearly 90% of the total revenue/sales made by the Corporate Debtor.

- iii.** This group paid against the sales made by Corporate Debtor through banking channels until June 21; thereafter, the payment mode was converted into cash. The Liquidator took over possession and custody of the ICICI current account.
- iv.** As on the date of possession of the Corporate Debtor in the hands of Liquidator, a sum of Rs 5,77,25,727/- (comprising of INR 5,28,46,076/-) for Profile distributor and (Rs. 48,79,651/- for Profile Pharma) are amounts receivable by Corporate Debtor, against sales made by Corporate Debtor to these parties.
- v.** The Liquidator sent an E-Mail dated 10.03.2022 asking for payment of this outstanding amount. In response, Mr. Sanjeev Prakash Lal replied via an E-Mail dated 30.03.2022, denying outstanding of any such large amounts by attaching a ledger account in the e-mail. Copy of the ledger account is in Annexure X to the application.
- vi.** From the ledger, we find that the receivables of the Corporate Debtor have been set off by accounting entries passed by Mr. Sanjiv Prakash Lal proprietor of Profile Pharma Group. Summary of such debits is in the table below: (Page No. 105)

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(Amounts in INR)			
	Prolife Pharma	Prolife Distributor	Total
Cash Paid to 'Welfare Committee of Duckbill Drugs Pvt. Ltd. (WCDDPL) during the period 01.04.2021 to 08.04.2022	27,10,000	33,00,000	60,10,000
Bank Transfer to HDFC Bank Account without any Payee's details	7,50,000	-	7,50,000
Debit Note bearing no. 22 dtd. 14.01.2022 without GST details	-	12,12,747	12,12,747
Good Return under Debit Note. bearing no. DN No. PR-01/21-22; DN No. PR-02/21-22; DN No. PR-03/21-22 and DN No. PR-04/21-22, without any GST details	-	38,83,283	38,83,283
Sales Commission for FY 2017-18; FY 18-19; FY 19-20; FY 20-21 booked on 01.03.2022 (pertains to period prior to 13.04.2021 i.e. Liquidation commencement date)	-	2,83,34,368 (61,30,192 + 67,33,500 + 70,74,195 + 83,96,481)	2,83,34,368
Additional Interest cost on the above Sales Commission	-	5,42,064	5,42,064
Sales Commission for FY 2021-22 booked on 01.03.2022 (pertains to period after commencement of Liquidation)	-	67,42,545	67,42,545
TOTAL			4,74,75,007

- vii.** From the table above, we find that the entries relating to cash paid to the welfare committee have been made during the CIRP/Liquidation period when such payments ought to have been made to the Corporate Debtor account under the supervision of the Resolution Professional/Liquidator. That too, it has been claimed by the proprietors of Profile Pharma Group that cash has been paid without any supporting documents whatsoever. Even if such cash payments are



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supported, the same cannot be permissible as welfare committee of Drug Bill Drugs should not be receiving this money, but the Corporate Debtor which was under the charge of Resolution Professional/Liquidator.

- viii.** Therefore, we reject first adjustment found in the table above outrightly.
- ix.** The second entry in the table pertains to a transfer to the HDFC Bank Account on behalf of the Corporate Debtor without any payment details. First of all, Profile Pharma is not authorized to make any payments to anyone on behalf of the Corporate Debtor.
- x.** The absence of payment details and the reason for such payment without the knowledge of the Liquidator demonstrate the fraudulent intent of this adjustment, and therefore, even this adjustment found as second entry in the table is rejected.
- xi.** The third entry in this table relates to Debit Note 22 dated 14.01.2022. This debit note does not carry GST details and is not a GST complaint document. The details of debit note are not known and in any event the debit note has no bearing on Corporate Debtor when it has been raised during the period of liquidation. It is not the case of the Respondent that such debit notes have been raised and received by the corporate debtor prior to commencement of CIRP and accounted for in the books of Corporate Debtor.



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- xii.** During the period of liquidation, if someone has a claim, he is supposed to lodge it with the Liquidator in the relevant form prescribed under IBBI regulations. Having not done so this adjustment in 3rd entry to the table is also not permissible and accordingly rejected.

14.36. The next entry is related to goods return during the period 2021-22.

- i.** The proprietor of Profile Pharma claims that he has returned goods worth Rs. 38,23,883/- during the period 2021-22. The so-called goods return is not supported by any GST compliant document. Profile Pharma has also not supported his claim with GST returns filed by him showing the sales return and above all the purported returned goods have not been delivered to the liquidator.
- ii.** Under the said facts and circumstances, we find no reason to accept this adjustment either and accordingly reject it.
- iii.** Next entry is with reference to sales commission for FY 2017-18 to FY 2021. According to the proprietor, he is entitled to sales commission for sale of products of the Corporate Debtor. The Corporate Debtor has not been able to produce any document to justify that the Profile Pharma group is entitled to sales commission. Sales commission if at all payable, is time barred for the FY 17-18 and 18-19 and consequently such debits are illegal. Even assuming that sales commission



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is payable, the entire entry for the debit was made during the CIRP/Liquidation period which is not permissible.

- iv.** As already stated, any claim from any party during the liquidation process will have to be lodged with the Liquidator, and no party can unilaterally adjust the same against his payable to the Corporate Debtor.
- v.** No GST invoice or GST-compliant document has been placed on record for sales commission. The profile pharma group has not produced any GST return which reflects these revenues. The entry of sales commission for FY 2017-18 to 2021 appears to afterthought that too when the same was done only on 01.03.2022 after the exchange of correspondence between the Liquidator and profile pharma. This has been done to defraud the creditors of corporate debtor and therefore illegal and we find no reason to accept this adjustment and the same is accordingly rejected.
- vi.** The next entry in the table relates to interest claim on sales commission to the tune of Rs. 5,42,064/-. When we have held that sales commission itself is not to be adjusted against the payable by the said Profile Pharma to the Corporate Debtor, the question of adjustment of interest on such accrued sales commission does not arise and accordingly rejected.
- vii.** The last entry in the table relates to sales commission due for FY 2021-22, amounting to Rs. 67,42,545/-. As already stated, any claim during the liquidation period will have to be lodged



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with the Liquidator and should not be unilaterally adjusted against the payables. Even this debit / adjustment is not supported by any GST compliant Invoice and therefore looking it from any angle, the adjustment deserves rejection.

- viii.** Thus, the entire adjustments made by Profile Pharma are rejected and consequently, an amount of Rs. 5,77,25,727/- (Comprising INR 5,28,46,076 for the profile distributor and INR 48,79,651/- for Profile Pharma) has to be recovered.

14.37. Receivables from other parties:

- i.** It is not in dispute that receivables from the other parties have been considered based on the audited financials of the year 2019-2020 and information memorandum has been prepared on that basis. Based on the information memorandum gathered, the Liquidator followed up with various other parties with recoveries outstanding receivable on account of the Corporate Debtor. The debtor wise details along with response received from such debtors have been captured in the table as mentioned in **Para 11.7 a)** of this Order.
- ii.** With reference to debtors mentioned in Sl. No. 4, 5 & 6 of the table, the concerned parties denied any business relationship with the Corporate Debtor and consequently disputed the claim of the Liquidator. This claim of the said parties was shared with the suspended board.
- iii.** The Respondents 1 and 2 herein, did not directly meet the objections raised by with direct response to the said claims



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made by the debtors and instead, only indirect responses, such as the Liquidator has not verified the books of accounts properly, or it was the welfare committee which was running the business; therefore, they must have committed some wrongdoings, etc.

- iv.** In the absence of a direct response, only two inferences can be made. One is that the Corporate Debtor never sold goods to the debtors but instead diverted the stock to some other party and showed these parties as buyers. Accordingly, these parties were shown as debtors.
- v.** The other inference would be that these parties would have paid directly to the suspended board and now they are claiming they have no relationship with the Corporate Debtor. No other inference could be drawn when such a response is received.
- vi.** Therefore, we find that in the absence of proper explanation /supporting/direct response to the claims made by the Liquidator, this appears to be fraudulent transaction involving siphoning of either stock of the Corporate Debtor or the funds receivable by Corporate Debtor and accordingly amount of Rs. 11,35,690/- payable by Indecorus Consultant, Rs. 13,55,683/- payable by Rupanchal Drugs Hospital and Rs. 31,31,051/- payable by Shri Narayani Pharma, totalling to Rs. 56,19,634/- are recoverable.



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- vii.** With reference to a debtor named Ashirwad, he denied any amount waived to the Corporate Debtor and submitted that the Corporate Debtor is liable to pay **Rs. 1.54 Cr.**
- viii.** The suspended board has not offered any explanation as to how a balance sum of Rs.67,32,644 receivable from Ashirwad has become payable by the Corporate Debtor, to the tune of **Rs. 1.54 Cr.**
- ix.** Thus, even this transaction appears to be erroneous and amount in question shown as recoverable to the tune of Rs. 67,32,644/- has to be recovered from the suspended board.
- x.** With reference to the second entry in the table relating to B.G> Enterprises, he also denied any outstanding payable by enclosing supporting documents such as bank statements, ledger accounts, etc.
- xi.** On perusal, we find that his claim appears to be correct. However, there is nothing on record to prove that the Corporate Debtor has received this money from the concerned debtor. The Liquidator was not brought to notice or knowledge of such payments to the corporate debtor, by the suspended board in their reply, and consequently, even this has to be recovered from the suspended board.
- xii.** With reference to Serial No. 3 relating to Paul Brothers, they have categorically denied any sum as payable. They have also provided an account statement claimed to have been duly



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signed by Mr. Swapan Mukherjee, the Ex-Director of Corporate Debtor.

- xiii.** We have perused the account statement duly signed by Swapan Mukherjee. The liquidator shared these statements, along with correspondences made with Paul Brothers, with the suspended board, and we see no specific response to the liquidator's allegation by the suspended board.
- xiv.** If these amounts have been indeed received and nothing is payable by Paul Brothers to the Corporate Debtor, then such amounts should have been received by the Corporate Debtor, which was under the supervision of the Resolution Professional/Liquidator during the material period, but that is not the case. Therefore, even this amount representing Rs. 2,76,81,772/- has to be recovered.
- xv.** There are two other creditors appearing in Sl. No. 7 & 8 appearing as sundry debtors. The Liquidator has communicated to these debtors but did not receive any response. They are appearing in books of accounts of Corporate Debtor even prior to 31.03.2020 with no efforts for recovery of such balance during the period up to 2022 when the company was run by the suspended board through the so-called welfare committee. Neither these debts were written off in the books of accounts with proper justification nor the amounts were collected.



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- xvi.** As per normal business practice, if a debtor has not paid, legal notices are issued to collect the dues, and after all legal steps are exhausted, the amounts are written off in the books of accounts without prejudice to the rights of the Corporate Debtor to recover some through legal process.
- xvii.** The suspended board has not placed any document to demonstrate the genuineness of the recoverability of such amounts. Consequently, we hold that the entire amount mentioned in the table, Rs. 4,96,19,442/—, is recoverable.
- xviii.** The next allegation is with reference to the illegal possession of a motor car belonging to the Corporate Debtor. Car belonging to Corporate Debtor valuing Rs. 41,936/- has not been returned to the custody of Liquidator on behalf of the Corporate Debtor. Respondents in their reply have submitted that car has been handed over. If this is true, the Resolution professional may take possession of the same.
- xix.** To summarize, we hold that suspended board of the Corporate Debtor cannot escape the responsibility of conducting the affairs of the Corporate Debtor by relying on MoU (that too unstamped, unauthorised and unsigned document) purportedly executed by the Corporate Debtor's director and the employees of the corporate debtor thru an entity formed by them ,wherein management of day to day operations of the corporate debtor have been claimed to have been delegated to them



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xx. This claim, if at all accepted, is akin to a delegation of certain powers and duties to senior employees of the company by the Director and nothing more and nothing less. It is not the case of the suspended board that they have sold the company to another entity “Welfare Committee of Duckbills P Ltd to claim immunity and thus we outright reject the application and hold that the suspended board is responsible for all the doings/wrong doings/misdeeds committed by the Corporate Debtor.

xxi. Therefore, we grant reliefs claimed by the Liquidator and the amount claimed under each heading is tabulated herein under:

Sl. No.	Reliefs sought for	Our order thereon
a.	Order be passed directing the Respondent No. 1 & 2 jointly and or severally pay following sums to the liquidation estate of the Corporate Debtor. i. Rs. 50,96,018/- as stated in Paragraph V (15)(I)(k) of the application. ii. Rs. 4,96,19,742/- as stated in Paragraph V(15)(IV) of the application.	Allowed.



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	iii. Rs. 41,936/- as stated in Paragraph V(15)(V) of the application.	
b.	<i>Order be passed directing the Respondents No. 1, 2 & 3 jointly and or severally to pay sums of Rs. 50,05,584/- and Rs. 39,81,973/- as contribution to the liquidation estate as stated in Paragraph (V)(15)(I)(q) of the application.</i>	Allowed.
c.	<i>Order be passed directing the Respondent No. 1 & 2 to pay sum of Rs. 42,21,655/- to the liquidation estate of Corporate Debtor as stated in Paragraph (V)(15)(II) of the application.</i>	Allowed.
d.	<i>Order be passed directing the Respondent 1, 2 & 4 jointly and or severally to pay sum of Rs. 5,77,25,727 as contribution as stated in Paragraph V(15)(III) of the application.</i>	Allowed.
e.	<i>Order of injunction be passed restraining the Respondents from dealing with transferring or</i>	Allowed.



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	<i>encumbering, any of the assets or properties within disposal of this application.</i>	
f.	<i>Cost of the application be borne by the Respondents.</i>	Not Allowed.

xxii. To summarize, we hold that suspended board of the Corporate Debtor cannot escape the responsibility and liability in conducting the affairs of the Corporate Debtor by relying on MoU (that too unstamped and unsigned document.) wherein management of day-to-day operations of the corporate debtor have been claimed to have been delegated to the welfare committee. A sum of **Rs. 12,56,92,635/-** is recoverable from the Suspended Board.

xxiii. This allegation, if at all accepted, is akin to a delegation of certain powers and duties to senior employees of the company by the Director and nothing more and nothing less. It is not the case of the suspended board that they have sold the company to another entity “Welfare Committee of Duckbills P Ltd to claim immunity and thus we outright reject the application and hold that the suspended board is responsible for all the doings/wrong doings/misdeeds committed by the Corporate Debtor.



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xxiv. We also hold that failure to hand over all the documents, books of accounts and assets of the Corporate Debtor to Resolution Professional upon commencement of CIRP on 17.12.2019 date, amounts to misconduct or offence in terms of Section 70 of IBC. We are conscious of the position of law that this Adjudicating Authority does not have the jurisdiction to try an offence under Section 70 of IBC, in terms of Section 236 of IBC. We would reproduce Section 236 as under:

Section 236: Trial of offences by Special Court.

*(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under **Chapter XXVIII of the Companies Act, 2013.***

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2),



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the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.

Therefore, we are sending a copy of this order to the **Regional Director, Eastern Zone, MCA, Kolkata** to consider initiating appropriate proceedings against the Respondents herein in the Special Court as per Section 236 of the I&B Code, 2016 read with Section 435 of the Companies Act, 2013. The Registry is directed to serve a copy of this order upon the Regional Director, Eastern Zone, MCA, Kolkata with an urgent basis.

- 15.** In terms of view above, the application is accordingly **disposed of**.
- 16.** The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 19th Day of June, 2024.

Bose, R. K. [LRA]/ PH(PS)