NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1855 of 2025

[Arising out of the Impugned Order dated 06.10.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench in I.A. No. 278/2023 in C.P. (IB) No. 83/NCLT/AHM/2020]

In the matter of:

Mr. Rakshit Dhirajlal Doshi
Suspended Director M/s Doshion Water Umbrella
(Cuddalore) Private Limited
27, Ramila Baug, Basant Bahar– III,
Opp. Homeopathic Medical College,
Bopal – Ghuma Road,
Ahmedabad – 380058

…. Appellant No.1

MR. ASHIT DOSHI
Suspended Director of M/s. Doshion Water Umbrella
(Cuddalore) Private Limited
27, Ramila Baug, Basant Bahar – III,
Opp. Homeopathic Medical College,
Bopal – Ghuma Road,
Ahmedabad – 380058

…. Appellant No.2

Versus

MR. CHIRAG SHAH
Liquidator of M/s. Doshion Water Umbrella
(Cuddalore) Pvt Ltd.
Having office at:
208, Ratnaraj Spring, Opp. HDFC Bank House,
Beside Navnirman Co-Op Bank,
Navrangpura, Ahmedabad – 380009

…. Respondent

Present:

For Appellant : Ms. Vaishnavi Vishwanathan, Advocate.

For Respondent : Ms. Anjali Sharma, Mr. Mandeep Singh Vainaik, Ms. Thanguin Kim and Mr. Gaikhuanlung, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 06.10.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-I) in I.A. No. 278/2023 in C.P. (IB) No. 83 of 2020. By the impugned order, the Adjudicating Authority has allowed I.A. No. 278 of 2023 filed by the Liquidator of the Corporate Debtor-M/s Doshion Water Umbrella Pvt. Ltd. holding certain transactions conducted by the Appellants No.1 and 2 as transactions falling within the ambit of Section 66 of IBC and directing refund of the amount withdrawn to the account of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been jointly preferred by the Appellants.

2. Coming to the factual matrix of the case, on the initiation of CIRP of the Corporate Debtor- Doshion Water Umbrella Pvt. Ltd. on 01.07.2022, the Resolution Professional (**'RP'** in short) appointed M/s Pipara & Company as the Transaction Auditor which submitted the Transaction Audit Report (**'TAR'** in short) on 01.12.2022. The RP sought clarifications from the suspended management on 26.12.2022 on the observations of fraudulent trading/wrongful transactions as reported by the Transaction Auditor in the TAR with respect to two sets of transactions, one relating to managerial remuneration paid to Directors amounting Rs. 23.64 lakhs and the other of Rs. 2.78 lakhs. The suspended management submitted their reply and on

consideration of the said reply, the RP filed a Section 66 application vide IA No. 287 of 2023 impugning the two transactions carried out by the suspended management of the Corporate Debtor. The RP was thereafter substituted by the present Respondent-Liquidator on account of the Corporate Debtor being ordered into liquidation on 13.09.2023. The Appellants-Suspended Management of the Corporate Debtor in their reply to the IA No. 287 of 2023 before the Adjudicating Authority contended that the managerial remuneration drawn by the Directors has been wrongly classified as fraudulent transaction/wrongful trading and asserted that there was no intent to defraud the creditors as required by Section 66 of the IBC. The Adjudicating Authority in the impugned order however allowed IA No. 287 of 2023 and held that the withdrawal made by the Appellants under the guise of managerial remuneration satisfied the conditions stipulated under Section 66 of the IBC and directed refund of Rs 26.42 lakhs to the CIRP bank account of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellants.

3. Making submissions on behalf of the Appellants, Ms. Vaishnavi Vishwanathan submitted that the suspended management had not been drawing salary from April 2019. When the claims made for remuneration of managerial services for the period commencing April 2020 to June 2022 had been admitted by the RP, there is no rationale for characterising the withdrawal of remuneration for managerial services claimed by the same Directors for the preceding period in 2019-2020 as fraudulent particularly when it is clear from records that the suspended management had not been

drawing salary since April 2019. When the claims made by the Appellants towards their remuneration was admitted by the RP for FY 2020-2021 it does not stand to reason as to how the payment of remuneration for FY 2019-2020 could be denied to the Appellants. It was also emphatically asserted that in the case of the first transaction, the remuneration was drawn by the suspended management to the tune of Rs. 21.64 lakhs on 31.03.2021 and Rs.2 lakhs on 30.06.2022 which were dates prior to the commencement of CIRP as the Corporate Debtor had been admitted into CIRP on 01.07.2022. Moreover, the payment of the remuneration amount towards managerial services rendered by the Appellants was clearly recorded in the books of accounts of the Corporate Debtor. Further, there were no other employees working in the company who were to receive remuneration and there were no other admitted remuneration dues in respect of similarly placed employees, workmen or like operational creditors. Hence payment of remuneration to the Appellants cannot be said to have been given to them in preference over payments which were required to be made to other similarly placed creditors. Thus, the payment of their dues could not be viewed to have been done with the intent of defrauding other creditors. Submission was also pressed that payment of managerial remuneration was made to keep the Corporate Debtor run as a going concern and hence it was very much within the scope of ordinary course of business. Reliance was also placed on the judgment of the Hon'ble Apex Court in ***Anuj Jain vs. Axis Bank Ltd. & Ors. (2020) 8 SCC 401*** to claim that specific material fact is required to be pleaded in a Section 66 application. In the present case, the Respondent failed to prove that the

transaction fell under Section 66 of IBC. It was further submitted that the Transaction Auditor in his report failed to furnish any specific and effective finding to show these transactions to be fraudulent at a time when Section 66 of IBC clearly stipulates that intention to defraud has to be explicitly and expressly demonstrable in such cases. As regards the other set of transaction involving a sum of Rs.2.78 lakhs, during the oral submissions, the Appellants mentioned that they have already dropped this claim.

4. Refuting the contentions of the Appellants, Ms. Anjali Sharma, Ld. Counsel for the Respondent submitted that the suspended management withdrew amounts under the head of remuneration in a wrongful manner which clearly attracted Section 66 of the IBC and hence the Adjudicating Authority had rightly directed the restitution of the amount wrongfully drawn by the suspended management. It was further contended that the managerial remuneration was not only paid over other liabilities but the said amount was drawn immediately on the receipt of funds from the sister concern of the Corporate Debtor-M/s Penta Aqua Pvt. Ltd. which shows the malafide intent to defraud the other creditors. Moreover, an amount of Rs. 2.78 lakh was appropriated on 02.07.2022 which appropriation was clearly after the CIRP initiation date thus rendering the action of withdrawal inadmissible due to moratorium provisions having come into play. It was emphatically asserted that the managerial remuneration amount withdrawn was in the nature of self-payments made by the suspended management at a time when they were clearly aware that the Corporate Debtor was facing financial stress and many of its dues including dues of statutory nature still remained unpaid. Thus, at

a time when the Corporate Debtor was financially oppressed, these selective payments cannot be regarded as payments made in ordinary course of business, hence, both in terms of the timing of the withdrawal and the source of receipts, the transactions were wrongful transactions. It was also canvassed that the admission of a claim by the RP for managerial remuneration for a later period of FY 2020-2021 cannot justify the legality of self-payments made by the suspended management towards managerial remuneration for the earlier period of FY 2019-2020. It was also contended that for purposes of establishing Section 66, it is not required to substantiate direct admission of fraud and the same can be easily established by the circumstantial grounds. The present was also a case where the payment was made in priority to the insiders at the expense of the other creditors including statutory dues. Being insiders, such self-payments warranted strict justification and compliance to accounting discipline in the context of statutory dues since insolvency was ongoing. These transactions were thus wrongful transactions not made in the ordinary course of business with intent to defraud writ large which has been rightly noted by the Adjudicating Authority by way of a well-reasoned order.

5. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

6. The short point for our consideration is whether the payment drawn by the suspended management towards their managerial remuneration for FY 2019-2020 can be construed as a wrongful trading/fraudulent transaction under Section 66 of IBC and, if so, whether the said amount requires to be

returned to the Corporate Debtor by the suspended management-Appellants. However, both these issues being closely inter-dependent, we would deal with them conjointly.

7. It is the case of the Appellants that the managerial remuneration claimed for the period April 2020 to June 2022 had been admitted by the RP as a legitimate claim. By admission of these claims, the RP had therefore admitted that the Appellants had rendered professional services and were entitled to receive payment on this count. Having admitted the Appellant's right to be paid for the period April 2020 to June 2022, it was contended that the Respondent is estopped from challenging the legality of the payments made for the same purpose during FY 2019-2020. Application of Section 66 selectively to managerial service remuneration for FY 2019-2020 while holding similar transactions for a subsequent period to be legal displays manifest arbitrariness on the part of the Respondent. Professionally, the Appellants were water-treatment technology experts and the remuneration claimed by them was for rendering of their technical services made in the ordinary course of business and could not have been treated as preferential transaction either as there were no other workmen or like operational creditors whose dues were outstanding.

8. Per contra, it is the contention of the Respondent that the managerial remuneration amount was in the nature of self-payment made by the suspended management after sourcing the same from a sister concern of the Corporate Debtor at a time when the Appellants were clearly aware that the Corporate Debtor was facing financial stress and many of its dues including

dues of statutory nature still remained unpaid. The present was a case where the payment was made in priority to the insiders at the expense of the other creditors. These selective payments therefore could not be looked upon as payments made in ordinary course of business. Being insiders, such self-payments warranted strict justification and compliance to accounting discipline in the context of statutory dues since insolvency was ongoing. Moreover, merely on account of admission of remuneration claims of the suspended management by the RP for some later period cannot justify the legality of self-payments made for an earlier period since these transactions have to be weighed differently and were not strictly comparable. It was vehemently contended that the manner in which the suspended management had withdrawn the remuneration amount in question immediately on receipt from its sister concern was sufficient to show that the intent of the Appellant was to defraud the other creditors thereby attracting Section 66 of IBC.

9. Coming to our analysis and findings, it is well settled that to establish a case under Section 66 of the IBC for fraudulent or wrongful trading, a high burden of proof is required. The degree of proof and evidence required should be of unimpeachable nature and beyond reasonable doubt. Mere suspicion or presumption of fraud would not suffice to attract the provisions of Section 66. Having outlined the above test, we now proceed to examine whether the Respondent had furnished adequate, cogent and robust material proof of malafide intent on the part of the Appellants to defraud the creditors which travelled beyond the realm and spectre of suspected wrongdoing.

10. When we look at the material on record, we find that the IBBI Claims Portal of the Corporate Debtor reflected the total claims received from the Appellants as admitted by the RP towards their remuneration claim of Rs. 54.36 lakhs which is placed at page 312 of the Appeal Paper Book ("**APB**" in short). This table does not show admission of any other employee-related claims. Even the TAR placed at page 131 of APB shows that the remuneration claim received from the two Appellants as Rs. 27.18 lakhs each aggregating to Rs. 54.36 lakhs. The same amount is also reflected in the claim forms filed by the two Appellants at pages 313 and 325 of the APB. It is therefore clear from multiple documentations that managerial services had been performed by the Appellants and their claims on this count stood admitted by the RP for the period FY 2020-2021. Further when we look at the supporting ledger entries placed at pages 315-317 and 327-329 of the APB, it clearly shows that salaries were due to the Appellants and payments were made accordingly for the period FY 2019-2020. The underlying ledger entries unequivocally demonstrates the actual amount withdrawn towards managerial remuneration. It is equally pertinent to note that the Respondent has nowhere denied that the Appellants had not rendered managerial services since April 2019. There is no allegation made by the Respondent of falsification of records with regard to these liabilities towards managerial services remuneration for FY 2019-2020. In such circumstances, in the absence of any cogent grounds to show that the managerial services remunerations dues had not arisen, recovery of such remunerations for the period of FY 2019-2020 appears unjustified. The withdrawal of remuneration for the period 2019-2020 cannot

be considered to be fraudulent or wrongful trading under the provisions of Section 66 of the IBC at a time when similar remuneration has been admitted by the RP for a subsequent period of FY 2020-2021. When the managerial services were rendered in the ordinary course of business by the suspended management during FY 2019-2020 as in FY 2020-2021, Section 66 cannot be said to visit the managerial remuneration transactions during FY 2019-2020 in the absence of strict proof to demonstrate intent to defraud. Mere possibility or presumption of fraud without conclusive evidence of intent to defraud cannot attract Section 66 of the IBC as this provision cannot be invoked except on clear and cogent evidence of intent to defraud creditors.

11. Another reason attributed by the Respondent to hold that the transactions were fraudulent in nature was the proximity of the date of withdrawal of the managerial remuneration cheques to the insolvency commencement date. The RP had held that the amounts were withdrawn on 30.06.2022 while the CIRP admission orders was issued on 01.07.2022. When we look at the actual bank statements placed at pages 315-317 and 327-329 of the APB, it shows that the amounts were actually withdrawn on 31.03.2021 which withdrawals had therefore effectively occurred more than 15 months prior to the admission of Section 7 petition. Furthermore, when the technical services were rendered legitimately by the erstwhile management to keep the Corporate Debtor running as a going concern, the tenability of the same transaction cannot be doubted or viewed suspiciously. Moreover, these services were rendered two years before the commencement of CIRP. Hence the claim of the RP of these transactions being preferential

and wrongful keeping in mind the proximity of the cheque withdrawal date to the insolvency commencement date is entirely misplaced and factually incorrect. The inference of purported last-minute siphoning away of funds at the expense of other creditors is wholly unsupported by facts on records.

12. Thus, when payments were made to the Appellants for legitimate services rendered by them in the ordinary course of business with full disclosure of accounts of the Corporate Debtor, the same cannot be said to fall within the purview of Section 66 of IBC as the essential element to attract Section 66 is to establish by way of cogent evidence the intent to defraud which remains unfulfilled. Merely because the account of the Corporate Debtor had been classified as NPA, this does not suspend or extinguish the responsibility of management to continue its effort to run the business as a going concern so as to maximize the value of the assets. The scrupulous and meticulous maintenance of accounts by the Corporate Debtor with respect to managerial remuneration which corresponded with the underlying ledger entries unequivocally demonstrates the integrity of the amount claimed. The impugned transaction was in effect a disbursement of long-standing dues in respect of managerial services discharged in the ordinary course of business thereby negating any suggestion of fraudulent conduct. Thus, the basis on which the transaction has been characterised as fraudulent does not have legs to stand on. In the absence of specific and cogent evidence linking the withdrawal of managerial services remuneration amount with an intent to defraud the creditors, we are of the considered view that Section 66 cannot be said to visit the transactions amounting Rs 21.64 lakhs of 31.03.2021. Be

that as it may, in respect of withdrawal of Rs 2 lakhs made by the suspended management for their remuneration for the period FY 2019-2020 for which cheque was drawn on 30.06.2022 which cheque was admittedly cleared after CIRP admission order, we cannot rule out the factum that the Appellant was having knowledge that insolvency of the Corporate Debtor was imminent or was inevitable. We are therefore not amenable to allowing the withdrawal of the said cheque amount of Rs. 2 lakhs and are of the considered view that this sum deserves to be refunded to the account of the Corporate Debtor.

13. On the allegation that the suspended management had utilised a receipt from the sister concern of a Corporate Debtor to make the withdrawals and therefore the transactions should be treated as fraudulent trading also lacks substance. Routing of revenue generation of professional services through a sister concern of the Corporate Debtor is standard business practice. This in itself cannot be viewed as an attempt to siphon off funds from the sister concern and for any such transaction to be stamped with fraudulent intent must be accompanied with specific pleading and proof. Insofar as the project related advisory services for which Rs. 2.78 lakh was recovered by the Appellants after the CIRP initiation date, the Appellant have themselves admitted that this amount was not admissible in view of moratorium and hence we need not dwell on this aspect any further.

14. Coming to another argument raised by the Respondent that since the Appellant did not deposit statutory dues such as TDS at the time when the account of the Corporate Debtor has been classified as NPA, hence the payments for managerial services were preferential in nature is found to be

equally misconceived. The inability of the Corporate Debtor company to meet its tax obligations during a period of financial distress when placed in juxtaposition to the payment of remuneration for managerial services form two separate buckets or categories of payments. Hence not meeting tax obligations cannot form a ground to demonstrate any dishonest design on the part of the suspended management to defraud creditors or to carry on business with an intent to deceive. Any such conclusion would be premised on presumption and assumption which is not permissible in coming to a conclusion for any transaction to be held as fraudulent transaction. The threshold for determining fraudulent trading under Section 66 is much more rigorous and requires proof of deliberate intent to cause wrongful loss to creditors which aspect has not been established. There is lack of sufficient material to indicate intent to defraud other like creditors or *malafide* conduct on the part of the Appellant.

15. We also find that the Adjudicating Authority at para 8.12 of the impugned order has held that the withdrawal of the managerial services remuneration also had the character of preferential transaction. What has been missed out is that the scope of inquiry differs from preferential transactions to fraudulent transactions since the consequences in relation to these two distinct sets of transactions vary from each other. Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Section 43 which deals with preferential transactions and Section 66 which centres around intent to defraud by way of fraudulent trading or wrongful trading. The rather casual

manner in which the term preferential transaction and fraudulent transaction has been interchangeably used does not meet our countenance as in the scheme of IBC both these terms have been coined with distinct connotation and needs to established separately.

16. For the reasons discussed above, we set aside the impugned order holding the impugned withdrawals by the Appellants as vitiated by fraud in terms of Section 66 of IBC. However, we direct that out of total of Rs. 26.42 lakhs withdrawal made by the Appellants, Rs. 2 lakhs which was withdrawn by the Appellant on 30.06.2022 may be restored to the account of the Corporate Debtor besides Rs. 2.78 lakhs which the Appellants have on their volition agreed to restore. The Appeal is disposed of with the above directions. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 03.03.2026

Harleen/Abdul