

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.301

IA/101(AHM)2022 in CP(IB) 377 of 2018

Order Section 66(1) of IB Code, 2016

IN THE MATTER OF:

HDFC Bank Ltd

.....Applicant

V/s

Terlin Engineerings OPC Pvt Ltd

.....Respondent

Order delivered on: 20/04/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

— SD —

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

**IA/101(AHM)/2022
in
C.P.(IB) No.377/(AHM)/2018**

*(An application under Section 66(1) of the Insolvency and
Bankruptcy Code, 2016)*

In the matter of:

HDFC Bank Limited

Through its authorized Signatory,
Mr. Anil Sankhla,
Having regional office at:
Astral Tower, Opp. Reliance General
INSR Bldg. Maharashtra Society,
Navrangpura, Ahmedabad,
Gujarat – 380009.
Having its Corporate Office at:
HDFC House, HT Parekh Marg,
165-166, Backbay Reclamation,
Churchgate, Mumbai – 400020.

..... Applicant (Amended)

VERSUS

1. Terlin Engineerings OPC Private Limited

Having its registered office at:
Chamber No.10, Plot No.511/2,
Vishat Place, Sector-23,
Gandhinagar – 382023.

..... Respondent No.1

2. Ruchita Chemicals LLP.

Having office at:
24, Bhavi Apartment,
156, Nehru Park,
Nr. Lad Society, Vastrapur,
Ahmedabad – 380015.



- Respondent No.2
- 3. Gahena Enterprise Pvt. Ltd.**
401, 3rd Floor SUR- 232/4+5, Rudra Path
Opp. Pakwan Restaurant, S.G highway,
Bodakdev,
Ahmedabad – 380054.
- Respondent No.3
- 4. Craigmores Trading DMCC**
Jebel Ali Free zone Authority,
Dubai metals & Commodities Centre.
Email: jainnairatya@gmail.com
- Respondent No.4
- 5. Usha Harisuman Trivedi**
Director of Corporate Debtor
i.e., Kanoovi Foods Private Limited
52/1, Kisannagar, Sector-26, Gandhinagar,
Gujarat, India 382044
- Respondent No.5
- 6. Vibhash Harisuman Trivedi**
Director of Corporate Debtor i.e.
Kanoovi Foods Private Limited
19, Swagat Mahal, Chandkheda,
New CG Road, Ahmedabad,
Gujarat – 382424.
- Respondent No.6
- 7. Harisuman Trivedi**
52/1 Krisannagar, Sector- 26
Gandhinagar, Gujarat 382044
- Respondent No.7
- 8. Nobatsinh Mansingh Thakor**
Director of Corporate Debtor
i.e. Kanoovi Foods Private Limited
A-402, Info city Township,
Gandhinagar, Gujarat-38207.
nobatsinh@gmail.com, dhaval84@yahoo.co.in
- Respondent No.8
- 9. Rajkumar Mulchand Gumnani**
Director of Corporate Debtor
i.e. Kanoovi Foods Private Limited
Block No.24, Sindhi Colony,
Sardarnagar, Ahmedabad,
Gujarat-382475.



..... Respondent No.9

10. Nimish Kiritkumar Davda

Director of Corporate Debtor
i.e. Kanoovi Foods Private Limited
301, Shyam Tower, Parth Sharthi Avenue,
B/H City Gold Cinema Satellite, Ahmedabad,
Gujarat, India 380015.

..... Respondent No.10

Order Pronounced On: 20.04. 2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E S:

For the Applicant/RP : Mr. Tarak Damani, Adv.
For the Respondents : Mr. Mandeep Singh Saluja Adv.(R2)
: R-1, R-3 to R-10 (*Ex-Parte*)

O R D E R
(Per Bench)

1. The present Interlocutory Application No. 101 of 2022 was filed on 24.01.2022 vide inward no. D1369, affirmed by Mr. Devang P. Sampat, being the Liquidator of the Corporate Debtor Company namely, M/s. Kanoovi Foods Private Limited under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 seeking reliefs with the following prayers: -

- a. *Your Lordship may be pleased to allow the present application;*
- b. *Your Lordship may be pleased to declare that the transactions entered into by the Corporate Debtor as described in this application are fraudulent and*



wrongful transactions in terms of Section 66 of the Code and pass and appropriate direction/order in terms of Section 66 of the Code;

- c. Your Lordship may be pleased to direct the Respondents seeking directions to make contribution to the assets of the Corporate Debtor for entering into Fraudulent Transactions and Fraudulent Trading in respect of M/s. Kanoovi Foods Private Limited.*
- d. Declare that in relation to the fraudulent transactions, the Liquidator has undertaken all requisite investigations and efforts in terms of the Code;*
- e. Your Lordship may be pleased to grant any other/ further relief(s) as may be deemed fit in the interest of justice.”*

2. It is stated that the instant application is filed to report the fraudulent transactions under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 for seeking directions/orders to direct persons responsible for fraudulent trading to contribute to the assets, so that the creditors are not unfairly harmed in respect of M/s. Kanoovi Foods Private Limited (“the Corporate Debtor).
3. It is stated that the applicant, Mr. Devang P. Sampat herein is an Insolvency Professional and appointed as a Liquidator of the Corporate Debtor, M/s. Kanoovi Foods Private Limited vide this Bench’s order dated 13.01.2021.
4. The brief facts of the matter are stated as under:
 - 4.1 The Application is filed by the liquidator of the Corporate Debtor, M/s Kanoovi Foods Private Limited. The Applicant also acted as the Resolution



Professional during the CIRP of the Corporate Debtor. The Corporate Insolvency Resolution Process of Kanoovi Foods Private Limited was admitted by order dated 26.07.2019.

- 4.2 In the 2nd meeting of the CoC held on 26.10.2019, the Resolution Professional proposed to undertake a forensic/transaction audit of the Corporate Debtor to examine financial records and ascertain whether the suspended management had engaged in preferential, fraudulent, or extortionate transactions prior to commencement of CIRP. The CoC affirmed that suitable actions must be initiated if such transactions were discovered.
- 4.3 Accordingly, on 29.02.2020, the Resolution Professional appointed D.G. Thakarar & Associates to conduct a forensic/transaction audit of the Corporate Debtor. The scope of the audit was comprehensive, covering examination of related party transactions, tracing of cash flows, review of loan utilization, and identification of siphoning or diversion of funds from incorporation till CIRP commencement.
- 4.4 In the CoC meeting held **on 02.07.2020**, the creditors resolved to liquidate the Corporate Debtor, as revival was not feasible. Pursuant to this resolution, the Applicant filed an application before this Bench, seeking liquidation. This Bench, after hearing the matter, passed an order dated 13.01.2021 directing



liquidation of M/s. Kanoovi Foods Private Limited and appointing the Applicant as Liquidator.

- 4.5 The forensic auditor, D.G. Thakarar & Associates, conducted a detailed review and analysis of transactions of the Corporate Debtor, including related party dealings, repayments, cash realizations, and loan utilization. Their investigation revealed instances of siphoning of funds and diversion of resources. The forensic/transaction audit report dated **18.10.2021** was submitted to the CoC/Stakeholder Consultation Committee.
- 4.6 The forensic audit revealed that the promoters and directors siphoned off funds amounting to **Rs. 4,443.51 lakhs**, and an additional **Rs. 263.00 lakhs** were identified as fraudulent transactions under Section 66 of the Code. The transactions included advances to suppliers, transfers to related parties, fictitious receivables, and unsecured loans.
- 4.7 The audit further revealed inflated sales figures, dubious trading transactions (such as fabric sales worth **Rs. 1,120.29 lakhs** to Ruchita Chemicals LLP without payment), and questionable imports of micro-SD cards from entities with mismatched details, indicating fraudulent intent.
- 4.8 The forensic auditor provided an addendum to the audit report dated **29.12.2021**, offering further clarifications and elaborations on the fraudulent



transactions identified. The addendum confirmed additional instances of wrongful trading and fraudulent intent by the directors and promoters of the Corporate Debtor.

4.9 The applicant has submitted the details of observations made by the Forensic Auditor as below:

I. Observation of Forensic Auditor:

(As detailed on page 50-51 of the Forensic Audit Report:)

As submitted on the basis of data gathered and analysed, the promoters of the Corporate Debtor Company have siphoned off the funds amounting to Rs.4,443.51 lakhs sourced from the Financial Creditor. The Applicant has tabulated the details as under:

Name of the Party	Amount (Rs. in Lakhs)	Grouping under Balance sheet/ Remarks
Out of Share Application Money	48.77	--
Advance paid to Suppliers	82.25	--
Amount transferred to ST out of Cash Credit Account of CBI	97.74	--
Amount transferred to M/s. Terlin Engineering OPC Pvt. Ltd.	324.35	--



M/s. Ruchita Chemicals LLP	660.49	No more Receivable
M/s. Craigmere Trading DMCC	518.86	No more Receivable
M/s. Gahena Enterprises	1870.31	No more Receivable
Various Debtors	169.51	No more Receivable
M/s. Kanoovi Ventures Pvt. Ltd.	674.23	It's actually not received as unsecured loans
Total	4443.51	

II. Observation of the Forensic Auditor:

(Page 39 of the Forensic Audit Report)

- Sales of the company increased significantly year-on-year.
- In FY 2015-16, sales rose by 150.30% compared to FY 2014-15.
- Trading sales of fabric worth Rs. 1,120.29 lakhs were made to M/s Ruchita Chemicals LLP between 1st February 2016 and 18th March 2016.
- No payment was received against these sales. Instead, Rs. 459.80 lakhs payable to M/s. Shrifal Trading Pvt. Ltd. was adjusted, leaving Rs. 660.49 lakhs shown as receivable in audited accounts.

III. Observation: (Page 41-43 of Audit Report)

- In FY 2016-17, the company imported 56,350 Micro SD Memory Cards (32 GB) from M/s



Sharda MAA (HK) Ltd., Hong Kong, invoiced at USD 710,010.

- Discrepancies were noted in the invoice and bank details, including mismatched addresses and contact phone numbers.
- True Caller verification of the consignee's phone number (+971505888534) revealed it belonged to "Dhirubhai Joshi."
- Craigmores Trading DMCC, linked to the transaction, was licensed for metals and commodities, not electronics, raising suspicion of fraudulent intent.

IV. Observation (Pg. 51 of Audit Report):

- Receivables from M/s. Gahena Enterprises (Rs. 1,870.31 lakhs) and various debtors (Rs. 169.51 lakhs) were found to be unrecoverable.
- Based on circumstantial evidence, the auditors concluded that the directors acted with fraudulent intent.

V. Observation (Pg. 43-45 of Audit Report):

- M/s. Kanoovi Ventures Pvt. Ltd. received Rs. 674.23 lakhs as unsecured loans.
- Receipts through bank amounted to Rs. 171.50 lakhs.
- Funds were traced to M/s. Terlin Engineering OPC Pvt. Ltd., which itself had received Rs. 114.30 lakhs from Kanoovi Foods Pvt. Ltd. by way of term loan disbursement from HDFC Bank.



- Journal entries showed Rs. 550.00 lakhs transferred from M/s. Padvini Traders Pvt. Ltd.

VI. Observation (Pg. 22, 54–58 of Audit Report):

- Siphoning of funds was evident in multiple transactions:
- Rs. 48.77 lakhs from Share Application Money.
- Rs. 82.25 lakhs as advances to suppliers.
- Rs. 97.74 lakhs transferred to Siddhivinayak Traders from CBI Cash Credit Account.
- Rs. 324.35 lakhs transferred to M/s. Terlin Engineering OPC Pvt. Ltd.

Missing Assets:

The audited books of the Corporate Debtor recorded vehicles as assets, namely:

1. Mahindra Scorpio S10 car,
2. Honda Jazz Car
3. Two Bajaj CT 100 motorcycles.

4.10 As stated, these vehicles were missing from the site of the Corporate Debtor and were not handed over to the Liquidator despite repeated follow-ups, NCLT orders, and public announcements (Financial Express, 25.01.2021). Police complaints were filed at Talod Police Station and before the Superintendent of Police, Himmatnagar.

4.11 The Applicant submits that the directors and promoters knowingly carried on the business of the Corporate Debtor with intent to defraud creditors and



for fraudulent purposes, thereby attracting liability under Section 66 of the Insolvency and Bankruptcy Code, 2016.

4.12 The Applicant has *inter-alia* submitted and relied upon documentary evidence annexed to the petition, as per the details below: -

Annexures	Details
Annexure A	Copy of NCLT order dated 21.10.2020 directing cooperation of suspended management
Annexure B	Extracts of CoC meetings dated 26.10.2019, 29.01.2020, and 26.02.2020
Annexure C	Copy of NCLT order dated 13.01.2021 directing liquidation
Annexure D	Forensic/Transaction Audit Report dated 18.10.2021
Annexure E	Addendum to Forensic Audit Report dated 29.12.2021
Annexure F	Audited Financials of the Corporate Debtor showing missing vehicles
Annexure G	Public Announcement dated 25.01.2021 in Financial Express
Annexure H	Police complaints filed regarding missing assets/vehicles
Annexure I	Email communications with suspended management seeking handover of assets

5. The above Application was filed on 24.01.2022. This Adjudicating Authority vide order of 09.02.2022 directed the liquidator to serve the notice through speed post as well as email and file an affidavit of service of notice.



6. Affidavit of Service was filed on 23.3.2022. All the respondents were served through email on 18.02.2022. Notices through registered AD were sent to all respondents and notices were served on Ruchita Chemicals LLP (Respondent No.2) and Nobatsingh Mansingh Thakor (Respondent No.8). It was not served on other respondents. This Tribunal vide order of 28.03.2022 directed the liquidator to publish notice in the newspaper (substituted mode of service). Affidavit of publication was filed on 23.06.2022 and noted in this Tribunal's order of 27.06.2022.

7. In the present matter there are total ten (10) respondents. However, on receipt of the petition, one Mr. Ajay Shah, being authorised signatory of M/s. Ruchita Chemicals LLP, i.e the Respondent No.2 has submitted an Affidavit-in-Reply **vide e-filing on 13.09.2022**. The Reply reads as:
 - 7.1 The Respondent No.2 submitted that he has read the application filed by the Liquidator and is competent to file the present affidavit in reply on behalf of Respondent No. 2.

 - 7.2 The Respondent No.2 denied all allegations, assertions, and contentions made by the Applicant in the petition, individually and collectively, save and except those specifically admitted herein. The R2 has further prayed for liberty to file a further detailed affidavit in reply if necessity arises.



- 7.3 It is submitted that the present application and the reliefs prayed for are misconceived, without any basis in law or in fact. The Applicant has not placed complete and accurate facts but has presented distorted and incomplete circumstances. The Respondent No.2 further clarified that non-dealing with each contention para-wise should not be construed as admission.
- 7.4 The Respondent No.2 submits that the application filed under Section 66(1) of the Insolvency and Bankruptcy Code, 2016 is erroneous, illegal, frivolous, and not maintainable. It is further submitted that the Applicant has suppressed material facts and that the allegations made are frivolous and denied in toto. The answering Respondent asserts that he is not involved in any fraudulent transaction or trading with Kanoovi Foods Pvt. Ltd.
- 7.5 The Respondent submitted that in a meeting held on **02.09.2016**, chaired by Mr. Vibhash Trivedi and Director of Kanoovi Foods Pvt. Ltd., it was resolved that the matter was amicably settled. It was further resolved that Ruchita Chemicals LLP would directly make payments to Padvini Traders Pvt. Ltd., Shrifal Trading Pvt. Ltd., and Kanoovi Foods Pvt. Ltd. would stand discharged from any financial obligation towards those entities. Accordingly, Kanoovi Foods Pvt. Ltd. undertook not to pursue Ruchita Chemicals LLP for any payment. In view of this amicable



settlement, the present proceeding against Respondent No.2 is liable to be dropped. The R2 has placed a copy of the Minutes of Meeting dated 02.09.2016 as Annexure R1 of the reply affidavit.

- 7.6 In light of the above, the Respondent No.2 prayed that the present application be dismissed, as it is contrary to the provisions and rules framed under the Insolvency and Bankruptcy Code, 2016. The alleged amount/issue has already been settled between the parties, and therefore the proceedings against Respondent No.2 is devoid of merits.
8. It is pertinent to note that the present application was originally filed by the Liquidator of the Corporate Debtor. Subsequently, vide order dated 16.10.2023, this Adjudicating Authority allowed substitution of HDFC Bank Limited as the Applicant, which is now prosecuting the present application. The substitution ensures continuity of proceedings and does not affect the nature of reliefs sought, which are in rem for the benefit of the creditors of the Corporate Debtor.
9. On receipt of the Reply from R2, the Petitioner, HDFC Bank has filed a rejoinder on 13.09.2024 vide inward diary no. D-7059 by one Mr. Anil Sankhla, Senior Manager of the HDFC Bank, department for special operations, as under: -

9.1 The Applicant submitted that he is a Senior Manager with HDFC Bank Ltd., duly authorized to represent



the Financial Creditor. He is conversant with the facts of the case and competent to file this rejoinder affidavit in response to the affidavit in reply filed by Respondent No. 2 (Ruchita Chemicals LLP).

- 9.2 It is submitted that the impugned application was originally filed by the Liquidator of the Corporate Debtor. Subsequently, on an application filed by HDFC Bank, this Tribunal vide order dated 16.10.2023 allowed substitution of HDFC Bank Ltd. as the Applicant in place of the erstwhile Liquidator. Accordingly, HDFC Bank Ltd. is now the competent Applicant in the present proceedings.
- 9.3 The Applicant reiterated that as all relevant facts have already been narrated in the impugned application, the same are not restated herein, The Applicant craves leave of this Tribunal to treat the impugned application as part and parcel of this rejoinder affidavit.
- 9.4 The Applicant submitted that Respondent No.2 has not approached this Tribunal with clean hands. Material facts have been suppressed, and distorted contentions have been raised. On this ground alone, the prayers in the impugned application deserve to be allowed, **with substantial costs** upon Respondent No.2 for filing frivolous and vexatious contentions.



- 9.5 The Petitioner denied all averments, allegations, and contentions raised by Respondent No. 2 in its affidavit in reply unless specifically admitted in the application.
- 9.6 The Applicant, with respect to para 1 of the reply, submitted that the deponent has not produced any authority letter, resolution, or document to show that he is authorized to file the reply on behalf of R2. The absence of such authorization renders the reply defective and without legal sanctity, hence, the reply does not deserve consideration.
- 9.7 With respect to paras 2 to 4 of the reply, the Applicant submitted that Respondent No.2 has merely denied the facts without producing any evidence. The reply does not controvert the detailed forensic findings and documentary evidence placed on record by the Applicant. The Respondent has deliberately chosen not to deal with the contention's para-wise, which itself shows lack of bona fides. The reply appears to have been filed only to delay and derail the proceedings.
- 9.8 The Applicant, with respect to para 5 of the reply, submitted that the R2 has raised frivolous averments without producing any supporting documents. No evidence has been furnished to substantiate the claim that the application is frivolous or not maintainable. The allegations are baseless and deserve outright rejection.



9.9 The Applicant, with respect to para 6 of the reply, submitted that the **alleged settlement dated 02.09.2016 has never been placed** on the records of the Corporate Debtor. **The alleged settlement is neither registered nor notarized**, nor has it been reflected in the books of account of the Corporate Debtor. Even assuming such a settlement was arrived at, it ought to have been recorded in the accounts and supported by legally valid documentation. The minutes of meeting produced are not supported by any authority letters from directors authorizing them to enter into settlement. Hence, the alleged settlement is false, fabricated, and produced only to mislead this Tribunal.

9.10 It is stated that the R2 has failed to provide any proof in support of its allegation with respect to paragraphs 7 and 8 of the reply. It is stated that the contentions are frivolous and vexatious, and the reply is liable to be rejected in toto. The prayers sought in the impugned application deserve to be granted. As regards para 8, the same is a formal paragraph and does not require a substantive response.

9.11 In view of the above submissions, the Applicant has prayed that the reply filed by Respondent No.2 be rejected, the impugned application be allowed as prayed for, and appropriate costs be imposed upon Respondent No. 2 for filing a false and frivolous reply.



10. In this case, only M/s Ruchita Chemicals has filed reply concerning the transactions with the Corporate Debtor which are considered in the Application. No other respondent has filed any reply in the case.
11. R1 to R4 and R7 are third party Respondents. This Bench recorded, Respondent Nos. 1 to 4 and 7 are the third party respondents and the Tribunal asked the Ld. Counsel of the Applicant to explain how the present application is maintainable against these respondents in view of the decision of Hon'ble Supreme Court in the matter of **Gluckrich Capital V/s. State of West Bengal (Misc. Applic.No. 1302/2023)**.
12. The HDFC Bank filed a compliance affidavit on 13.09.2024 and it has been contended that the application is maintainable against all the Respondents. The judgment of the Hon'ble Supreme Court in the case of Glukrich Capital is not applicable as that judgment was in the background of the peculiar facts and completely different circumstances. It is contended that in the case of **Glukrich and Usha Ananthasubramanian Vs Union of India**, the proceedings were filed against director/management of the 3rd party company rather than the 3rd party company. It has been submitted that in the impugned application, the Applicant bank has only made the 3rd party companies as parties to the proceedings and not directors/management of the companies as parties. The proceedings are initiated



against the Respondent Nos. 1 to 4 pursuant to the forensic audit of the transactions.

13. On 06.01.2025, the matter confirmed to proceed **ex-parte** against R-1 and R-3 to R-10, as no one appeared despite due service of notices on behalf of them.
14. The Applicant has filed written submission on 16.03.2026 vide inward diary no. D-2297. In the present matter, the written submissions from R2 are received and filed on 16.03.2026 vide inward diary no. D-2339.
15. In this case, there are ten Respondents but only Respondent No.2 has filed reply and HDFC, the Applicant has filed rejoinder. The Application also encloses Forensic/Transaction Audit Report dated 18.10.2021 (Pages 69 to 245) and Addendum to the Forensic Audit Report dated 29.12.2021 (Pages 246 to 279) both prepared by D.G. Thakarar and Associates. A copy of the audited financials of the company for financial year 2015-2016 is also enclosed with the application (Pages 280 to 290).
16. We have heard the Ld. Counsel for the Applicant; Ld. Counsel for the Respondent No.2, **ex-parte** against the Respondent No.1 & 3 to 10, considered the oral submissions of the appearing parties and perused the material on record. It is an application filed under section 66 of the IBC, 2016. The principles of natural justice stand complied with, as sufficient opportunity was granted to all Respondents



17. Before, we proceed with the facts of the case, we consider appropriate to refer to the legal provisions and the law laid down on the issue.

18. **Section 66 of IB Code reads as below:**

Fraudulent trading or wrongful trading. -

(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 minimizing the potential loss to the creditors of the corporate debtor.

(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.]

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

19. The Hon'ble Supreme Court in the case of ***Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd, 2025 SCC OnLine SC 690 (Paras 55-60)*** held that Section 66 must be invoked only on “*clear and cogent evidence of intent to defraud creditors.*” The



Hon'ble NCLAT in **Ashok Kumar Agarwal v. N.C. Saha (Comp. App. (AT) (Ins.) No. 139 of 2025, (Para 5-6)** ruled that a mere possibly or presumption of fraud, without evidence of intent, cannot attract Section 66 (2) of the Code as well.

20. Section 66(1) of the IBC, 2016 imposes liability for fraudulent trading only when business is carried on with intent to defraud creditors or for any fraudulent purpose. The Hon'ble NCLAT in **Renuka Devi Rangaswamy IRP v. Mr. Madhusudan Khemka, (2023) ibclaw.in 384 NCLAT** (Chennai Bench) has held that mere irregularities or poor accounting do not meet this high threshold of proven fraudulent intent. Similarly, in **Regen Powetech Pvt. Ltd. (Rep. RP Ebenezar Inbaraj) v. Wind Construction Ltd., (2022) ibclaw.in 793 NCLAT** decided on 23.09.2022 (Chennai Bench), isolated discrepancies were not treated as fraudulent trading absent clear evidence of deceitful motive.
21. For wrongful trading under Section 66(2), liability arises if directors knew or ought to have known that insolvency was inevitable and failed to minimise potential loss to creditors. The Hon'ble NCLAT in **Nalinesh Kumar Paurush and Ors. v. Arvind Mittal (RP) and Anr., (2025) ibclaw.in 808 NCLAT** decided on 25.09.2025 (New Delhi Bench) clarified that audit observations alone, without establishing knowledge of inevitability of insolvency and deliberate inaction, cannot sustain a



finding under Section 66. Under Section 66(1) of the IBC, fraudulent trading requires proof of business carried on with intent to defraud creditors, while Section 66(2) for wrongful trading applies if directors knew or ought to have known of no reasonable prospect of avoiding insolvency and failed to minimise potential loss to creditors.

22. Further, the Hon'ble NCALT in its decision of 28.01.2026 in the case of ***Worldwide Online Services Pvt. Ltd Vs. Mr. Nandkishor Vishnupant Deshpande & Ors. Com. Appeal (AT)(Ins) No. 510 of 2021*** noted that the plain reading of Section 66 shows that it contemplates two distinct situations. Section 66(1) deals with fraudulent trading and empowers the Adjudicating Authority, on an application by the Resolution Professional, to direct any person who was knowingly party to carrying on the business of the Corporate Debtor with intent to defraud creditors or for any fraudulent purpose, to contribute to its assets. Section 66(2), on the other hand, deals with wrongful trading and applies specifically to a director or partner who knew, or ought to have known, that insolvency was unavoidable and failed to exercise due diligence to minimize losses to creditors. Thus, while Section 66(2) is confined to directors or partners, Section 66(1) is wider in scope and extends to any person knowingly participating in fraudulent conduct of business. To invoke Section 66(1), the facts and evidence must establish dishonest intent to defraud creditors. Whether a transaction is fraudulent depends upon the facts of each



case and must be determined on the standard of preponderance of probabilities.

Paragraph 51 of the Judgment read as below:

*“...The other submission of Ld. Counsel for the appellant is pertaining to the fact that no direction under Section 66 of the Code to contribute to the account of CD may be given to a third party and reliance has been placed on **Gluckrich Capital Pvt. Ltd. vs. The State of West Bengal and Ors., (2023) SCC online SC 1187**. The issue is now no more res integra and has been settled by catena of judgments passed by this Appellate Tribunal. A plain reading of Section 66 of the Code would demonstrate that under Section 66(1) if during the corporate insolvency resolution process or a liquidation process it is found that the business of the CD has been carried on with the intent to defraud creditors of the CD or for any fraudulent purpose the adjudicating authority on an application moved by the resolution professional may pass an order directing any persons who were knowingly parties to the carrying of the business in such manner to make contributions to the asset of the CD as the tribunal may deem fit. Sub-Section 2 of Section 66 also provides that on an application made by the RP during corporate insolvency resolution process the Adjudicating Authority may by an order direct that a director or partner of the CD shall be liable to make such contribution to the assets of the CD if, 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 CIRP and they did not exercise due diligence in minimising the potential loss to the creditors of the CD.”*



Thus the above placed cases would sufficiently lay down the proposition that Section 66 of the IBC, 2016 deals with two different situations. Section 66(1) of IBC, 2016 deals with 'Fraudulent Trading' and Section 66(2) of IBC, 2016 deals with 'Wrongful Trading'. Section 66(1) of IBC, 2016 imposes liability on 'any person' who were knowingly parties to the carrying on the business with a dishonest intention to defraud the creditors, to make contribution to the assets of the Corporate Debtor. Therefore to qualify under Section 66(1) of IBC, 2016, the transaction should be knowingly transacted with a dishonest intention to defraud the creditors of the CD, while under Section 66(2) of IBC, 2016, which deals with 'Wrongful Trading', Liability can only be fixed upon only 'Director' or 'Partner' and for a transaction to qualify under this Sub Section it must be shown that the parties to such transaction knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings and they did not take due diligence with a view to minimizing the potential loss to the creditors of the company. Thus both these sub sections of Section 66 of the Code takes care of two different situations and also the scope of sub - section (1) and (2) of Section 66 of IBC, 2016 is different. No need to say that the facts alleged and evidence produced must satisfy the ingredients of this section and the facts from which the intention to defraud may be deduced must be proved to satisfy of the conscience of the 'Tribunal' certainly on the scale of 'preponderance of probability'. However, no strait jacket formula can be formulated to fit in all factual situations and it will depend on the facts and evidence placed in each case to asses as to whether the particular transaction may be treated as fraudulent or not."



23. Jurisprudence establishes that bad commercial decisions or diversions without fraudulent purpose or personal benefit do not attract Section 66 liability, as audit reports alone cannot conclusively prove wrongful trading absent clear intent to defraud or minimise creditor losses. It is well settled that proceedings under Section 66 are civil in nature and the standard of proof is that of preponderance of probabilities. The material placed on record, including the forensic audit report, fund flow analysis, and absence of rebuttal evidence, sufficiently discharges this burden.

24. Based on the pleadings in the case, following issues arise for our consideration:

- (i) Whether the transactions identified constitute fraudulent trading under Section 66 of the Code?
- (ii) Whether Respondent Nos. 5 to 10 are liable under Section 66(2) for wrongful trading?
- (iii) Whether Respondent Nos. 1 to 4 can be held liable as knowing participants under Section 66(1)?

25. Now, we consider and analyse identified transaction in the Application for our decision. Facts are common for each issue and therefore decided together.

Siphoning of Rs 4443.51 lakhs sourced from the Financial Creditor.



26. The transactions are identified at pages 16 and 17 of the Application and is based on discussion on pages 50-51 of the Transaction Audit Report.
27. It has been submitted that the company has siphoned off funds and these transactions are: out of share application money (Rs 48.77), advance to suppliers (82.25), amount transferred to ST out of cash credit amount (97.74 lakhs), amount transferred to M/s Terlin Engineering OPC Private Limited (Rs 324.35), M/s Ruchita Chemicals LLP (660.49- no more receivable), M/s Craigmore Trading DMCC (518.86- no more receivable), M/s Gahena Enterprises (1870.31- no more receivable), Various Debtors (169.51- no more receivable).
28. These transactions are dealt on pages 118 and 119 of the Application (Pages 50 and 51 of the Forensic Audit Report). It has been stated that based on the circumstantial evidence, intention of Directors is fraudulent. The promoters have diverted/siphoned of funds amounting to Rs 4443.51 lakhs sourced from the financial creditors.
29. Pages 246 to 279 of the Application (Pages 1 to 34 of the Addendum to Forensic Report) contains supporting documents to transactions identified as fraudulent.
30. The above transactions, based on the documents available in the Addendum to Forensic Report, are discussed hereunder: -



- A. Regarding amount of Rs 48,76,605 the Report notes that these are transferred to Directors, Relatives of Directors, for purchase of packing material, and for purchase of notebooks to Snehraj Notebook Industries. Annexure A contains the information on amount transferred. We note that no business reasons are given by the Respondents to justify these payments to related parties. We agree that the transactions resulted into siphoning off funds which led to reduction in the financial assets of the Corporate Debtor, without proper justification, are fraudulent.
- B. Annexure B gives information on the list of major creditors having debit balances (for building, for expenses, for fixed assets, for raw material, for traded goods), totalling to Rs 82,25,114. These are advances given to various parties which are identified in the Report. The Respondents have not given any justification for giving advances to various parties, which is unusual, and remains outstanding when the Corporate Debtor faced financial crunch which led to the insolvency, therefore, these siphoning of funds have rightly been proposed as fraudulent transactions. We agree for the reason that advances to creditors remaining outstanding suggest that the directors have transferred funds for purposes other than business and did not carry out proper due diligence.




- C. Annexure C gives information on amounts of Rs 80,73,555 transferred to M/s Siddhivinayak Traders, which is a proprietary concern of Mrs. Neha Trivedi-wife of Mr. Vibhash Trivedi, the director. This entity has received another Rs 17 lakhs on 20.09.2013. The Report gives information on the funds utilised by Siddhivinayak Traders by making payments to Mrs Neha Trivedi, cash withdrawals, and to other persons. Considering that Siddhivinayak used funds for personal use of its proprietor suggest that this entity did not in turn supply any goods or services to the Corporate Debtor. We note that the funds transferred to M/s Siddhivinayak Traders have not been given for business purpose and is a clear case of diversion/misuse of funds of the Corporate Debtor.
- D. An amount of Rs 1,64,30,000 has been transferred from the HDFC account to M/s Terlin Engineering OPC Private Limited. Annexure D gives information on the utilisation of funds by Terlin by making payments to various end users and did not come back to the Corporate Debtor. The Respondents did not come forward to explain the business purpose of advancing the funds to Terlin who in turn paid money to various parties. We consider these transactions as payments/siphoning of funds not for business purpose.
- E. Annexure E to the Addendum Forensic Report provides information on sales made and the company



has not received the payment against sales made. This includes sale made to M/s Ruchita Chemicals of Rs 1120.29 lakhs. An amount of Rs 459.80 lakhs was adjusted against amount payable to M/s Shrifal Trading Private Limited and the balance amount was Rs 660.49 lakhs which was not collected. Respondent No.2 has filed reply and the transaction of the adjustment has been explained and a copy of agreement is also filed. The Respondent submitted that payments were also made to Padmini and Kanoovi on behalf of the Corporate Debtor. However, this claim has not been demonstrated with the help of any bank statements or any other document. The amount remained as receivable. In absence of any supporting bank records, accounting entries, or legally enforceable documentation, the alleged settlement cannot be accepted. The continued reflection of receivables in the books further negates the defence. Accordingly, the defence of Respondent No.2 is rejected. Further, even assuming such a settlement existed, the same would not absolve the Respondent from liability under Section 66, which is concerned with the protection of creditors and not merely inter se contractual arrangements.

- F. Annexure F to the Addendum Forensic Report gives information on the purchases that were considered non-genuine based on various corroborating evidence discussed in the Report. We agree that the



transactions of purchase made, particularly from Sharda MMA (HK) Limited for purchase of memory card for which consignee party is in the UAE and corresponding payments are of fraudulent nature as these are not refuted by the Respondents.

G. Annexure H to the Addendum Forensic Report provides information on the other debtors of Rs 169.51 lakhs. Annexure I has information on unsecured loans. No supporting documents have been provided by the Respondents.

H. The Application has identified other transactions like the vehicles which were not handed over to the Liquidator as assets of the Corporate Debtor. The Respondents acted fraudulently in not handing over the assets of the CD to the liquidator.

31. Based on the facts discussed above, and transactions identified with supporting documents, we are inclined to agree with the Applicant that these are fraudulent transactions. Due to these transactions, the assets of the corporate debtor got diminished and the money is fraudulently taken out from the bank accounts of the Corporate Debtor or not collected out of receivables. The findings of the forensic audit, when read in conjunction with (i) absence of contemporaneous records, (ii) routing of funds through related entities, (iii) non-recovery of substantial receivables, and (iv) unexplained diversion of funds for non-business purposes, cumulatively establish a



pattern of conduct evidencing deliberate intent to defraud creditors, satisfying the threshold under Section 66 of the Code as laid down in ***Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd.*** The Forensic Audit Report has identified transactions showing siphoning off the funds received from the financial creditors/banks.

32. This Adjudicating Authority is satisfied that the Applicant has undertaken requisite investigation and due diligence in identifying the impugned transactions, based on the forensic audit report and supporting material placed on record. Section 66(1) of the IBC, 2016 empowers the Adjudicating Authority to direct contributions from persons knowingly carrying on business with intent to defraud creditors. misrepresentation of the company's financial position, including creation of fictitious transactions and diversion of funds, for example alleged purchases from a person in Hongkong of the items not dealt by the Corporate Debtor and siphoning off the money from the Corporate Debtor and defrauding creditors and not coming forward to explain the transactions and not bring the money back to the Corporate Debtor is a clear case of defrauding the creditors.
33. Section 66(1) of the IBC, 2016 imposes liability for fraudulent trading only when business is carried on with intent to defraud creditors or for any fraudulent purpose.



34. For wrongful trading under Section 66(2), liability arises if directors knew or ought to have known that insolvency was inevitable and failed to minimise potential loss to creditors. The failure of the Respondents to produce relevant records or to rebut the allegations despite opportunity warrants drawing of adverse inference against them.
35. The Respondent No. 5 to 10, being the directors of the Corporate Debtors, have failed to discharge the burden, which stood shifted upon them once prima facie evidence of fraudulent transactions was established by the Applicant under Section 66 to demonstrate that the impugned transactions were undertaken in the ordinary course of business or financial affairs of the corporate debtor or there were business reasons for the same. Accordingly, we hold that the transactions identified in the Application satisfy the ingredients of fraudulent trading under Section 66(1) of the Code, as they demonstrate a deliberate intent to defraud creditors.
36. Additionally, the conduct of Respondent Nos. 5 to 10 independently attracts Section 66(2) of the Code, from the financial statements, continued depletion of assets, mounting receivables without recovery, and diversion of borrowed funds during the period immediately preceding CIRP, the continuous depletion of assets, mounting unrecoverable receivables, and diversion of borrowed funds during the period immediately preceding insolvency



commencement clearly establish that Respondent Nos. 5 to 10 knew or, at the very least, ought to have known that there was no reasonable prospect of avoiding insolvency, yet failed to take any steps to minimise losses to creditors. The total liability quantified herein has been arrived at after eliminating any overlap between siphoned funds and unrealised receivables, as detailed in the forensic audit report and its addendum, so as to avoid double counting of the same transaction.

- 37.** Accordingly, the Directors (Respondent No. 5 to 10 in the Application) are held jointly and severally liable and are directed to contribute to the assets of the Corporate Debtor the amount stated in the Application (Rs. 4706.51 lakhs in paragraph 4.6 towards siphoned/diverted funds and Rs. 1120.29 lakhs in paragraph 4.7 towards fraudulent/unrealised sales transactions) totalling to Rs 5827.80 lakhs as detailed and substantiated in the forensic audit report and its addendum, ensuring that there is no duplication of amounts to the assets of the Corporate Debtor by depositing this amount with **the Applicant/** HDFC Bank Limited within 45 days from the date of this order.
- 38.** It is clarified that the liability of third-party entities under Section 66(1) arises not by virtue of their status as counterparties, but only where there is demonstrable material showing their knowing participation in transactions lacking commercial substance and forming



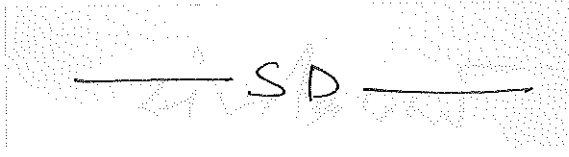
part of a fraudulent scheme. Such knowledge is inferred from (i) absence of underlying contracts, (ii) mismatch between the nature of business of the entities and the transactions undertaken, (iii) circular routing of funds, and (iv) lack of recovery or consideration. The liability of Respondent Nos. 1 to 4 is not premised merely on their status as third parties, but on their active and knowing participation in a series of transactions forming part of a structured scheme to divert and siphon funds of the Corporate Debtor. The material on record, including fund flow analysis and absence of underlying commercial substance, demonstrates that these entities were not passive recipients but integral conduits in the fraudulent scheme. Hence, the present application is maintainable against them also under Section 66(1) of the Code.

- 39.** Based on the material on record, including fund flow analysis, absence of underlying commercial justification, and their direct involvement in receipt and utilisation of diverted funds, Respondent Nos. 1 to 4 are found to be knowing participants in the fraudulent transactions. As these parties had knowledge of and actively facilitated the diversion of funds without any legitimate commercial justification. The said Respondents have failed to demonstrate that they were bona fide recipients acting in the ordinary course of business. We hold that these Respondents are also liable to make contributions, to extent of their transactions with the Corporate Debtor identified in the Application, to the assets of the corporate



debtor. Their liability is confined strictly to the extent of amounts received or dealt with by them in connection with such transactions. Such liability is civil in nature and confined strictly to the extent of benefit derived or funds handled by such entities in connection with the impugned transactions.

40. In the event of non-compliance, the Applicant/FC shall be at liberty to initiate appropriate recovery and execution proceedings in accordance with law, including attachment of assets of the defaulting Respondents.
41. Accordingly, the present petition, **IA/101(AHM)/2022 in C.P.(IB) No.377/(AHM)/2018** stands **allowed** in the above terms. No order as to costs.



SANJEEV SHARMA
MEMBER (TECHNICAL)

Alpesh (PS)



SHAMMI KHAN
MEMBER (JUDICIAL)