

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**COMPANY APPEAL (AT) (Insolvency) No. 1070 of 2021**  
**& I.A. No. 4532 of 2022 & I.A. No. 981 of 2023**

**(Arising out of the Order dated 12.11.2021 passed by the National Company Law Tribunal, New Delhi (Court-II) in IB-984 (ND)/2019)**

**IN THE MATTER OF:**

**1. Mr. Sunil Tangri**

210, Sukhdev Vihar, New Delhi- 110025.

**...Appellant No. 1.**

**2. Mrs. Ramni Tangri,**

210, Sukhdev Vihar, New Delhi- 110025.

**...Appellant No. 2.**

**Versus**

**Mrs. Ashu Gupta,**

Resolution Professional, Web Tec Packaging's  
(Undergoing CIRP)

Office No. 204 A, 2<sup>nd</sup> Floor, 23, SBI Buildings,  
Najafgarh Road Indl Area, Shivaji Marg,  
New Delhi – 110015.

**...Respondent**

**Present**

**For Appellants:**

Mr. Abhijeet Sinha, Mr. Rajiv Virmani &  
Mr. Arjun Agarwal, Advocates.

**For Respondent:**

Mr. Vinod Khanna, Adv. for Liquidator /  
Respondent.  
Ms. Ashu Gupta, Liquidator.

**With**

**COMPANY APPEAL (AT) (Insolvency) No. 1121 of 2023**

**(Arising out of the Order dated 02.08.2023 passed by the National Company Law Tribunal, New Delhi (Court-II) in I.A. No. 5756/ 2020 in C.P. (IB) No. 984 (ND) of 2019**

**IN THE MATTER OF:**

**1. Mr. Sunil Tangri**

210, Sukhdev Vihar, New Delhi- 110025.

**...Appellant No. 1.**

**Versus**

**Mrs. Ashu Gupta,**  
Resolution Professional, Web Tec Packaging's  
(Undergoing CIRP)

Office No. 204 A, 2<sup>nd</sup> Floor, 23, SBI Buildings,  
Najafgarh Road Indl Area, Shivaji Marg,  
New Delhi – 110015.

**...Respondent**

**Present**

**For Appellants:** Mr. Abhijeet Sinha, Mr. Rajiv Virmani &  
Mr. Arjun Agarwal, Advocates.

**For Respondent:** Mr. Vinod Khanna, Adv. for  
Liquidator/Respondent.  
Ms. Ashu Gupta, Liquidator.

**J U D G E M E N T**

**(10.10.2023)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. These two Appeals i.e., Company Appeal (AT) (Insolvency) No. 1070 of 2021 & Company Appeal (AT) (Insolvency) No. 1121 of 2023 have arisen from two different orders dated 12.11.2021 and 02.08.2023 passed by the same Adjudicating Authority i.e., National Company Law Tribunal, New Delhi Bench, Court-II. The subject matter, the background and the facts of the case are by and large similar and both the Impugned Orders as well as the Appeals are interconnected. Hence, we shall deal both these appeals jointly in subsequent discussion and a common judgement shall be pronounced.

**COMPANY APPEAL (AT) (Insolvency) No. 1070 of 2021**

**(Arising out of the Order dated 12.11.2021 passed by the National Company Law Tribunal, New Delhi (Court-II) in IB-984 (ND)/2019)**

2. This Appeal has been filed against the Impugned Order dated 12.11.2021 passed by the National Company Law Tribunal, New Delhi Bench, Court-II (the 'Adjudicating Authority') in IB- 984 (ND)/2019 in IA/102/2021, whereby, the Adjudicating Authority allowed the application preferred under Section 66 of the Insolvency & Bankruptcy Code, 2016' (in short '**Code**') by the Respondent and directed the Appellants to make total contribution of Rs. 29,75,73,550/- to the assets of Corporate Debtor. The Respondent was also directed to institute a criminal prosecution against the Appellants under relevant provisions of the law. The Adjudicating Authority further requested the IBBI to make necessary amendments in Regulation 35A and 40 A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as '**IBBI Regulations, 2016**') in terms of Section 12 of the Code.

The Appellants are the Suspended Directors of the Corporate Debtor. Aggrieved by the same, the Present Appeal under Section 61 of the Code has been preferred before this Appellate Tribunal.

**COMPANY APPEAL (AT) (Insolvency) No. 1121 of 2023**

**(Arising out of the Order dated 02.08.2023 passed by the National Company Law Tribunal, New Delhi (Court-II) in I.A. No. 5756/2020 in C.P. I)**

3. This Appeal has been filed under Section 61 of the Code against the Impugned Order passed by the Adjudicating Authority in IA 5756 whereby

the Adjudicating Authority rejected the application for approval of resolution plan and ordered liquidation of the Corporate Debtor.

**4.** Heard Counsel for Appellants and Respondent and perused the records made available including cited judgments in both the above Appeals.

**5.** M/s AC Goel Paper Distributing Company Pvt. Ltd., an Operational Creditor of the Corporate Debtor, filed the Application under Section 9 of the Code which was admitted on 25.07.2019. On 05.11.2019, M/s Siemens Financials Services Pvt. Ltd., the Financial Creditor of the Corporate Debtor, became the sole member of the Committee of Creditors (in short '**CoC**').

**6.** It is the case of the Appellant that initial Resolution Plan submitted by the Appellant, Mr. Sunil Tangri, was rejected on the ground of non-payment of Earnest Money Deposit of Rs. 15 Lacs despite the Appellant requesting the CoC as well as the Respondent/Ex-RP to grant time till 07.07.2020 on account of the prevailing economic conditions in the country caused due to COVID-19.

**7.** The Respondent filed an application bearing I.A No. 2853 of 2020 under Section 33(2) of the Code on 20.02.2020 for liquidation of the Corporate Debtor. The Adjudicating Authority, however, on 28.09.2020 directed the Respondent to convene fresh meeting of CoC to avoid liquidation, Corporate Debtor being MSME, with direction to the Respondent to file report on the outcome of CoC meeting.

**8.** The Appellant submitted that on 13.10.2020, the 9<sup>th</sup> Meeting of CoC was held when a Resolution Plan submitted by the Appellant was approved

by the CoC subject to all the changes to be done as proposed by Respondent and the CoC.

**9.** The Appellant stated that the 10th Meeting of the CoC held on 18.11.2020, pursuant to changes suggested by the Respondent and the CoC, the Appellant submitted the revised Resolution Plan on 18.11.2020, which was approved by the CoC.

**10.** It is the case of the Appellants that in the meantime, the Respondent also got forensic audit of Corporate Debtor conducted in accordance with Section 25 (2)(d) of the Code and Regulation 35 A of the IBBI Regulation, 2016 and accordingly M/s VMRS & Association, Chartered Accountants were appointed to conduct forensic audit of the Corporate Debtor, who gave the Forensic Audit Report on 22.09.2020. It is the case of the Appellants that they submitted their detailed response on 20.11.2020 to the Respondent vis-à-vis finding of Forensic Audit Report, bringing out fallacies and inaccuracies in the Forensic Audit Report.

**11.** The Appellants are aggrieved by the fact that the Respondent has failed to apply her mind while considering the Forensic Audit Report and has ignored the replies and clarification of the Appellants and further did not form an opinion, the Appellants also alleged that the Respondent did not consider the Statutory Audit Report which did not point out any such irregularities in the Independent Statutory Auditors Reports of the annual financial statement of the Corporate Debtor.

**12.** On 29.12.2020, the Respondent filed IA 5756 under Section 30(6) of the Code for approval of Resolution plan before the Adjudicating Authority. As

per the Appellant, this act of the Respondent/Ex-RP of filing the Application for resolution after the Application of Section 66 makes it obvious that the Respondent had no intention of reviving the Corporate Debtor and wanted its corporate death by sending it into liquidation.

**13.** The Appellant brought out that the Adjudicating Authority, vide Order dated 06.01.2021, dismissed the I.A. No.2853 of 2020 filed by the Respondent (which was filed for liquidation of the Corporate Debtor) as well as I.A. No.5398 of 2020 filed by the Appellant as dismissed as withdrawn.

**14.** It is further the case of the Appellants that the Respondent filed I.A. No. 102 of 2021 before the Adjudicating Authority under Section 46, 49, 66, 69 and 72 of the Code on 04.12.2020, whereas the Corporate Insolvency Resolution Process (in short '**CIRP**') had commenced on 25.07.2019, thus the delay was of more than 500 days and as per extant rules, such application could not have been considered by the Adjudicating Authority. The Adjudicating Authority, however, allowed L.A. No. 102 of 2021 filed under Section. 66 and directed the Appellant to make total contribution of Rs. 29,75,73,550/- Crores to the assets of Corporate Debtor as well as directed the Respondent to initiate criminal prosecution against the Appellants under Section 69 of the Code.

**15.** The Appellant stated that on 07.12.2021, the Appellant (along with Mrs. Ramna Tangri) preferred an appeal under Section 61 of the Code being Company Appeal (AT) (Ins.) No. 1070 of 2021.

**16.** The Appellant has argued that the Adjudication Authority has failed to appreciate that the Section 66 the matter was sub-judice before this Appellate

Tribunal in an appeal and the outcome of the same has a crucial direct impact on the outcome of the CIRP/Liquidation of the Corporate Debtor and passed the Impugned Order in Company Appeal (AT) (Ins.) No. 1121 of 2023 in haste on 02.08.2023.

**17.** The Appellant is also aggrieved by the fact that the Adjudicating Authority further requested the IBBI to make necessary amendments in Regulations 35A and 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "IBBI Regulations, 2016") in terms of Section 12 of the Code.

**18.** The Appellants also assailed the Adjudicating Authority who failed to adhere to the timelines as stipulated in the Code & Regulations and without application of mind, allowed the Application of the Respondent under Section 66 of the Code, ignoring the fact that the Corporate Debtor is a MSME and the intent of the Code is for the revival of the Corporate Debtor and not for liquidation of the same.

**19.** It is the case of the Appellants that application under Section 66 of the Code is not permissible, since there has been delay of 502 days since the was due in initiation of the CIRP was done on 25.07.2021 and cited the judgment of Delhi High Court passed in WP (C) No. 8705 of 2019 titled as ***M/s Venus Recruiters Pvt. Ltd. vs. Union of India & Ors.***, wherein the High Court adjudicated that if the timelines of the Code are not followed, the purpose of the Code will be defeated and therefore it is the case of the Appellant that as such the application under Section 66 should not have been allowed.

**20.** The Appellants cited case of **Committee of Creditor Essar Steel India Vs. Satish Kumar Gupta & Ors.** [(2020) 8 SCC 531] to point out that relaxation in continuation of CIRP beyond 330 days is rule nisi. Similarly, Appellants mentioned that the Adjudicating Authority wrongly interpreted the judgment of **Brilliant Allowance Pvt. Ltd. S. Rajagopalan** which was in connection with withdrawal of application under Section 12A of the Code r/w Regulation 30A of Regulation, 2016. In this connection, it is the case of the Appellants that the view taken by the Adjudicating Authority is contrary to model timelines as stipulated under Regulation 40A of the IBBI Regulation 2018.

**21.** The Appellants further assailed the Adjudicating Authority for passing Impugned Order dated 12.11.2021 mechanically without application of mind and solely relying on the Forensic Audit Report without making an independent determination to the alleged fraudulent transaction. It is also the allegation of the Appellants that the Adjudicating Authority has not taken into consideration the fundamental ingredient of Section 66 of the Code i.e., the acts should be with intent to defraud the Creditors and also ignored the fact that the Independent Statutory Auditors did not find any such alleged frauds. It has been pointed out that the Forensic Audit Report, at best can be taken as indicative and cannot be taken to be conclusive proof of alleged frauds.

**22.** The Appellants submitted that the Forensic Audit Report did not consider the submissions made by the Appellants and the Report is inaccurate and misleading.



**23.** The Appellants have given detailed averments regarding Forensic Audit Report. During the hearing, the Respondent also gave her side about scientific approach adopted in Forensic Audit Report and basis for forming an opinion by the Respondent regarding fraudulent transactions and determinations of frauds leading to application under Section 66 to the Adjudicating Authority. Since, Forensic Audit Report is the crux of the matter in both the Appeals, this Appellate Tribunal will deal the Forensic Audit Report along with averments of the Appellants, and the Respondent and our own findings on the same independently at later stage after noting other averments of both the Appellants and Respondent. At present, it will be sufficient to observe that we have taken note of the averments of the Appellants on Forensic Audit Report along with the written submissions of the Appellants.

**24.** It has been alleged by the Respondent that the Appellant is habitual in misleading the stakeholders as well as this Appellate Tribunal and the direction Mr. Sunil Tangri has been giving false address of his residence in all the affidavits to this CA (AT) (Ins.) No. 1121 of 2023 and pleading in the connected Appeal bearing CA (AT) (Ins.) No. 1070 of 2021 which was listed before this Appellate Tribunal on 01.09.2023. In response to this, the Appellants stated that this happened due to inadvertent clerical error while drafting the affidavit and there was no intention of the Appellant to mislead this Appellate Tribunal.

**25.** The Appellants alleged that onus is on Resolution Professional/ the Respondent to prove the financial transactions as fraudulent transactions

without any reasonable doubts which has not happened in the present case. It has also been stated that the Respondent has acted negligently by not incorporating corrected tally data and explanations furnished by the Appellants. It is further case of the Appellants that the Respondent did not make out any opinion and blindly relied on the Forensic Audit.

**26.** The Appellants also assailed for Forensic Auditors who did not perform according to draft Forensic Accounting Investigation Standards (in short '**FAIS**'), which has been issued by Institute of Chartered Accountant of India recently. The Appellants stated that at best the findings could have been termed as red flags and but same could not be blindly relied upon unless supported by reliable documents and evidence or through independent investigations, which has not happened in the present case.

**27.** The Appellant asserted that the Forensic Auditors Report is based on unaudited financial statements, incomplete tally data and incorrect accounting entries as evident from the remarks made by the Forensic Auditors in their 'Correspondence with Different Stakeholders', wherein it was stated that the management of the Corporate Debtor as well as the Statutory Auditors of the Corporate Debtor could not provide complete information. The Appellants further alleged that the Resolution Professional has failed to formulate an independent opinion before filing the avoidance application before the Adjudicating Authority and has placed reliance only on the findings of the Forensic Audit Report which is based on incomplete information, incomplete tally data and incorrect accounting entries, as

completed accounts could not be finalized by the Appellants for few years due to several unavoidable reasons beyond their control.

**28.** The Appellant raised issue about the Adjudicating Authority who vide its Impugned Order dated 12.11.2021 directed the Appellants to make a total contribution of Rs. 29,75,73,550/- which amount, even prima- facie, is an exorbitant sum in comparison to claimed liabilities. It has been submitted by the Appellants that the Corporate Debtor has total claims (provisionally admitted) of Rs. 4,04,76,290/- against which the Appellants, after making several bona fide efforts, submitted a Resolution Plan of Rs. 1,58,07,532/- which offered approximately 40% of the total claim amount (including CIRP cost at that time) and in offered better value than the liquidation value.

**29.** The Appellant stated that on 03.03.2023, I.A. 5756 was taken up for hearing by the Adjudicating Authority whereby the counsel for the Respondent sought dismissal of the said application in light of the ineligibility of the Appellant as per the provisions of Section 29 A of Code. Upon hearing the submissions made by the counsel of the Appellant as well as the Respondent, the Adjudicating Authority granted liberty to the Respondent to move an appropriate application in accordance with law.

**30.** The Appellant stated that on 02.08.2023, IA 5756 along with other applications were again taken up for hearing, whereby the Adjudicating Authority dismissed IA 5756 in light of the ineligibility of the Appellant to be a resolution applicant as per the provisions of Section 29A of the Code and further ordered the liquidation of the Corporate Debtor and appointed the Respondent as the Liquidator of the Corporate Debtor.

**31.** It is the case of the Appellant that the Adjudicating Authority was wrong in holding him to be ineligible under Section 29(A) (g) of the Code as at the time of submission of Resolution Plan by him, no finding on Section 66 Application of the Respondent was available and it is much after submission of his Resolution Plan, the Adjudicating Authority passed the Impugned Order in Company Appeal (AT) (Insolvency) No. 1070 of 2021 on 12.11.2021. The Appellant argued that the intent of the Code is clear argued that the intent of the Code is clear that the Resolution Applicant should not be disqualified under Section 29(A) of the Code at the time of submission of the Resolution Plan. The Appellant further argued that the Corporate Debtor being MSME is not covered under Section 29 A of the Code.

**32.** The Appellants, concluding his averments, requested this Appellate Tribunal to set aside the Impugned Orders dated 12.11.2021 and 02.08.2023 and allow both the Appeals i.e. Company Appeal (AT) (Insolvency) No. 1070 of 2021 and Company Appeal (AT) (Insolvency) No. 1121 of 2023.

**33.** Per-contra, the Learned Counsel for the Respondent denied all the averments made by the Appellants in both the Appeals i.e., Company Appeal (AT) (Insolvency) No. 1070 of 2021 and Company Appeal (AT) (Insolvency) No. 1121 of 2023, treating these to be malicious, misleading and with intentions to avoid liquidation of the Corporate Debtor and submitted that the Impugned Order was passed in Company Appeal (AT) (Insolvency) No. 1070 of 2021 on 12.11.2021 and due to several tactics of the Appellants, the Resolution Professional/ Liquidator has not been in position to effect the Liquidator order passed by the Adjudicating Authority even when three years

are almost getting over. The Respondent castigated the conduct of the Appellant and emphatically submitted that such delay directly or indirectly, erode the value of the Corporate Debtor and effects the rights of other stakeholders and urged this Appellate Tribunal to dismiss the appeal with exemplary lost in interest of justice.

**34.** The Respondent brought out that I.A. No. 102 of 2021 was filed by the Resolution Professional before the Adjudicating Authority under Section 66 of the Code, which was replied by the Appellants on 13.08.2021, however, the Appellant had not made any objection/ reply to the allegations of embezzlement of funds raised by the Resolution Professional in I.A. No. 102 of 2021 but raised mere question of maintainability on ground of limitation, which tantamounted to non-denial of the facts brought out by the Respondent in Section 66 application and the Appellants tried to avoid their responsibilities of frauds on technical grounds. It is the case of the Respondent that the Appellants have taken these pleas now raised in the present appeal before the Appellate Tribunal for the first time in the present appeal, and the same cannot be allowed in terms of the judgment of this Appellate Tribunal in *CA (AT) No. 147 of 2018* in the matter of **Value Fab Solutions Pvt. Ltd. vs. ROC** [(2018) SCC OnLine NCLAT 280] dated 22.05.2018, where it has been held that the new grounds for the first time in the Appeal cannot be allowed. It is the case of Respondent that on this ground alone, the Appeal deserves to be dismissed.

**35.** The Respondent assailed the conduct of the Appellants, who after commencement of CIRP, decided not to co-operate with the Respondent and

did not furnish requested information inspite of several e-mails and personal requested by the Respondent persuading. It has been submitted that due to non-submission of relevant records, data, information and non- cooperation by the Appellants, the Respondent/ Resolution Professional was not able to perform her duties efficiently especially in preparation of Information Memorandum (in short '**IM**'), issuance of Expression of Interest (in short '**EOI**') etc.

**36.** The Respondent pointed out that she sent letters by speed post to the Corporate Debtor as well as the Appellants as Suspended Directors of the Corporate Debtor, at the address available at Ministry of Corporate Affairs website, however, all such letters were returned with remark 'left'. The Respondent submitted that this clearly shows wrong intention of the Appellant. This was also followed by several e-mails requesting for information and documents but the Appellant No. 1 in response supplied initially only copy of PAN, Bank Account No. and cover pages of some legal cases pending against the Corporate Debtor. In response to further emails by the Respondent, the Appellant No. 1 replied on 15.09.2019 that there is no employee in the company and the plant and machinery owned by the Corporate Debtor is lying at the sold factory premises only and new owner is not allowing entry. The Appellants also replied that accounts of 2017-18 and 2018-19 are under reconciliation and banks account have been blocked by Sales Tax Department.

**37.** The Respondent elaborated various endeavours taken by her to reach out to the Appellants in order to obtain their cooperation in getting annual

accounts, books, statutory records, tally data and other information documents and despite all efforts of the Respondent, the Appellants did not provide the required cooperation, even despite request to provide the correspondence address the Appellants, the Appellants categorically denied the same and stated that the Appellant would be available on telephone and e-mail. The Respondent also cited one example of such non-cooperation to buttress her point, where after several attempts and confirmation and commitments from the Appellants, a factory visit was planned for 11.11.2019 for valuers for the purpose of valuation of the Corporate Debtor and despite confirmation, the Appellants did not turn up and their mobile number were also found in switch off mode. The Respondent stated that there was no cooperation from the Appellants, whatsoever and clearly the strategy of the Appellants were to delay and derail the CIRP/ Liquidation process.

**38.** The Respondent also assailed the conduct of Mr. Pradeep Nagpal of Nagpal, Nagpal & Associates, the Statutory Auditors of the Corporate Debtor who also did not give cooperation. The Statutory Auditor through e-mail dated 02.06.2020 intimated Respondent that sufficient and appropriate audit evidence for an audit opinion is not available with them. Due to non-cooperation of the Statutory Auditors M/s VMRS & Associates, Chartered Accountant were appointed on 14.08.2020 to conduct the forensic audit in order to analyse financial transactions of the Corporate Debtor and their related parties. The Forensic Audit Report was submitted on 22.09.2020 for the financial year 2016-17, 2017-18 & 2018-19 and for the period from 01.04.2019 to 02.09.2019.

**39.** The Respondents submitted that based on Forensic Audit Report, which was an expert opinion, the Respondent/Resolution Professional formed an independent and unbiased opinion and made determination of fraudulent transactions and filed an application on 08.12.2020 under Section 66 of the Code before the Adjudicating Authority vide I.A. No. 102 of 2021, which was allowed by the Adjudicating Authority.

**40.** The Respondent strongly refuted the allegation of the Appellants that she has not performed her duties diligently and blindly relied upon the Forensic Audit Report. It is the case of the Respondent that even the Statutory Auditors have given adverse remarks in their independent Auditors Report of the Corporate Debtor for the financial year 2016-17, 2017-18 & 2018-19, which clearly demonstrate that the records of the Corporate Debtor were entirely unreliable and therefore only way to understand the true and fair picture of the Corporate Debtor was through an expert agency which was conducted by way of Forensic Audit.

**41.** The Respondent took strong exceptions to the baseless allegations of the Appellants and unfortunate remarks about the Adjudicating Authority regarding non-application of mind. It is the case of the Respondent that the Impugned Order was passed by the Adjudicating Authority after hearing all the parties at length and after ascertaining the complete positions in fair, transparent and independent manner, resulting into judicial speaking order.

The Respondent refuted the allegation regarding breach of model timelines for CIRP especially regarding determination on preferential and other transactions including fraudulent transactions in accordance with



Regulation 14A of IBC (Resolution Process for Corporate Persons) Regulation, 2016 r/w Regulation 35A. It is submitted that the Regulation 35 A is not mandatory in nature and only directory as held by Hon'ble Supreme Court of India in the case of **Surendra Trading Company vs. Juggilal Kamlapat Jute Mills Company Limited & Ors.** in Civil Appeal No. 8400 of 2017 and also in **PT. Rajan vs. T.P.M. Sahir & Ors.** [(2003) 8 SCC 498).

**42.** The Respondent refuted the allegations that the she was determined to send the Appellant MSME Company into liquidation without considering the Resolution Plan of the Appellants. In this regard, it has been submitted that that during the course the proceeding on the said application for approval of the liquidation of the Corporate Debtor, the Adjudicating Authority considering all facts at that time directed the Respondent to convene fresh meeting of the CoC to consider the representation of the Ex-management of the Corporate Debtor cum resolution applicant along-with their Resolution Plan and thereafter the revised Resolution Plan of the Appellant No. 1 was approved by the CoC and the Respondent/Resolution Professional has filed the application for the approval of resolution plan vide I.A. No 5756/2020 before the Adjudicating Authority which was pending at that time for consideration of the Adjudicating Authority (since then rejected vide Impugned Order dated 12.11.2021 by the Adjudicating Authority) against which there is a separate appeal which was filed before this Appellate Tribunal and is being dealt separately. Thus, the revised plan has been considered by the CoC only after the best efforts by the Adjudicating Authority otherwise the liquidation of the Corporate Debtors would have

happened much earlier. Thus, the Adjudicating Authority was not turning blind eye and was trying to revive the Company.

**43.** The Respondent strongly supported the decision of the Adjudicating Authority on ineligibility of the Appellants to submit the Resolution Plan in terms of Section 29A of the Code. It is the case of the Respondent that it became evident from the records and on the basis of Forensic Auditor Report that there has been an embezzlement of funds and thereafter the appropriate judgement was passed by the Adjudicating Authority.

The Respondent refuted all the averments of the Appellant and reiterated background of the case. As per the Respondent, she filed the application for avoidance of fraudulent transactions on 08.12.2020 bearing no. I.A. 102/2021 and the Adjudicating Authority passed order dated 12.11.2021, wherein the Adjudicating Authority determined the fraudulent transactions of Rs. 29,75,73,550/- and an order to erstwhile directors/Appellant to make contribution of Rs. 29,75,73,550/- to the assets of the Corporate Debtor within 2 months of the date of the order.

It is the case of the Respondent that thus, the erstwhile director/resolution applicant (RA) became ineligible in terms of section 29A(g) of the Code, but till date no contribution received from the Appellant to the assets of the Corporate Debtor.

**44.** The Respondent stated that under Section 29A is a restrictive provision that specifically lists down the person who are not eligible person to be a resolution applicant to prevent defaulting promoters from buying back the corporate debtor, at steep discounts. The Respondent stated that the plan

submitted by the Appellant could not be considered by the Adjudicating Authority.

**45.** The Respondent stated that the argument of the Appellants that Section 29A provides that 'the person shall not be eligible to submit a resolution plan, if ineligible on date for submitting the Resolution Plan would mean that the bar under sec 29A of the Code is to be seen only at the time of submission of plan and not thereafter is misplaced. It has been submitted by the Respondent that once the provision provides a bar for a promoter to file a plan under Section 29A, the same will apply for all times to come and not only at the time of submissions only. It is the case of the Respondent that the legislature has used the words 'to submit a plan' for reason that as per model timelines of the Code, it is presumed that by the time plan is to be submitted, the issue of preferential and fraudulent transactions would have been decided. In this regard the reference is drawn to Reg. 40A of CIRP Regulations, where the decision of preferential and fraudulent transaction has to be made in 15 days and only thereafter form G is to be submitted and plan has to be considered in 135 days. The Respondent elaborated that in the present case due to non-cooperation of the Appellants neither document and records of the Corporate Debtor were given on time, nor records were available with the Respondent as Resolution Professional to start the forensic audit. The appellants cannot take benefit of their own wrong doings. Thus, the language as used in the provisions and regulations have to be read harmoniously and the same can't be a ground for the appellants to challenge

the liquidation order passed by Adjudicating Authority under section 33 of the Code.

**46.** The Respondent also pointed out that due to non-cooperation of the Appellant as well as the Statutory Auditors despite her all efforts, she has no choice but to file an application No. CA 1531 of 2019 under Section 19(2) of the Code against the Appellants and Statutory Auditors of the Corporate Debtors.

**47.** It is the case of the Respondent that based on Forensic Audit Report, she filed I.A. No. 102 of 2021 under Section 66 of the Code before the Adjudicating Authority but the Appellants wilfully chose not to contest or deny any allegations and rather took lame technical plea of limitation and the Adjudicating Authority after going in all details allowed the I.A. No. 102 of 2021.

**48.** It is the case of the Respondent that the Forensic Auditors submitted that their report was based on findings of Forensic Audit Report who were specifically appointed to finding affairs of the Corporate Debtor review independent auditors and only thereafter the Respondent/Resolution Professional identified few transactions falling within the purview of Section 43,45, 49 and 66 of the Code and also duly informed to the IBBI vide e-mail dated 10.12.2020 as required under regulation 35 A of IBBI (IRPCP). Regulation, 2016. It has been submitted that after due diligence and detailed deliberations on the identified transactions, the Respondent/ Resolution Professional has given due opportunity to the Appellants herein vide e-mail dated 15.10.2020 to present their comments/case, however, the Appellants

did not give any satisfactory response vide his e-mail dated 20.11.2020 thereafter the respondent/Resolution Professional had filed application vide I.A. No102/2021 for fraudulent transaction with the Adjudicating Authority.

**49.** Concluding her arguments, the Respondent again requested the Appellate Tribunal to dismiss both the Appeals i.e., Company Appeal (AT) (Insolvency) No. 1070 of 2021 and Company Appeal (AT) (Insolvency) No. 1121 of 2023 with exemplary cost.

**50.** After hearing all the parties and noting all details submissions and cited judgments in both the Appeals as pointed out by us in initial discussions, we find that the crux of the case is subject matter regarding application under Section 66 of the Code, which is primarily based on Forensic Audit Report, an independent expert agency, it would be necessary for us to go into details, in following discussions and also the aspect of ineligibility of the Appellants under Section 29 (A) (g) of the Code based on which the Resolution Plan of the Appellant was refuted and the Liquidation order was issued.

### **Analysis of Forensic Audit Report**

**51.** The Respondent brought out that the total embezzlement of funds by the Appellants through various means & modes has been assessed, worth amounting to Rs. 29,75,73,550/- with following details –

<b>S.No.</b>	<b>Particulars/ Heads of embezzlement funds</b>	<b>Amount</b>
01.	Diversion of Stock	5,48,50,824/-

*Comp. App. (AT) (Insolvency) No. 1070 of 2021  
& Comp. App. (AT) (Insolvency) No. 1121 of 2023*

02.	Fund Misappropriation worth under related transaction	24,02,726/-
03.	Non-Recovery from Sundry Debtor	2,20,46,314/-
04.	Excessive Remuneration	1,89,14,000/-
05.	Excessive charged other expenses	5,91,60,261/-
06.	Negative balance of cash in hand	15,92,574/-
07.	Miscellaneous Balances written-off	1,85,31,876/-
08.	Saurabh Tangri director's son of Corporate Debtor	57,22,478/-
09.	Sunil Tangri current account	3,13,178/-
10.	Sunil Tangri loan account	1,24,99,000/-
11.	Sunil Tangri Imprest account	57,18,641/-
12.	Ramani Tangri account is recoverable	54,54,000/-
13.	Entries post CIRP date	8,53,67,678/-
14.	Non-showing of actual sales consideration of plant	50,00,000/-
	<b>Total Fraudulent Transactions</b>	<b>29,75,73,550/-</b>

Since above break up of alleged frauds are under several heads, we will endeavor to examine the relevant and significant points of alleged frauds, in an item-wise-item approach.

- (i) On the first findings of Forensic Audit Report, the Respondent pointed out that there has been diversion of stock of Rs. 5,48,50,824/- due to excessive consumption of material compared to previous years. The Appellants submitted that he has given detailed reasoning regarding this issue which, inter-alia, clarification that the raw material accumulated over the previous years were destroyed due to non-receipt

of any fresh orders, change in design or specification, quality issues, shelf life expired, non-usable, etc. The Appellants stated that the Respondent did not consider all these reasons for depletion of stock and failed to form an independent and fair opinion on these aspects and took easy course of relying blindly on Forensic Audit Report.

The Appellants further stated that this mis-apprehension of Forensic Audit Report was due to fact that proper records were not available by the Corporate Debtors which does not mean that there was illegal diversion of stock for fraudulent purposes. The Appellants stated that the Statutory Auditors have not pointed out any such diversion of stock.

Per-contra, the Respondent pointed out that with regard to diversion of stock of Rs. 5,48,50,824, on perusal of finding No. 1 of the Forensic Audit Report, it is clear that the Corporate Debtor manipulated the Stock Valuation and Material consumption including their Opening and Closing stock which consist of Work in Progress and rest is Finished Stock Inventory. The Corporate Debtor excessively consumed 193% as compared to previous year trend i.e. 73%, 79%, 70% raw material in financial year 2018-2019 and further also the excessive consumption of finished goods i.e. 97% in financial year 2018-2019 as compared to previous year trend i.e, 22%, 19% thus it is clear that the stock has been manipulated to the tune of Rs 5,48,50,824/-, which was sold by the Corporate Debtor in cash and the amount received was pocketed in cash by the Appellants, hence a wilful

attempt was made by the Appellant No. 1 and 2 (Suspended directors) to harm the various stakeholders. The Respondent pointed out this was backed by Forensic Auditors in their detailed technical analysis from page no. 9 to 22 of the Forensic Audit Report.

Moreover, it has also been pointed out by the Respondent that if any stocks were destroyed, then the Appellants should have booked the same as damages/scrap sales etc., in the financial statements, which was never done by the Appellants.

After going through all above details, we find the reasonings and submissions of the Appellants that stock worth of Rs. 5,48,50,824/- were destroyed, are not convincing to us and we tend to agree that such diversion of stock has been done by the Appellants with clear intent to divert funds from the Corporate Debtor to personal pockets of the Appellants with illegal intentions.

(ii) As regarding allegation of misappropriation **of funds under related party transactions**, the Respondent as well as Forensic Audit Report pointed out that M/s S Arthah Trading Company is owned by Mr. Aditya Tangri son of the Appellants and the address of both this company as well as Corporate Debtor is same i.e., 163, 2nd Floor, Kailash Hill, New Delhi and these are clearly related parties and credit balance accumulated are not genuine funds for which detailed technical analysis has been done by the Forensic Auditors.

The Appellants submitted that the findings have been based on incorrect accounts, which were due to errors in tally data. The



Appellants further submitted that these transaction were conducted at arm's length and there cannot be considered as fraudulent.

Per-contra, the Respondent pointed out that with regard to Fund Misappropriation worth Rs 24,02,726- under related party transaction; the Forensic Audit Reports finding No. 2 clearly demonstrate that M/S Arthah Trading Company owned by Mr. Aditya Tangri (Ex-Director of Corporate Debtor) and son of the Appellants i.e., Mr. Sunil Tangri & Ms. Ramani Tangri (Erstwhile Directors of Corporate Debtor) and his registered office showing under tally record is 163,2nd Floor, Kailash Hill, New Delhi which is a common address of Corporate Debtor i.e. (Webtech Packagings India Private Limited) and M/s Arthah Trading Company. This proprietorship firm is a related party .

This Appellate Tribunal notes that the alleged transaction are prima-facie of the related parties as noted above and also note that the Registered Address of both the Corporate Debtor and related parties is same, hence the conclusion of the Respondent based on Forensic Audit Reports is acceptable.

(iii) As regarding allegation of **non-recovery from Sundry Debtors** and & making these as doubtful, the Respondent/ Forensic Audit Report pointed out that Sundry Debtor as on 31.03.2018 was Rs. 2,20,46,314/-, out of which 95% were outstanding for more than six months and these were evidently but doubtful. The Corporate Debtor has not made any provisions in their financial statement with malafide intentions to defraud the stakeholders. The Appellant submitted that

this happens in any type of business when financial challenges emerge and many assets including trade receivable become doubtful and could not have been considered as alleged frauds.

We observe from the submissions that 95% of debts were more than six months and the Corporate Debtor did not make any provision in their annual financial statements. This clearly is against basic commercial and accounting norms and therefore we tend to agree with the Respondent on this aspect of non-recovery and non provision of doubtful debts from Sundry Debtors of Rs. 2,20,46,314.

(iv) The Appellants also denied the charge regarding excessive remuneration worth Rs. 1,89,14,000/- to his family member including his wife, the Appellant No. 2 herein who was sleeping/ dormant partner.

The Respondent pointed out that from the Forensic Audit Report Finding no. 5 it has been established that the key managerial personnel including their relatives diverted money from the Corporate Debtor account in the name of remuneration. The Respondent submitted that as per written statement of Mr. Sunil Tangri vide e-mail on 02.08.2020 where he stated that his wife is a sleeping partner and their son Mr. Saurabh and Mr. Aaditya Tangri played no role in the affairs of the Corporate Debtor and in the background it is strange that how board of directors has shown the remuneration of Rs. 36,06,000/- in financial year 2011-2012 to 2013-2014 and Rs. 41,52,000/- to Mr. Saurabh and Mr. Aaditya Tangri and as well as

director remuneration of Rs 1,11,56,000/- to Mr. Sunil Tangri which was far to excessive as compared to the profit of the Corporate Debtor. The said amount has been booked with mala-fide intention to withdraw the money form the account of Corporate Debtor. In response, it is the case of the Appellants that the remuneration paid cannot be case of fraud.

We find logic in the finding of Forensic Audit Report and submission of the Respondent that when there is no commensurate profits, accounts of Corporate Debtor itself are not maintained due to so called financial crunch of the Corporate Debtor, then how such huge amount of Rs. 1,89,14,000/- have been paid as remuneration to wife and sons, who allegedly did not contribute to day to day conduct of the Corporate Debtor. We are in agreement with the averments of the Respondent as this issue.

(v) The Respondent based on Forensic Audit Report has also alleged that the Corporate Debtor has **excessively charged** other fund as excessive. expenses worth Rs. 5,91,60,261/- which was found as excessive based on trend analysis and such other expenses were found to be abnormal and doubtful behaviour which includes charge of expenses like computer expenses of Rs. 96.32 Lakhs, discounts rebate Rs. 4.32 Crores, other expenses of Rs. 21.35 Lakhs, bad debts of Rs. 38.86 Lakhs etc.

It is the case of the Appellants that these entries related to beyond look back period and in any case such transactions happened in normal

business course and the assumptions of Respondent is not correct. On face of these facts including activity level of the Corporate Debtor and profitability of the Corporate Debtor, it is just not clear how such expenses can be justified which may be will purpose to reduce the profit of the Corporate Debtor and divert funds. We tend to accept the contentions of the Respondent in this account.

(vi) The Respondent has also alleged regarding **negative balance** of cash in hand between 01.04.2017 to 02.04.2019 which indicate misappropriation by the Directors of the Corporate Debtor. It is further reiterated that the report/ observation is based on tally data submitted by the Appellants, thus no question for fresh consideration of updated tally data.

The Appellants submitted that since 2016-17, the accounts were pending as on commencement of CIRP w.e.f. 02.09.2019 and cited reasons for such non completion of accounts due to non- availability of regular accountant, due to financial crunch of the Corporate Debtor, refusal to complete Statutory Audit by the Statutory Auditors due to non-payment to Auditors etc. It is the case of the Appellants that the inferences made by the Respondent based on Forensic Auditors Report was in fact due to incomplete accounts and should not be treated as frauds.

The arguments of the Appellants that this happened due to non maintenance of accounts due to financial crunch is not palatable and

convincing to us and we find allegation of the Respondent to be more convincing.

(vii) The Respondent has alleged that the Corporate Debtor has written off **miscellaneous balance amount** of Rs. 1,85,31,876/- between the period from 01.04.2017 to 02.09.2019 from the books of the Corporate Debtor and several fraudulent entries have been made which does not give true and fair picture of the Corporate Debtor and tantamount to frauds.

It is the case of the Appellants that the debit balances which have been written off were no more recoverable, similarly write back of credit balances which were no more payable as per normal business decisions and as such these cannot be treated as alleged frauds.

We find such write off huge amount of Rs. 1,85,31,876/- without any rationale and find contention of the Respondent to be fair.

(viii) The Respondent has also pointed out regarding **diversion of funds in the name of Directors and related party** of Forensic Audit Report finding Nos. 18, 19, 20, 21 & 22, as pointed out at Saurabh Tangri director's son of Corporate Debtor amounting to Rs. 57,22,478/-, Sunil Tangri current account amounting to Rs. 3,13,178/-, Sunil Tangri loan account amounting to Rs. 1,24,99,000/-, Sunil Tangri Imprest account amounting to Rs. 57,18,641/- and Ramani Tangri account is recoverable amounting to Rs. 54,54,000/-. The Respondent pointed out that with regard to allegation of diversion of funds in the name of directors and related party, as evident from Forensic Audit Report that

the material amount of adjustments were deliberately made in the accounts of Corporate Debtor to misappropriate the funds of Corporate Debtor made between director of the Corporate Debtor and their family member and to accommodate such entries just to withdraw the money and the said account is also red flag account. It is further reiterated that the report/observation is based on tally data submitted by the Appellants, thus no question arises for fresh consideration of updated tally data.

Shorn of unnecessary discussing in the teeth of clear finding, we are not in position to appreciate and accept such huge diversion of funds by the Appellants and related parties, which seems for their personal benefits and clearly to defraud creditors and other stakeholders of the Corporate Debtor.

(ix) The Respondent based on Forensic Auditors Report finding No. 25 alleged manipulation of Rs. 8,53,67,678/- between 02.09.2019 to 31.03.2020 which has been adjusted in the books of the Corporate Debtor even after initiation of the CIRP on 25.07.2019 and 17 entries were manipulated to defraud various stakeholders.

The Respondent pointed out that from Forensic Audit Report Finding no. 25 brought out that the tally books of Corporate Debtor were manipulated by Appellant Nos. 1 and 2 through 17 entries amounting to Rs. 8,53,67,678/- between 02.09.2019 to 31.03.2020 has been posted/adjusted in the books of account even after the initiation of CIRP i.e. 25.07.2019. These 17 entries are self-explanatory that the

Appellants has manipulated books of account to defraud the various stake holders.

The Appellants asserts that in one of the Tally, Ex- Accountant made memorandum entries like Plant & Machineries, Depreciation, Projected Sales, Projected purchase, Advance from customers, Sundry Creditors, Miscellaneous Balance written off etc., for the purpose of deriving the projection figures. These memorandum entries do not have any impact on CIRP Process. The Tally with these memorandum entries were mistakenly shared by the Accountant with Resolution Professional/ Forensic Auditors.

In this connection, this Appellate Tribunal is of view that the post CIRP, any adjustment by the Corporate Debtor is not permissible and contention of the Respondent are acceptable. The contention of the Appellants that the Ex-Accountant wrongly gave such details to the Respondent, does not carry any credence and is not acceptable.

(x) The Respondent has also pointed that there has been fund diversion through non-shown of actual **sales worth Rs. 50 Lakhs** and has been pointed out in detailed analysis in the Forensic Auditors Report in various paragraphs which has analyzed various transactions of sales and noted that the cash and cheque payment are also not matched with the buyers Mr. Neeraj Gupta proprietor of Modern Trading Company and based on analysis Forensic Auditors Report concluded diversion of Rs. 50 Lakhs into cash mode by the Directors of the Corporate Debtor amounting to fraud.

The Respondent pointed out that from it has been noted that table of payments made by the Appellants are not reconciled with each other and it appears that the cash and cheque payment are also not matching with the balance maintained by the buyer Mr. Neeraj Gupta, Proprietor of Modern Trading & Mfg Co. It appears that the sale between Corporate Debtor and buyer is over and above Rs. 2.25 Crore and the Corporate Debtor under their books shown total transfer of assets worth Rs. 1.75 Crore in place of actual sales consideration worth Rs. 2.25 Corers by the buyer, it clearly appears that Corporate Debtor diverted the Rs. 50 Lakhs which is evident from the records and said sum diverted into cash mode by the directors of Corporate Debtor and hence recoverable.

It is further pertinent to mention here that the Applicant/ RP has also filed an application under Section 45 of the Code, 2016 for declaring the above said undervalued transaction of the sale of property being C.A. No. 327/2019. However, while adjudication the said application, the Ld Lower Authority has observed/conclusion which is herein for the sake of ready perusal.

*"34. So far as the question of recovery differential amount of Rs. 50,00, 000.00/- is concerned, as per the Forensic Auditor's Report, the amount was diverted that shall be taken into consideration under section 66 of IBC, filed by RP being I.A no. 102/2021 and not under section 45 of the IBC. Hence, we are of the considered view that the applicant failed to convince that this transaction comes under section 45 IBC. Hence the applicant prayer to*



*declared the said transaction u/s 45 IBC is hereby rejected. But it shall be considered in LA. 102/202 1, filed u/s 66 of IBC, 2016.*

*35. Before parting with the order, since it has been brought to our notice that cash transaction of Rs. 50,00,000/- purported to have taken place between R-3 on the one side and R-1 & R-2 on the other side is not reflected in the IT Return of the R-3, and the cash transaction is also prohibited under the law, hence the Registry is directed to send a copy of this order to the concerned officer of the Income Tax Department for information and action in accordance with the provision of law."*

The Appellants stated that the Respondent has failed to appreciate that the Appellants have sold their personal assets as well as factory premises to pay off the debts of the Corporate Debtor and therefore the allegation of misappropriation and diversion of funds does not seem to be convincing.

In backdrop of such detailed analysis by the Respondent and Forensic Audit Report and skeptical response of the Appellants, the contentions of the Respondent are acceptable.

(xi) With regard to Trade payable outstanding since long is also a red flag, the Respondent based on Forensic Audit Report Finding no. 10 stated that the Corporate Debtor wilfully held the creditors for long time and was not interested to make the payment and settle the dues which resulted in the court cases and the insolvency process against the directors.

(xii) The Respondent also submitted that the Appellants has not provided any fixed assets register to the auditor showing the details of the assets, thus the transfer of fixed assets indicates fraudulent trading to defraud the stake holders.

**52.** It is seen CoC approved the resolution plan and accordingly the application for the liquidation of the Corporate Debtor was withdrawn by the Respondent/Resolution Professional. However, since the CoC at a later stage authorised the Respondent to file the application under section 66 of the Code, therefore the Respondent filed the said application after forming her independent opinion. Therefore, it is incorrect submissions made by Appellant that the Resolution Professional want to send the Corporate Debtor into liquidation.

**53.** It is the contention of the Appellants that the Statutory Auditor did not find any fraudulent transactions contrary to the Forensic Audit Report submitted by M/s VMRS & Associates, Chartered Accountants and therefore Forensic Audit Report was not correct. In this regard, we observe that the role of Forensic Audit becomes relevant only when such situation occurs about alleged preferential, undervalued, fraudulent and extortionate type of transaction takes place and on most occasions the process of Forensic Audit is required to be undertaken after the annual financial statement of the Corporate Debtor are duly compiled and audited. In view of this, the contention of the Appellant is not convincing. Moreover, we also take note of the submissions of the Respondent that in the Statutory Auditors did not provide suitable cooperation to the Respondent as Resolution Professional

and further the Statutory Auditors themselves gave qualified Audit Report. In view of this, we are unable to accept the contention of the Appellant that in absence of pointing out fraudulent transactions by the Statutory Auditors, the alleged fraudulent transactions should not have been taken into consideration by the Respondent or by the Adjudicating Authority.

**54.** In view of the above detailed analysis, we do not find any error in the Impugned Order dated 12.11.2021 and do not find any merit in the Appeal.

**55.** After examining the issue of Company Appeal (AT) (Insolvency) No. 1070 of 2021, as discussed in details above, let us examine the issue raised in Company Appeal (AT) (Insolvency) No. 1121 of 2023. The Adjudicating Authority passed the Impugned Order dated 02.08.2023 disapproving the Resolution Plan of the Appellant being ineligible under Section 29 (A) (g) of the Code and also ordered for the Liquidation of the Corporate Debtor.

**56.** This Appellate Tribunal has taken into consideration relevant portion of the Impugned Order dated 02.08.2023 and the relevant paragraphs are reproduced herein under :-

**“IA-5756/2020:** *As can be seen from the order dated 12.11.2021 passed in IA 102/2021 filed under Section 66 of IBC 2016, the Successful Resolution Applicant herein was found responsible for the fraudulent transactions. Para 46 to 50 of the said order reads thus:*

*“46. We further notice that as per the schedule of the amounts identified by the Forensic Audit and submitted by the RP/Applicant in para 7 discussed supra, a total amount of Rs.29,75,73,550/ has been misappropriated or written off or diverted by the respondents with intend to*

defraud the creditors of the corporate debtor or for any fraudulent purpose.

47. Hence, we are of the considered view that the respondents/Suspended Board of Directors of the Corporate Debtor have carried on the business with intent to defraud the creditors of the Corporate Debtor or with fraudulent purpose. Accordingly, we direct the Respondents to make total contributions of Rs.29,75,73,550/- to the assets of the Corporate Debtor within two months from the date of the order.

48. Apart from that, the RP/Applicant is directed to institute a Criminal prosecution against the respondents under Chapter VII (Part II) of IBC under Section 69 and other relevant provisions, in accordance with the provisions of law.

49. Accordingly, the present application is hereby Allowed.

50. The Learned Registrar is directed to send a copy of this order to the IBBI with a request to make necessary amendment in Regulation 35A and 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, in terms of Section 12 of the IBC, as referred in Para 26 of the Order."

As can be seen from the Section 29A(g) of IBC 2016, a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with a person has been a promoter or in the management of control of a Corporate Debtor in which the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by this Adjudicating Authority under this code. The sub-Clause (g) of Section 29A reads thus:

(g) “has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

*Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;”*

Apparently, in the present case, the SRA is the promoter/ex-director of the Corporate Debtor and in terms of the aforementioned order dated 12.11.2021 passed by this Adjudicating Authority, he was found involved in the fraudulent transactions. We find from Section 240A of IBC 2016, that the MSME are exempted from application of certain clauses of Section 29A but the sub-Clause (g) is not one of the such clauses. In the wake, as the instant Resolution Plan having been submitted by an ineligible person, the Resolution Plan is liable to be rejected, since, the SRA is barred under Section 29A(g).

**Accordingly, IA-5756/2020 praying for approval of the Resolution Plan is rejected.**

**In terms of Section 33(1)(b) of IBC, where the resolution plan is rejected by this authority, the**

**Corporate Debtor is required to be liquidated.  
Ordered accordingly.”**

*(Emphasis Supplied)*

**57.** The Adjudicating Authority has power under Section 33(1) of the Code to reject plan and direct liquidation of Corporate Debtor, if any of the requirement of not fulfilled by Resolution Applicant. In the present case the Appellant/Resolution Applicant was declared ineligible under Section 29A(g) of the Code after determination of fraudulent transactions of Rs. 29,75,73,550/- by him along with related parties/ his family members vide order dated 12.11.2021 in I.A. 102/2021.

**58.** It is seen that the Adjudicating Authority has exercised its power in the light of Section 33(1) (a) for Initiation of Liquidation, where the Adjudicating Authority has to consider the maximum period permitted for completion of the CIRP under section 12 i.e., 330 days and in this case, around 1,469 days already been lapsed (25.07.2019 CIRP to 02.08.2023 date of liquation order).

**59.** Coming to the issues regarding ineligibility under Section 29 (A) (g) of the Code, we have already noted the detailed analysis done by the Adjudicating Authority in quoted paragraphs.

**60.** In this connection, we will like to note Section 29(A)(c) and Section 29(A)(g) of the Code which read as under :-

**“29A. Persons not eligible to be resolution applicant.  
-(c) [at the time of submission of the resolution plan has an  
account,] or an account of a corporate debtor under the  
management or control of such person or of whom such**

person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non performing asset accounts before submission of resolution plan:

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

[Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;]”

*(Emphasis Supplied)*

**61.** From above, it is evident that once the Resolution Applicant become ineligible under Section 29 (A) (g) of the Code, the Adjudicating Authority is bound to reject the Resolution Plan and consequently order for Liquidation of the Corporate Debtor.

**62.** We note that 29A(c) of the Code is provision which and has been added with clear intention to ensure that people who were at the helm of the affairs of the Corporate Debtor, do not come back in some other guise to get back the management/ control/ ownership of the Corporate Debtor without clearing its outstanding debts. The Code defined such Promoters etc. of the Corporate Debtor i.e., in clauses (c) of S. 29A of the Code. If a person has been a promoter, or in the management, or control of the Corporate Debtor in which a preferential, undervalued, fraudulent and extortionate transactions have taken place, and in respect of which an order has been made by the Adjudicating Authority under the Code, such person become ineligible to submit any resolution plan under S. 29A(g) of the Code and such eligibility cannot be restored back by paying off the debts of the corporate debtor. Therefore, it becomes clear that persons who are not covered under clause 29 A(g), will remain eligible to submit resolution plans under clause (c) of Section 29A, else will become ineligible as in the present Appeal. Therefore, we do not find any thing wrong on this point in findings.

**63.** We do not find any error in the Impugned Order dated 02.08.2023 in CA (AT) (Insolvency) No. 1121/2023.

**64.** In fine, both the Appeals i.e., Company Appeal (AT) (Insolvency) No. 1070 of 2021 and Company Appeal (AT) (Insolvency) No. 1121 of 2023



challenging the Impugned Orders dated 12.11.2021 and 02.08.2023 are found to be devoid of any merit and stand dismissed. No Costs. Interlocutory Application(s), if any, are Closed.

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Mr. Naresh Salecha]  
Member (Technical)**

*Simran*