



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
26-02-2026 AT 12:40 P.M.**

**CP(IB) No. 277/7/HDB/2023  
AND  
IA (IBC) 26/2025 in CP(IB) No. 277/7/HDB/2023  
u/s. 7 of IBC, 2016**

**IN THE MATTER OF:**

A P S F C JM Financial Asset  
Reconstruction Company Limited  
**AND**  
KOBO Biotech Limited

**...Financial Creditor**

**...Corporate Debtor**

**C O R A M:-**

**SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)  
SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA (IBC) 26/2025**

Present: Mr. M Rama Rao, Learned Counsel for the Applicant.  
Mr. Varun Ambati, Learned Counsel for Respondents No.1 to 5.

**Orders pronounced, recorded vide separate sheets.**

**In the result, this application is dismissed.**

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH, COURT-I**

**I.A (IBC) No. 26 of 2025**

**IN**

**C.P (IB) No.277/7/HDB/2023**

**[Under Section 66 of Insolvency and Bankruptcy Code, 2016 r/w Rule  
11 of NCLT Rules]**

**IN THE MATTER OF M/s. JM FINANCIAL ASSET RECONSTRUCTION  
COMPANY LTD. v. KOBO BIOTECH LTD.**

**Between:**

**Kobo Biotech Limited**

Represented by its RP Ms Namrata Amol Randeri,  
R/o. 215, Laxmi Plaza, Laxmi Indl Est.,  
New Link Rd, Andheri (W),  
Mumbai - 400053

.....Applicant

AND

**1. Mr. Urja Vijaykumar Shah,**

Member of Susp Board 1209/C, Upvan Tower,  
Opp Juggilal Poddar School, Govind Nagar,  
Malad East, Mumbai 400097.

.....Respondent No. 1

**2. Mr. Ajit Annu Kamath,**

Member of Susp Board Flat No.C-1701,  
Building No 6,Lake Lucerne,  
Sub Plot 4 Lake Homes,  
Nr Gopal Sharma School,  
Powai, Mumbai 400076.

.....Respondent No. 2



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3. **Mr. Rajendrakumar Padmanabhan Kaimal,**

Member of Susp Board C-120111202,  
Orchid Enclave, Nahar Amrit Shakti,  
Chandivali Farm Road,  
Nr D Mart Store, Mumbai 400072.

.....Respondent No. 3

4. **Mr Sunil Mansukhlal Pitroda,**

Member of Susp Board 8/503,  
Mukta Mahek, 90 Ft Road,  
Nr Aditi Hospital Thakur Complex,  
Kadivali East, Mumbai 400101.

.....Respondent No. 4

5. **Neelam Kumar Murdia,**

CFO of the Corporate Debtor,  
as per ROC Records,  
NK. Murdia@archpharmalabs. Com

.....Respondent No. 5

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**Coram:**

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

**Counsels Present**

For Applicant : Ms. Manoranjani, Advocate

For Respondents : Mr. Saketh Ram, Advocate



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1. This Application is filed by the Resolution Professional of M/s. Kobo Biotech Limited against the Suspended Board of Directors seeking the following reliefs:
  - i) Direct the Respondents to remit Rs. 133.48 Crores that has been wrongfully appropriated or fraudulently transferred as detailed in the Application, to the assets of the Corporate Debtor, for the benefit of the creditors being an avoidable transaction covered u/s 66(1) of the Code.
  - ii) Direct the Respondents to remit Rs. 109.40 Crores creating negative networth as detailed in the application being an avoidable transaction covered u/s 66(2) of the Code.

**Application**

2. M/s. Kobo Biotech Limited, Corporate Debtor, was admitted into Corporate Insolvency Resolution Process (CIRP) vide order dated 13.08.2024 passed in CP (IB) No. 277/7/HDB/2023. The Applicant was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional.
3. It is submitted that the Transaction Auditor, Ms. Nitya Ramesh, after examination of the books and records, submitted a report dated 14.12.2024, highlighting transactions indicative of fraudulent and wrongful trading under Section 66 of the Code. The Financial Statements for FY 2021–22 disclose substantial write-offs and write-backs under various heads as detail below and no adequate explanations were given:



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<b>SNo</b>	<b>Particulars</b>	<b>Amt in Crores</b>	
1.	Advance Written off		(10.86)
2.	Assets Written off	10.64	
3.	CWIP – Written Off	2.25	
4.	Investment Written Off	12.19	
5.	Stock Written Off	35.24	
6.	Bad Debts Written Off	73.16	
7.	Interest Written Back		(78.91)
8.	Loan Written Back		(36.82)
9.	Employees Cost Written Back		(6.34)
	<b>Total</b>	<b>133.48</b>	<b>(132.93)</b>

4. It is further submitted that the Company's continuous financial distress since FY 203-14 while the net worth of the Company became negative and continued to erode from FY 2016-17 onwards. The continued operation of the Company under such circumstances resulted in further depletion of assets and accumulation of losses to the tune of Rs. 109.40 Crores. As a result, this is a fit case for filing under Section 66(2) of the IBC.
5. It is submitted that the Applicant sought clarification and supporting records from the Respondents, however, the Respondents stated that accounts were maintained in SAP until 2022 and later shifted to Tally, and that records could not be provided without renewal of SAP subscription. No concrete steps were taken by the Respondents to provide complete financial data or explanations.

**Counter by Respondent Nos. 1 to 5**

6. The Respondent Nos. 2 to 5 filed an adoption memo adopting the counter filed by Respondent No. 1.
7. It is submitted that Kobo Biotech Limited (formerly Avon Lifesciences Ltd.) operates an API manufacturing facility at Solapur, Maharashtra, with global accreditations including USFDA approvals in which Mr.



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Manoj Tejraj Jain (DIN 00034727) joined on 31.01.2009 and was Executive Director in charge of operations.

8. It is submitted that in the year 2016 a drug peddler from Nigerai was arrested by police who named one of the employees of the CD working at Solapur plant who used to steal the L-Ephedrine and D-Ephedrine in small quantities and supplied to the drug peddler. Upon seizure of the stock, Thane Police and made sensationalized the case projecting a Rs. 2000 crore street value, vastly inflating the true worth of less than Rs. 4 crore causing severe reputational damage.
9. It is submitted that the suspended management scrupulously followed applicable Indian Accounting Standards (Ind AS 36, Ind AS 2, Ind AS 109) while effecting write-offs of assets, CWIP, investments, stock and book debts. The write-offs pertained to auctioned assets, irrecoverable debtors, obsolete or expired stock, impaired investments and abandoned projects, and were undertaken to present a true and fair view of the financial position.
10. It is submitted that the write-offs were carried out in consultation and coordination with a major Financial Creditors, JMFARC, and consciously re-evaluated the Financial Statements and undertook the write-off of redundant & non-recoverable assets with bonafide intention. The said action was an integral part of viable restructuring plan and revive the CD.
11. It is submitted that the alleged write-off of Rs. 10.64 Crores pertains to assets of the Sadashiv Peth plant in Telangana, which were sealed and auctioned by the State Tax Authorities due to tax dues, with a Sale Certificate issued on 25.02.2020 in favour of BRS Refineries Pvt. Ltd. Although the Corporate Debtor challenged the auction before the Hon'ble



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Telangana High Court and stayed further proceedings, it could not regain possession of the movable assets for over two years 31.03.2022. Accordingly, the assets were written off due to impairment and continued third-party usage, to present a true and fair view of the financial statements.

12. It is submitted that the alleged write-off of CWIP amounting to Rs. 2.25 Crores primarily relates to advances paid to contractors for a project undertaken long ago. Owing to prolonged delay, business downturn, and no reasonable prospect of completing the project or recovering the advances. Accordingly, after due consideration and in consultation with the financial creditor, the suspended management wrote off the CWIP, as the partially installed assets had lost value and the project had no viable future.
13. It is submitted that the alleged write-off of investment amounting to Rs. 12.19 Crores pertains to investment in Regal Pharma Pvt. Ltd., Singapore, incorporated to market products in South East Asia. Due to prolonged business downturn and continuous losses, the subsidiary's operations ceased and the value of shares became negligible. Consequently, the investment was written off in consultation with the financial creditor to reflect its impaired value in the financial statements.
14. It is submitted that the alleged write-off of stock amounting to Rs. 35.24 Crores comprises Rs. 1.88 Crores relating to Sadashiv Peth stock, which was auctioned by the Sales Tax Authorities, and Rs. 33.32 Crores relating to Logical Port stock, which became unusable due to non-payment of import duty. Internal inspection in 2021 confirmed that the stock had no realizable value. Accordingly, the write-off was effected as a prudent accounting measure to present a true and fair view of the Corporate Debtor's financial position.



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15. It is submitted that, in view of the severe financial distress of the Corporate Debtor, incurring additional expenditure for third-party destruction of obsolete stock was impractical. Accordingly, upon approval of the Board, the stock was written off and internally disposed of at the Solapur facility in 2022, following basic environmental and safety norms, including incineration. As the inventory had no realizable value or revival prospects, retaining it in the books would have misrepresented the financial position. The write-off was a bona fide accounting measure undertaken in good faith and in compliance with applicable standards, and does not attract Section 66 of the IBC.
16. It is submitted that the alleged write-off of bad debts amounting to Rs. 73.16 Crores pertains to sundry debtors outstanding since FY 2011-12, prior to the tenure of the present Respondent Directors/KMPs. Following the Thane Police raid and arrest of Mr. Manoj Jain, the erstwhile team exited without proper handover, leaving no records or debtor details. The suspended management made reasonable efforts to trace and recover the dues; however, the amounts remained unrecoverable for the reasons recorded against each party. The write-off was effected in the ordinary course of business after due diligence, to reflect the true and fair financial position of the Corporate Debtor.
17. It is submitted that the allegation of erosion of net worth is based on a mere arithmetic comparison between the opening net worth of Rs. 18.58 Crores and Rs. 127.98 Crores, resulting in a purported loss of Rs. 109.40 Crores. The major components contributing to this figure are financial costs/interest of Rs. 68.79 Crores, depreciation of Rs. 39.57 Crores, and employee expenses of Rs. 11.75 Crores. It is further submitted that these expenditures are legitimate, duly supported by records, and arise from statutory and accounting requirements, including interest obligations,



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depreciation as per applicable standards, and salary payments. The same have been audited and certified by the statutory auditor, and therefore cannot be construed as wrongful or fraudulent transactions.

18. It is submitted that the Auditor has, without any basis, questioned the booking of financial costs and depreciation, which are fundamental and statutorily mandated accounting entries. Such observations are unwarranted and contrary to universally accepted accounting principles. It is further submitted that the Resolution Professional has mechanically relied upon the said audit report to file the present Application under Section 66 of the Code. A bare perusal of the report reveals that while the audit scope is stated to be from 01.04.2022 to 14.08.2024, the findings pertain to the period 2016–17 to 31.03.2022, without any proper audit conducted for that period, thereby rendering the report unreliable.
19. The impugned write-offs were mere accounting adjustments made in compliance with applicable standards and did not involve any diversion of funds or undue benefit to the suspended management. No wrongful loss was caused to any creditor, including JM Financial. Hence, the allegations under Section 66(1) are baseless.
20. The insolvency proceedings were initiated on 21.11.2023, long after the alleged transactions. The write-offs were undertaken prior to CIRP and without knowledge of impending insolvency. There is no material to establish fraudulent intent or reckless conduct, and the decisions were taken prudently in consultation with financial creditors.

**Rejoinder**

21. It is submitted that Respondents' reliance on Ind AS 2, 36 & 109 compliance is denied and the Respondents did not produce any contemporaneous document such as impairment reports, valuation



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reports, board resolutions, auditor observations or recovery efforts have been produced despite specific requests. The magnitude and timing of write-offs amounting to Rs. 133.48 crores across fixed assets, inventory, capital work-in-progress, investments, and receivables raise serious concerns as they were affected immediately prior to the commencement of the CIRP.

22. It is submitted that SBOD had written off Rs. 10.64 crore assets at Sadashiv Peth Plant, claiming State tax authorities sealed it for unpaid dues and a court order stopped the auction. However, in Avon Lifesciences Ltd vs. State of Telangana, no interim stay was granted and the petition was disposed of only because the 07.06.2018 auction did not occur, leaving issues open and also court-stay claim is unsubstantiated. Further, no material State tax liability appears in statutory dues reported for FY 2015-16 to 2018-19:

Particulars	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
ESIC	31,418	31,418	31,418	31,418
Provident Fund	33,56,721	66,86,009	95,66,654	1,19,96,071
Professional Tax	3,05,290	6,26,065	9,09,165	11,44,015
TDS	9,08,500	13,81,040	16,53,791	18,89,153
Service Tax	4,12,720	7,41,487	7,64,240	28,11,063
Excise Duty	14,97,195	14,97,195	14,97,195	14,97,195
Income Tax	3,27,54,530	3,27,54,530	3,79,97,674	3,27,54,530

23. It is submitted that from the above dues are mainly central taxes, with no material liability shown for Telangana State taxes in Other Current/Financial Liabilities. SBOD vaguely cites the Deferred Sales Tax Loan and if the confiscated movable assets were disposed of for the recovery of this loan, it would be reasonable to expect a corresponding reduction in the loan balance. However, no such adjustment is evident from the financial statements:



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(Rs. in Crores)

Particulars	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23
Deferred Sales Tax Loan	15.60	15.60	14.56	14.56	13.69
Note referred in the Balance Sheet	Note 19	Note 19	Note 19	Note 16	Note 16

24. The explanation is inconsistent with inconsistent with statutory filings, lacks transparency, and seems to be an afterthought to justify the sudden write-off, potentially causing loss to the Corporate Debtor and creditors.
25. The CWIP balance of Rs. 2.25 crore remained unchanged from FY 2014-15 to FY 2020-21, showing no movement or impairment over eight years. SBOD's explanation fails to justify why the write-off was not recognised earlier (particularly in FY 2017-18 or 2018-19), especially when liquidation proceedings were initiated by Ashika Credit Capital Ltd. in FY 2017-18, leading to the Hon'ble High Court appointing a Provisional Liquidator on 24 April 2018. Further, SBOD's explanation fails to justify why the write-off was not recognised earlier (particularly in FY 2017-18 or 2018-19), especially when liquidation proceedings were initiated by Ashika Credit Capital Ltd. in FY 2017-18, leading to the Hon'ble High Court appointing a Provisional Liquidator on 24 April 2018. Though management was aware of severe financial distress and impending winding-up, yet failure to impair the CWIP earlier, indicates gross negligence or deliberate deferral. The impairment recorded only in FY 2021-22, conveniently outside the IBC look-back period under Section 46 (2 years for related-party and 1 year for non-related-party transactions prior to insolvency commencement on 13.08.2024) appears calculated to evade scrutiny.



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26. It is submitted that the SBOD's explanation does not justify the timing of the write-off Rs. 12.19 crore investment in Regal Pharma PTE Ltd. (made in FY 2010-11 per resolution dated 15.05.2010 for overseas marketing). The investment value remained static at Rs. 12.19 crore from FY 2012-13 to FY 2020-21, despite Regal Pharma having ceased operations many years earlier and being non-operational for an extended period with evident and long-standing. No rationale was provided for deferring impairment recognition for nearly a decade, absent any revival or recovery. As a wholly owned subsidiary, Regal Pharma qualifies as a related party under IBC. The write-off in FY 2021-22 appears deliberately timed to evade the look-back period under Section 46 of the Code.
27. It is submitted that the SBoD's explanation for the Rs. 35.24 crore stock write-off in FY 2021-22 (particularly the Rs. 33.32 crore Logical Port stock) lacks documentary support and numerical consistency. The claim of write-off due to non-payment of import duty and old/unserviceable stock is unsubstantiated, however, the Financial data reveals that:
- i) the last imports occurred in FY 2014-15, with no imports in or after FY 2015-16.
  - ii) The closing stock of imported goods remained constant at Rs. 17.52 crore from FY 2014-15 onwards, with no further consumption or movement.
  - iii) Even under the most liberal assumption that the entire closing stock of Rs.9.22 crore as at FY 2010-11 was of imported origin, the maximum possible value of imported stock held by the company would not exceed Rs. 17.52 crore.



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iv) This directly contradicts the SBoD's claim of Rs. 33.32 crore worth of imported goods being available for write-off.

28. The relevant details from the audited financial statements are summarized below:

Value of Imports and Consumption		(Rs. in Crores)				
Particulars	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Opening Stock*	9.29	3.07	2.06	5.96	17.52	17.52
Value of Imports	12.49	16.14	9.14	11.68	-	-
Less:						
Consumed	18.71	17.15	5.24	0.12	-	-
Closing Stock	3.07	2.06	5.96	17.52	17.52	17.52

*\*As per audited books. No consumption or import activity from FY 2015-16 onwards.*

Calculation of Opening Stock of Imported Goods:

- Opening stock as on 01.04.2010 Rs. 26.44 crores  
(Imported and Indigenous)
- Add: Purchases Rs. 89.17 crores
- Less: Closing Stock Rs. 9.22 crores
- Hence, Consumed Rs. 106.39 crores

29. It is submitted that out of total consumption of Rs. 106.39 crore, Rs. 90.92 crore (85.46%) comprised indigenous materials and Rs. 15.46 crore (14.54%) imported materials. The closing stock as on 31.03.2010 stood at Rs. 9.22 crore, which the forensic auditor has treated entirely as imported material for calculation purposes.

30. It is contended that The claimed write-off of Logical Port stock (Rs. 33.32 crore) is nearly double the maximum possible value of imported closing stock (Rs. 17.52 crore), indicating the write-off value exceeds the actual available imported stock by a significant margin. Under Section 69 of the Customs Act, 1962 permits re-export of warehoused goods without payment of duty and SBOD has provided no evidence that this provision was considered. Further, operations were ceased in FY 2016-17 and If the stock lacked realizable value, write-off should have occurred earlier, however, the delayed write-off in FY 2021-22, falling just outside the Section 46 IBC look-back period, is questionable and suggests an intent to avoid scrutiny.



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31. It is submitted that the Rs. 35.24 crore write-off, especially the unverifiable Rs. 33.32 crore Logical Port stock, lacks proper documentary/financial support and appears retrospectively justified to evade IBC avoidance provisions. SBOD claims the receivables relate to FY 2011-12, before respondent directors/KMPs were appointed, however, the Audited accounts for FY 2011-12 shows that trade receivables outstanding for more than six months were only Rs. 0.70 crore, with no evidence of significant or large outstandings. Further, Significant rise in long-outstanding receivables began only from FY 2014-15, coinciding with appointments:

Name of Directors/KMP who are also respondent	Date of Appointment
Mr. Ajit Annu Kamath	01-Aug-2014
Mr. Rajendrakumar Padmanabhan Kaimal	21-Sep-2013

32. The following table from the audited financials shows the movement in trade receivables over the years:

Trade receivables	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Over Six Months	0.70	11.36	24.19	27.14	56.16
Others	146.34	193.36	41.11	29.01	33.56

33. The records indicate that trade receivables outstanding beyond six months increased significantly from FY 2013-14, during the tenure of the Respondent Directors, contradicting the claim that they were merely legacy balances of FY 2011-12. Further, the FY 2015-16 financial statements classified all receivables as “unsecured and considered good,” without any provisioning or disclosure of doubtful recovery. Though the



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SBOD claims recovery efforts were made, no supporting documents have been produced. The sudden write-off of Rs. 73.16 Crores without prior provisioning or documented recovery steps raises serious concerns regarding management's diligence and intent.

34. It is submitted that the SBOD argues that the net worth decline of Rs. 109.40 Crores to routine expenses such as financial costs, depreciation, and employee payments. However, this explanation overlooks that these losses stemmed from mismanagement and lack of timely corrective action. The Transaction Audit Report observes that, with reasonable diligence, the losses to creditors and erosion of net worth could have been significantly minimized.
35. It is further submitted that the RP/Applicant denies any defect in the Transaction Audit Report. The forensic auditor examined the available financial data & prior transactions for context while the allegations against the auditor's integrity are baseless and unsupported.
36. We have heard the counsels of all the parties and perused the entire record.

**Findings**

37. Before addressing the main issue, it is essential to first consider Section 66 of the IBC which deals with fraudulent or wrongful trading. It empowers the Adjudicating Authority to pass an order directing individuals who were knowingly involved in carrying on the business with the intent to defraud creditors, to contribute to the assets of the corporate debtor.



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38. The present Application has been filed under Section 66 of the Insolvency and Bankruptcy Code, 2016 alleging fraudulent and wrongful trading. For proper adjudication, it is necessary to extract the statutory provision:

**“Section 66: Fraudulent trading or wrongful trading.**

66. (1) *If during the corporate insolvency resolution process or a liquidation process, **it is found** that any business of the corporate debtor has been carried on **with intent to defraud creditors** of the corporate debtor or **for any fraudulent purpose**, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.*

*(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—*

*(a) **before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and***

*(b) such **director or partner did not exercise due diligence in minimising the potential loss** to the creditors of the corporate debtor.*



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*(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.”*

39. A plain reading of Section 66(1) makes it clear that jurisdiction is attracted only if it is **found** that the business was carried on with intent to defraud creditors or for any fraudulent purpose. The expression “**found**” is not ornamental; it mandates a definitive and reasoned conclusion based on cogent evidence. Suspicion, inferences, conjectures, discrepancies, doubts, presumptions, or even suggestions etc. cannot substitute such a finding.
40. Further, the burden lies squarely on the Applicant/Resolution Professional to demonstrate, by placing cogent and convincing material on record, that the impugned transactions were undertaken with the requisite fraudulent intent. In view of the serious consequences that ensue, such intent must be clearly established and proved to a standard commensurate with the gravity of the allegation, and cannot be sustained on the basis of mere inference or speculation.
41. The Hon’ble NCLAT in **Shibu Job Cheeran & Ors. V. Ashok Velamur Seshadri, (2023) ibc.in 158 NCLAT**, has held that the following elements must be established under Section 66 of IBC:
- i) Business of the Corporate Debtor has been carried out with an intent to defraud the creditors.



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- ii) Directors participated in carrying on business of the Corporate Debtor despite knowing likely insolvency of the Corporate Debtor.
42. The Hon'ble NCLAT in the case of Regen Powertech Pvt. Ltd., represented by erstwhile **RP Ebenezar Inbaraj v. M/s. Wind Construction Pvt. Ltd. (2022) ibclaw.in 793 NCLAT** clarified that fraudulent trading requires a high degree of proof, and relevant facts and evidence must be presented unambiguously.
43. The Applicant/Resolution Professional must provide tangible evidence to substantiate the claim of fraudulent intent. The Hon'ble Supreme Court, in **Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020) ibclaw.in 06 SC**, emphasized the distinction between the elements of preferential, undervalued, and fraudulent transactions, noting that the inquiry for fraudulent trading is distinct from that of preferential and undervalued transactions. Specific material facts must be pleaded if a transaction is sought to be brought under the provisions of Sections 45/46/47 or Section 66 of the Code.
44. In the present case, the Applicant/Resolution Professional has alleged that the write-offs relating to Assets, Capital Work-in-Progress, Investments, Stocks and Bad Debts were undertaken with the intent to manipulate the books of account and conceal the true financial position of the Corporate Debtor. It is contended that the magnitude, timing and nature of these accounting entries depart from ordinary accounting practice and prudential norms, thereby giving rise to serious suspicion of fraudulent conduct.



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**45. Sadashiv Peth Assets-Rs. 10.64 Crores:**

- i) The Corporate Debtor wrote off assets amounting to Rs. 10.64 Crores on the ground that the same were confiscated by the Telangana State Tax Authorities for non-payment of taxes. The assets were put to auction and M/s. BRS Refineries Pvt. Ltd. emerged as the successful bidder, pursuant to which a Sale Certificate dated 25.02.2025 was issued. The Corporate Debtor challenged the said action before the Hon'ble High Court of Telangana seeking to restrain further auction of the land and building. However, the Corporate Debtor did not regain custody of the movable assets for a considerable period. Owing to efflux of time and alleged third-party usage, the management effected a write-off of the said assets in the books of account.
- ii) The Applicant/Resolution Professional contends that, if the confiscation was on account of unpaid statutory dues, the corresponding liability ought to have been reflected under the head of statutory dues in the financial statements. Further, the audited statements for FY 2015-16 to FY 2018-19 do not disclose any substantial outstanding liability under the State Government head and in the absence of any such disclosure, the circumstances surrounding the write-off warrants further examination under Section 66 of the IBC.
- iii) At this juncture, it is relevant to observe that a mere absence of a corresponding disclosure under the head of statutory dues in the financial statements, by itself, does not establish fraudulent intent. No clear finding has been placed on record to show that the write-off was made with an intent to defraud creditors. The allegation is



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based on inference drawn from accounting entries rather than concrete evidence.

- iv) A write-off consequent to loss of possession, confiscation by statutory authorities, prolonged non-recovery, or impairment of value constitutes an accounting recognition of diminution or extinguishment of an asset. Even if the timing or manner of such recognition is questioned, the same does not automatically attract the rigours of Section 66 of the Code, which mandates clear, cogent and convincing evidence of deliberate intent to defraud or of reckless conduct. Thus, the write-off of Rs. 10.64 Crores does not satisfy the ingredients of fraudulent or wrongful trading and the allegation fails.

46. **Capital Work In Progress- Rs. 2.25 Crores:**

- i) The Corporate Debtor wrote off an amount of Rs. 2.25 Crores under the head Capital Work In Progress (**CWIP**), which primarily comprised advances paid to contractors for execution of a project. Owing to the downturn in the business of the Corporate Debtor, the project could not be completed and there remained no realistic prospect of either revival of the project or recovery of the advances. In view of the partial installation of assets, lack of funding, and absence of commercial viability, the Suspended Management, in consultation with the Financial Creditor, resolved to write off the CWIP as the same had lost its realizable value.
- ii) The Applicant/Resolution Professional contends that the CWIP balance remained unchanged from FY 2014–15 to FY 2020–21 and that the suspended management failed to justify why impairment was not recognized earlier despite awareness of the deteriorating



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financial condition. It is further alleged that the timing of the write-off appears to be a calculated step to place the transaction outside the look-back scrutiny contemplated under the IBC.

- iii) The mere fact that the CWIP remained reflected in the books for several years prior to its write-off does not, by itself, amount to a definitive or conclusive finding of fraud or wrongful intent. Recognition of impairment depends upon commercial assessment, availability of funds, and management's evaluation of project feasibility, which may crystallize at a later stage. A delay in recording impairment, even if perceived as imprudent or lacking financial diligence, raises at best issues of business judgment or accounting practice and cannot automatically be equated with an intention to defraud creditors.
  
- iv) No material has been placed on record to show diversion of CWIP advances, fictitious expenditure, or any wrongful gain to the Respondents, nor is there evidence that the write-off was undertaken to defeat creditor interests. In the absence of clear proof of intent to defraud or wrongful trading as required under Section 66 of the Code, the write-off of Rs. 2.25 Crores under CWIP cannot be treated as fraudulent, and the allegation fails to meet the statutory threshold.

**47. Investment in Regal Pharma Pvt. Ltd., Singapore- Rs. 12.19 Crores:**

- i) The Corporate Debtor had invested an amount of Rs. 12.19 Crores in Regal Pharma Pvt. Ltd., Singapore, a subsidiary of the Corporate Debtor, to market its products in South East Asia. Owing to the financial downturn and continuous operational losses, the subsidiary ceased to carry on meaningful business activities and the



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value of the shares diminished substantially. Upon assessment of the impaired value of the investment, the same was written off in the books of account.

- ii) The Applicant/Resolution Professional contends that the investment was made in FY 2010–11 and continued to be reflected at Rs. 12.19 Crores up to FY 2020–21, despite the subsidiary having ceased operations much earlier. It is alleged that the Respondents failed to recognize impairment for nearly a decade and that such delayed recognition indicates lack of diligence and appears to be an attempt to defer scrutiny.
- iii) The fact that impairment was not recorded in earlier financial years does not, by itself, amount to a substantiated or conclusive finding in favour of the Applicant. The value of an investment in a subsidiary is assessed based on management's view regarding its recoverability and future prospects. A delay in recording impairment may arise from business expectations or commercial assessment. Such delay, by itself, cannot lead to a conclusion that there was any intent to defraud creditors.
- iv) The Applicant's/Resolution Professional grievance relates mainly to the timing of impairment recognition and not to the genuineness of the investment. A delayed accounting write-off, even if imprudent, remains a commercial decision and does not by itself amount to a fraudulent transaction, particularly when it involves no fresh outflow of funds but only a book adjustment. No material has been produced to establish any nexus between the write-off and an intent to defraud creditors or engage in wrongful trading. In the absence of concrete evidence linking the impairment to any scheme to defeat



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creditor interests, the requirements of Section 66 are not satisfied and the allegation cannot be sustained.

**48. Stock -Rs. 35.24 Crores**

- i) The Corporate Debtor wrote off stock aggregating to Rs. 35.24 Crores. This comprised Rs. 1.88 Crores forming part of the inventory subjected to auction proceedings initiated by the Sales Tax Authorities and awarded to BRS Refineries Ltd. The balance stock of Rs. 33.32 Crores pertained to imported materials for which customs duty had not been discharged. Upon physical verification, the materials were found to be obsolete and commercially unusable, leading to their disposal at the Solapur facility.
- ii) The Applicant/Resolution Professional disputes the justification for the write-off, contending that the closing stock of imported goods reflected in the financial statements remained at Rs. 17.52 Crores from FY 2014–15 onwards, which does not align with the figure of Rs. 33.32 Crores claimed to have been written off. It is further alleged that the management failed to explore alternatives such as re-export under applicable customs provisions and that the timing of the write-off suggests an attempt to avoid scrutiny under Section 46 of the IBC.
- iii) The discrepancy highlighted by the Applicant/Resolution Professional primarily concerns reconciliation of stock figures and accounting treatment over prior years. Such inconsistencies, even if requiring further explanation, relate to valuation and inventory management practices. The Applicant/Resolution Professional has not recorded or demonstrated any clear finding that the write-off was effected pursuant to a deliberate design to defraud creditors.



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- iv) The write-off of obsolete or unusable stock during a prolonged operational shutdown is a matter of commercial assessment based on realizability and practical considerations. Failure to opt for alternatives such as re-export may reflect managerial judgment, but in the absence of evidence of dishonest intent, it cannot be treated as fraudulent conduct. No contemporaneous material indicates that the write-off was part of any scheme to dissipate assets or defeat creditor claims. The allegation is based largely on inference from timing and numerical discrepancies, without any substantiated finding of fraud. In the absence of cogent proof satisfying Section 66 of the Code, the write-off of Rs. 35.24 Crores cannot be characterized as fraudulent or wrongful trading.

**49. Bad Debts- Rs. 73.16 Crores**

- i) The Corporate Debtor wrote off bad debts amounting to Rs. 73.16 Crores pertaining to outstanding balances of sundry debtors. A substantial portion of these receivables originated in earlier financial years, including FY 2011–12, prior to the induction of the present Respondents. In 2016, during the tenure of Mr. Manoj Jain, the stock of the Corporate Debtor at the Solapur plant was seized and certain employees were arrested by the Thane Police in connection with the illegal supply of L-Ephedrine and D-Ephedrine to drug peddler. Subsequently, the Respondents assumed charge and were unable to trace complete supporting documentation or reliable contact particulars of several outstanding debtors. In view of prolonged non-recovery, lack of verifiable records, and practical impossibility of realization, the said balances were written off in the books of account as irrecoverable. In the absence of recoverability



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and supporting records, the outstanding balances were written off as irrecoverable in the books of account.

- ii) The Applicant/Resolution Professional contends that receivables outstanding beyond six months increased in subsequent years during the tenure of the Respondent Directors and that the financial statements for FY 2015–16 classified such receivables as “unsecured and considered good” without provisioning. It is alleged that the write-off in FY 2021–22, without documented recovery measures or earlier impairment recognition, indicates lack of diligence and questionable intent.
- iii) The receivables had remained outstanding for a considerable period and were eventually written off as irrecoverable. Earlier classification of such receivables as “considered good” reflects the management’s assessment at that time and does not amount to a conclusive determination that the amounts were in fact recoverable. The Applicant/Resolution Professional has not recorded or demonstrated any clear finding that the subsequent write-off was undertaken pursuant to a fraudulent design. A later reassessment of collectability, particularly after prolonged default and operational disruption, cannot by itself establish fraudulent intent.
- iv) The write-off represents an accounting recognition of non-recoverability and does not involve any diversion or siphoning of funds. No material has been produced to show that the debts were recoverable at the time of write-off or that recovery was intentionally abandoned for improper purposes. The grievance relates primarily to provisioning and recovery efforts, which fall within the realm of commercial judgment rather than fraudulent conduct.



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- v) The Applicant/Resolution Professional has not substantiated, with cogent evidence, that the affairs of the Corporate Debtor were carried on with intent to defraud creditors or that the Respondents engaged in wrongful trading. As the statutory requirements under Section 66 of the Code are not met, the allegation concerning the write-off of Rs. 73.16 Crores towards bad debts cannot be sustained.
50. Upon a cumulative consideration of the above transactions, particularly the table extracted at page 4 of the Application, it is observed that the aggregate write-offs amount to Rs. 133.48 Crores under the heads of Assets, CWIP, Investments, Stock and Bad Debts. At the same time, an amount of Rs. 132.93 Crores (**page 4 of the Application**) under the categories of Interest, Loan and Employee Costs has been written back. The overall financial effect thus reflects reciprocal accounting adjustments rather than a one-sided depletion of assets. No cogent material has been placed on record to indicate that these accounting entries were structured with an intent to prejudice the interests of creditors. In the absence of a clear and substantiated finding of fraudulent or wrongful intent, the mere magnitude of the write-offs cannot, by itself, attract the provisions of Section 66 of the Code.
51. The Applicant/Resolution Professional has also contended that the net worth of the Corporate Debtor eroded by Rs. 109.40 Crores over a period of time and that such erosion reflects wrongful trading within the meaning of Section 66(2) of the Code.
52. Negative net worth, by itself, is a financial outcome reflecting accumulated losses and liabilities exceeding assets. Commercial losses arising in the business cannot automatically be equated with fraudulent or wrongful trading. While net worth erosion may indicate business



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failure or financial mismanagement, Section 66 requires clear finding along with evidence of fraudulent intent or recklessness.

53. For invoking Section 66(2), it must be demonstrated that the directors knew, or ought to have known, that there was no reasonable prospect of avoiding insolvency and yet failed to exercise due diligence in minimizing potential loss to creditors. The material placed on record does not establish that the Respondents continued the business with knowledge of inevitable insolvency coupled with reckless disregard to creditor interests.
54. In the absence of concrete and cogent findings of the Applicant establishing that the affairs of the Corporate Debtor were carried on with intent to defraud creditors or that due diligence was consciously disregarded and the allegation based on negative net worth cannot be sustained. The Applicant has not discharged the burden required under Section 66, and mere suspicion or doubt is insufficient to fasten liability on the Respondents.
55. The Applicant has failed to establish the essential ingredients of fraudulent or wrongful trading as contemplated under Section 66 of the Insolvency and Bankruptcy Code, 2016. The allegations rely primarily on timing, accounting treatment, and inferences drawn from financial distress, without any conclusive finding, of any intent to defraud creditors or any fraudulent purpose.

Accordingly, the Application filed under Section 66 of the Insolvency and Bankruptcy Code, 2016 is devoid of merit and stands **dismissed**.

**Sd/-**

**SANJAY PURI  
MEMBER (TECHNICAL)**

**Sd/-**

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**