

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



ITEM No.301  
IA 585 of 2020  
in  
CP(IB) 5 of 2017

**Under Section 14, 17(1)(d), 68, 70, 71, 72, 73, 74 & 77(A) IBC**

**IN THE MATTER OF:**

Kedarram R Laddha Liquidator of steel Konnect (India) Pvt Ltd. ....Applicant

V/s .....Respondents  
Vivek Vijay Gupta & Ors.

**Order delivered on: 08/05/2026**

**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**

**I.A. No. 585/(AHM)/2020 in  
C.P.(I.B.) No.05/(AHM)/2017**

*(An application seeking directions under Sections 14, 17(1)(d), 68, 70, 71, 72, 73, 74 and 77(A) of the Insolvency and Bankruptcy Code, 2016)*

**In the matter of:** Steel Konnect (India) Pvt. Ltd

**Mr. KedarramR. Laddha,**

Liquidator of Steel Konnect (India) Pvt. Ltd.

Having address at:

B-1002, 10<sup>th</sup> Floor, Mondal Square,  
Nr. Prahladnagar Garden,  
SG Highway, Ahmedabad-380015.

**..... Applicant**

**Versus**

**1. Vivek Vijay Gupta**

(Suspended Director)

A/113, 11<sup>th</sup> Floor, Mayfair Apartment,  
Kanji Maharaj Society, Vejalpur,  
Ahmedabad – 380015, Gujarat.

**2. Varun Vijay Gupta**

(Suspended Director)

A/113, 11<sup>th</sup> Floor, Mayfair Apartment,  
Kanji Maharaj Society, Vejalpur,  
Ahmedabad – 380015, Gujarat.

**3. Laxmi Vilas Bank Ltd. (Original Respondent)**

**DBS Bank (India) Limited (Amendment on 01.03.2022)**

Through its Branch Manager,



1<sup>st</sup> Floor, Blue Star Complex,  
Nr. Stadium, Navrangpura,  
Ahmedabad.

**4. Dharam Paul Metal Pvt. Ltd.**

35, Latif House, Iron Market,  
Mumbai, Maharashtra – 400009.

..... Respondents

**Order Pronounced On: 08.05.2026**

**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 : Mr. Jaimin Dave, Advocate a.w.  
Ms. Hirva Dave, Advocate

For the Respondent : Mr. P. Prabhakaran, Adv. for R-3  
(DBS Bank India Ltd., Erstwhile  
Laxmi Vilas Bank Ltd.)  
: R-1, R-2 & R-4 already ex-parte.

**O R D E R**  
**(Per Bench)**

1. The present application **I.A. No.585 of 2020** has been filed on 01.07.2020 vide inward no. 6784 by the Applicant Mr. Kedarram R. Laddha, the Liquidator of M/s. Steel Konnect (India) Pvt. Ltd. under Sections 60(5)(c), read with Sections 14, 17(1)(d), 68, 70, 71, 72, 73, 74 and 77(A) of the Insolvency and Bankruptcy Code, 2016 seeking necessary



directions against the Respondents. The Applicant has prayed this Tribunal for the following prayers: -

- a. *Your Lordship may be pleased to allow the Present application;*
- b. *Your Lordship may be pleased to reverse the debit transactions carried between the duration of February 2017 to August 2017, from current account No. 011469000000016 with Lakshmi Vilas Bank Ltd.*


***In the alternate***

*Your Lordship may be pleased to direct Respondents jointly and/or severally to contribute Rs.20,25,57,788/- to the assets of the corporate debtor.*

- c. *Your Lordship may be pleased to pass an order /directions under Section 14, 17(1)(d), 68, 70, 71, 72, 73, 74 and 77(A) of the Insolvency and Bankruptcy Code, 2016 directing the Applicant to file a necessary criminal complaint /actions against the Respondents I accordance with the law and further be pleased to impose exemplary costs/ penalty upon the Respondents in facts and circumstances of the present case;*
- d. *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;”*

2. The applicant has narrated certain facts of the matter as under: -

2.1 M/s. Steel Konnect (India) Pvt. Ltd. is a private limited company incorporated under the Companies Act, 1956, having its registered office at Ahmedabad, Gujarat. The main objects of the Company are to carry out the business of heavy engineering and structural steel fabrication, providing infrastructural



solutions, as set out in its Memorandum and Articles of Association.

- 2.2 It is stated that in or around the financial years 2015–16, the Company ran into financial distress, incurred continuous losses, and defaulted in meeting its financial obligations, including repayment of loans due to various financial creditors.
- 2.3 M/s. Hero Fincorp Ltd., Ahmedabad, being one of the financial creditors, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, registered as CP (IB) No. 5 of 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against, Corporate Debtor, namely Steel Konnect (India) Pvt. Ltd.
- 2.4 This Bench, vide its order dated 19.04.2017, admitted CP(IB) No.05 of 2016 and appointed Ms. Ritu Rastogi as Interim Resolution Professional (“IRP”) under Section 13 read with Section 16 of the Code. A copy of the admission order dated 19.04.2017 is placed on record as Annexure-A to the present application.
- 2.5 It is stated that the IRP issued a public announcement in Form-A dated 24.04.2017 under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, inviting claims from creditors of the Corporate Debtor. As stated, the announcement was published in one national and one regional newspaper in compliance with Regulation 6(1).




2.6 As stated, the IRP received claims till 05.05.2017 from the financial creditors of the Corporate Debtor. The claims admitted were as follows:

S. No.	Name of Financial Creditor	Amount Claimed by Creditor (Rs.)	Amount Admitted by RP (Rs.)
1.	Bank of Baroda	1,10,83,86,065.86	1,10,83,86,065.86
2.	State Bank of India (Erstwhile State Bank of Hyderabad)	43,98,78,492.04	43,98,78,492.04
3.	State Bank of India	51,77,75,641.00	51,77,75,641.00
4.	Hero Fincorp Ltd.	7,01,45,356.78	7,01,45,356.78
<b>Total</b>		<b>2,13,61,85,555.68</b>	<b>2,13,61,85,555.68</b>

2.7 On verification of the claims, the Committee of Creditors (CoC) was constituted on 18.07.2017 comprising Bank of Baroda, State Bank of India (erstwhile State Bank of Hyderabad), State Bank of India, and Hero Fincorp Ltd. Subsequently, HDFC Bank Ltd. and Reliance Commercial Finance Ltd. also filed claims as financial creditors for Rs.87,50,040/- and Rs.4,31,23,980/- respectively.

2.8 As submitted, the IRP verified the claims and determined within 7 days of the receipt as envisaged under Rule 13(1) of the IBBI (CIRP) Regulations, 2016 and the IRP has constituted the Committee of Creditors of the Corporate Debtor and notified the 1<sup>st</sup>



CoC meeting. As submitted, the CoC meetings were held on various dates as tabulated under:

<b>Meetings</b>	<b>Dates</b>
1st CoC	30.05.2017
2nd CoC	19.07.2017
3rd CoC	13.09.2017
4th CoC	10.11.2017
5th CoC	17.11.2017
6th CoC	22.11.2017
7th CoC	11.12.2017
8th CoC	04.01.2018

2.9 The first meeting of the Committee of Creditors was held on 30.05.2017 in pursuance of Rule 17(2) of the IBBI (CIRP) Regulations, 2016, after issuance of seven days' notice. In the said meeting, it was resolved to continue Ms. Ritu Rastogi as Resolution Professional ("RP"), and she was appointed with 100% voting. During the meeting, Respondent Nos. 1 and 2 were inquired about the bank accounts of the Corporate Debtor by the IRP.

2.10 It is stated that the Respondent Nos. 1 and 2 falsely replied that they had disclosed all bank account details to the Interim Resolution Professional and that there were no other bank accounts of the Corporate Debtor. They did not raise any query or reservation with respect to the disclosures made.

2.11 In the second CoC meeting held on 19.07.2017, it was resolved to deliberate upon the updated Information



Memorandum and to file an application under Sections 19(2) and 19(3) of the Code for issuance of necessary directions to the personnel of the Corporate Debtor to comply with the instructions of the Resolution Professional and to provide requisite information in discharge of her duties.

2.12 It was also resolved in the said meeting that the Corporate Debtor had filed an appeal before the Hon'ble NCLAT against the admission order dated 19.04.2017. It was therefore decided that further decisions would be taken depending upon the outcome of the appeal before the Hon'ble NCLAT.

2.13 In the third CoC meeting held on 13.09.2017, it was resolved to appoint a local Resolution Professional based at Ahmedabad for better coordination and faster decision-making. Bank of Baroda was authorised to file an application before this Tribunal for change of Resolution Professional. It was further resolved to seek extension of time for completion of CIRP, as the appeal before the Hon'ble NCLAT had consumed more than 105 days, and additional time was required for preparation of a resolution plan. It was also resolved to appoint a forensic auditor and complete the audit. A copy of minutes of the meeting dated 13.09.2017 is placed on record as Annexure-B.

2.14 An application under Section 12 of the Code was thereafter preferred for extension of time for completion of CIRP. This Tribunal, vide order dated




10.10.2017, extended the duration of the resolution process by 90 days. A copy of the order dated 10.10.2017 is placed as Annexure-C.

2.15 It is submitted that during the statutory period for completion of CIRP is 180 days from the date of admission of the Insolvency Petition, Respondent Nos. 1 and 2 did not cooperate with the Interim Resolution Professional for commencement of CIRP, under the guise of pendency of the appeal before the Hon'ble NCLAT. This fact is stated to be recorded in the minutes of the CoC meetings dated 19.07.2017 and 13.09.2017.

2.16 The Committee of Creditors, through Bank of Baroda, preferred an application under Section 27 of the Code for replacement of the Resolution Professional. This Bench, vide its order dated 02.11.2017, appointed Mr. Ramchandra D. Choudhary as Resolution Professional by the IBBI. A copy of the order dated 02.11.2017 is placed as Annexure-D.

2.17 The RP, Mr. Ramchandra D. Choudhary inquired about the existing bank accounts of the Corporate Debtor. Upon such inquiry, it was revealed that the Company had **bank accounts with Central Bank of India, ICICI Bank, and Gujarat State Co-operative Bank Ltd.** Hence, on 04.11.2017, the Resolution Professional addressed a letter to Central Bank of India directing that the account held by the Company be debit-frozen and that no debit transaction be




carried out except with prior approval of the Resolution Professional. Copies of the letter dated 04.11.2017 and subsequent communications are placed as Annexure-E(Colly).

2.18 Thus, it is stated that Respondent Nos. 1 and 2 had concealed several bank accounts from the Resolution Professional with the intent to defraud the creditors and frustrate the CIRP proceedings.

2.19 Thereafter, the fifth CoC meeting was held on 17.11.2017, wherein it was discussed that **one more bank account of the Corporate Debtor with Axis Bank had been concealed** by the suspended Board and was identified later. A letter was accordingly issued to Axis Bank to freeze debit transactions. Minutes of the meeting dated 17.11.2017 are annexed as Annexure-F.

2.20 The Resolution Professional issued a letter to Central Bank of India regarding operation of Current Account No. 3574527339 of the Corporate Debtor on 18.12.2017, requesting that his name be included as sole authorised signatory for operation of the said account. A copy of the letter dated 18.12.2017 is placed as Annexure-G.

2.21 As submitted, on or around 29.12.2017, the Resolution Professional identified another undisclosed bank account of the Corporate Debtor being **Current Account No. 011469000000016 with Lakshmi Vilas Bank**. A notice was issued through e-mail to



Respondent No.1 for non-cooperation, stating that incorrect information had been provided regarding bank accounts and that accounts were maintained outside the books of the Corporate Debtor. Respondent No.1 gave a vague and evasive reply. Copies of the e-mail and reply dated 29.12.2017 are annexed as Annexure-H.

2.22 It is stated that Respondent Nos. 1 and 2 were maintaining Current Account No. **011469000000016 with Lakshmi Vilas Bank in the name of “NCB Steel Konnect India Private Ltd.”** The transactions in the said account were not reflected in the books of the Corporate Debtor either prior to or after commencement of CIRP. The account statement revealed the following entries:

- Credit Entry of Rs.2,92,73,568 dated 27.02.2017
- Credit Entry of Rs.2,92,73,568 dated 27.02.2017
- Credit Entry of Rs.3,26,46,056 dated 27.02.2017
- Debit Entry of Rs.9,11,93,192 dated 27.02.2017
- Credit Entry of Rs.48,87,384 dated 26.05.2017
- Debit Entry of Rs.48,87,384 dated 26.05.2017
- Credit Entry of Rs.4,78,62,385 dated 29.08.2017
- Credit Entry of Rs.5,86,07,777 dated 29.08.2017
- Debit Entry of Rs.10,64,77,212 dated 29.08.2017


2.23 It is submitted that under Section 17(1)(d) of the Insolvency and Bankruptcy Code, 2016, financial institutions are under an obligation to operate and maintain the accounts of the Corporate Debtor strictly as per the instructions of the Resolution Professional after declaration of moratorium. In the present case,



Respondent Nos. 1 and 2 were not authorised to operate or manage Current Account No. 0114690000000016 with Lakshmi Vilas Bank. Furthermore, the Bank ought not to have permitted operations in the said account once CIRP commenced on 19.04.2017. It is stated that by virtue of Sections 66 and 67 of the Code, any transaction carried out fraudulently with intent to defraud creditors is liable to be reversed and the persons responsible may be called upon to contribute to the assets of the Corporate Debtor.

2.24 Accordingly, the RP addressed a letter dated 29.12.2017 to Lakshmi Vilas Bank informing them about initiation of CIRP and directing that no debit transaction be allowed without express permission of the Resolution Professional. The bank was further asked to provide supporting evidence for certain credit and debit entries reflected in the account statement of Steel Konnect (India) Pvt. Ltd. bearing Current Account No. 0114690000000016, which had never been disclosed in the books of the Corporate Debtor.

2.25 Despite being aware of the ongoing CIRP and that accounts were to be operated solely by the Resolution Professional, Lakshmi Vilas Bank neither provided supporting evidence for transactions in the said account nor responded to the Resolution Professional's letter dated 29.12.2017. The bank, in collusion with Respondent Nos. 1 and 2, permitted



transactions in the undisclosed account with intent to defraud creditors — a fact further evidenced by the audited balance sheet's failure to reflect these illegal transactions. Relevant documents are annexed as Annexure I Colly.

2.26 It is stated that through a letter dated 04.01.2018, the Resolution Professional informed Lakshmi Vilas Bank that two related parties of the Corporate Debtor, MBC Agro Industries LLP and MJ Agro Industries - had long-pending outstanding amounts of Rs.17,44,19,705/- and Rs.28,46,98,778/- respectively, and were continuing to avail credit facilities from the bank during CIRP. As stated, MBC Agro Industries LLP was 100% owned by the Corporate Debtor's promoters. The Resolution Professional requested transaction details and warned of action under the Code, yet the bank failed to respond. A copy of the letter is annexed as Annexure-J.


2.27 As submitted, notwithstanding the communications dated 29.12.2017 and 04.01.2018, Respondent Nos. 1 and 2 siphoned off funds deposited in Current Account No.0114690000000016 with Lakshmi Vilas Bank to sister concerns. Between February 2017 and August 2017, Respondent Nos. 1 and 2 carried out several illegal transactions from the said account without the knowledge of the Resolution Professional,

thereby diverting funds to associated entities as tabulated under (Annexure-K):

<b>Date</b>	<b>Amount (Rs.)</b>	<b>Reason / Particulars</b>
27.02.2017	9,11,93,192 (debited)	Shown as Fund Transfer
26.05.2017	48,87,384 (debited)	– (no reason specified)
29.08.2017	10,64,77,212 (debited)	Paid to M/s Dharam Paul Metal Pvt. Ltd., a sister concern of the Corporate Debtor
Total	Rs.20,25,57,788/-	

2.28 In the eighth CoC meeting held on 04.01.2018, it was unanimously resolved by the Committee of Creditors that an appropriate application be filed for reversal of the illegal transactions. In the same meeting, the CoC rejected the resolution plan submitted by M/s. RARE ARC and resolved to liquidate the Corporate Debtor. Minutes of the meeting dated 04.01.2018 are annexed as Annexure L. Hence, the Resolution Professional filed IA No. 211 of 2018 before this Bench. Pending the adjudication of the said application, this Bench, vide its order dated 21.01.2020, passed an order of liquidation of the Corporate Debtor and appointed the present Applicant as Liquidator.

2.29 This Bench, vide its order dated 18.03.2020 in IA No. 211 of 2018, directed the Applicant to inquire into the fraudulent transactions undertaken by the Respondents and to file a fresh Interlocutory




Application within ten days of receipt of the order dated 18.03.2020 which is placed on record as Annexure-M.

2.30 It is stated that the said order was passed during the nationwide Covid-19 pandemic-imposed lockdown and the Applicant could not immediately investigate the transactions. However, upon resumption of work, the Applicant investigated the transactions and concluded that they were carried out with intent to defraud the creditors of the Company. Hence, the Applicant has been constrained to move the present application.

2.31 In view of the aforesaid facts and circumstances, the Applicant has preferred the present application before this Tribunal seeking necessary directions against the Respondents on the grounds set out as under:

#### **GROUNDS**

- **Fraudulent Transactions:** Respondent Nos. 1 and 2 carried out transactions between February 2017 and August 2017 from Current Account No. 0114690000000016 with Lakshmi Vilas Bank Ltd., which were wholly illegal, contrary to law, and liable to be reversed.
- **Violation of Section 17 IBC:** After admission of the Insolvency Application and declaration of moratorium, financial institutions are bound to operate and maintain accounts of the Corporate Debtor only as per instructions of the Resolution



Professional. The suspended Board had no authority to operate or manage such accounts.

- **Statutory Provision:** Section 17(1)(d) of the Insolvency and Bankruptcy Code, 2016 mandates that financial institutions maintaining accounts of the Corporate Debtor shall act on the instructions of the Interim Resolution Professional and furnish all information relating to the Corporate Debtor available with them.

3. That on issuance of the notice in the Interlocutory Application, the Respondent No.3 i.e. Laxmi Vilas Bank/Now DBS Bank India Ltd. appeared in the matter. However, despite due service of notice, the Respondent No.1, 2 & 4 neither appeared nor filed any reply. Hence, the Respondent No.1, 2 & 4 were proceeded **ex-parte** vide order dated 01.12.2021.

4. The Respondent No.3 filed its affidavit-in-reply on 31.07.2024 vide inward diary no. D-6053 denying various averments made in the Interlocutory Application. The contentions of the Respondent No.3 are mentioned hereunder: -

4.1 The Respondent No. 3 clarifies that its reply is strictly limited to the allegations and contentions made against it in the present Interlocutory Application,



and does not extend to matters beyond those specifically pleaded.

- 4.2 The R-3 contended that it first became aware of Company Petition (IB) No.05 of 2017 only upon receipt of a letter dated 04.01.2018 and prior to this communication, the R-3 had no knowledge of the insolvency proceedings. Upon receipt of the said letter, R-3 asserts that it has at all times acted in accordance with law and banking practice.
- 4.3 It is further contended that the Applicant himself has admitted that R-3 was informed vide letters dated 29.11.2017 and 04.01.2018. The R-3 further clarifies that while the letter dated 04.01.2018 was duly received, the letter dated 29.11.2017 was never received. The Applicant has also admitted that the transactions sought to be reversed pertain to the period February 2017 to August 2017. Respondent No. 3 submits that since no information about the insolvency proceedings was communicated prior to 04.01.2018, the transactions carried out during the stated period were processed in accordance with established banking practice. Hence, no wrongful act can be attributed to R-3.
- 4.4 The R-3 further submitted that upon receipt of the letter dated 04.01.2018, the Applicant did not permit the Corporate Debtor to operate the account, and complied with the issued instructions.



4.5 Hence, the R-3 has prayed that the application against it be dismissed with costs, as no liability or wrongful act is attributable to it.


5. A rejoinder reply has been filed by the Applicant/Liquidator on 30.09.2024 vide inward diary no. D-7386, affirmed by the Ex-Liquidator, Mr. Kedarram R. Laddha, authorised vide letter dated 01.06.2021.

5.1 As stated, the Applicant, being the Ex-Liquidator and Authorised Representative of Steel Konnect (India) Pvt. Ltd., has filed the present rejoinder affidavit against the reply of Respondent No. 3. The Applicant denies all averments made and contentions raised in the reply of Respondent No. 3, except those specifically admitted herein, and reiterates the averments made in the original application.

5.2 The Applicant, with respect to Paragraphs 3 to 5 of the reply, the Applicant vehemently denied the contention that Respondent No. 3 became aware of CP (IB) No. 5 of 2017 only upon receipt of the letter dated 04.01.2018. It is denied that Respondent No. 3 has acted in accordance with law at all times. It is further denied that Respondent No. 3 did not receive communication dated 29.12.2017, or that no information about the proceedings was communicated prior to 04.01.2018. The Applicant submits that wrongful acts have indeed been committed by Respondent No. 3.



- 5.3 The Applicant further averred that the then Resolution Professional, Mr. Ramchandra D. Choudhary, visited the branch of Respondent No. 3 (then known as Lakshmi Vilas Bank Ltd.) on 28.12.2017 and procured knowledge of a bank account maintained in the name of the Corporate Debtor. At that time, the RP duly communicated initiation of CIRP to Respondent No. 3. The bank also provided a statement of the Corporate Debtor's account, duly stamped and signed by Respondent No. 3.
- 5.4 The Applicant further submitted that the RP made e-mail correspondences with the suspended management of the Corporate Debtor as well as Respondent No. 3 on 29.12.2017, 30.12.2017, and 03.01.2018, seeking documents and cooperation. These correspondences are on record in the application.
- 5.5 It is submitted that despite repeated communications, the Respondent No. 3 failed to provide supporting evidence or details of transactions undertaken from the bank account during CIRP. The Respondent No. 3 admits receipt of the letter dated 04.01.2018, yet has failed to cooperate or assist in relation to transactions carried out by the suspended management of the Corporate Debtor.
- 5.6 It is averred with respect to Paragraph 6 of the reply that in view of the facts and circumstances



enumerated in the application and rejoinder, the present application deserves to be allowed, as there is gross negligence on the part of Respondent No. 3 and prayed to allow the present application.

6. A written statement has been filed by the Applicant/RP on 08.10.2025 vide inward diary no. D-6807. The Applicant has produced tabulated details of list of events. The same has been taken on record and for the sake of brevity the same is not reiterated.
7. Similarly, the Respondent No.3 Bank has also placed on record a written submission on 16.04.2026 vide inward diary no. 556. The R-3 has placed tabulated details of the date and events which is reproduced hereunder: -

Date	Event	Page No.
27.02.2017	Credit Entry of Rs.2,92,73,568/- dated 27/02/2017; Credit Entry of Rs.2,92,73,568/- dated 27/02/2017	-
19.04.2017	IRP Appointed	-
26.05.2017	Credit Entry of Rs.48,87,384/- dated 26/05/2017; Debit Entry of Rs.48,87,384/- dated 26/05/2017	-
29.08.2017	Credit Entry of Rs.4,78,62,385/- dated 29/08/2017; Credit Entry of Rs.5,86,07,777/- dated 29/08/2017; Debit Entry of Rs.10,64,77,212/- dated 29/08/2017	-
29.12.2017	First correspondence from IRP to Respondent No. 3. This correspondence	-



	was not received by Respondent No. 3.	
04.01.2018	RP through another letter dated 04.01.2018 informed Respondent No. 3 that two entities, namely MBC Agro Industries LLP and MJ Agro Industries, are related parties to the Corporate Debtor. For goods sold to both these related parties, outstanding amounts of Rs.17,44,19,705/- and Rs.28,46,98,778/- respectively remained overdue. During CIRP, these entities were dealing with Respondent No. 3 and availing credit facilities. One entity, MBC Agro Industries LLP, is 100% owned by the promoters of the Corporate Debtor. RP decided to take action against this entity under the Code and requested Respondent No. 3 to provide transaction details. Respondent No. 3 co-operated and provided statements as called for.	Page Nos. 71-74 of the application

8. We have heard Ld. Counsel for the Applicant, Ld. Counsel for the Respondent No.3, **ex-parte** against the Respondent No.1, 2 & 4, considered the oral submissions of both appearing parties and perused the material on record.
9. The principal issue for consideration is whether the transactions undertaken from the undisclosed bank account during CIRP were fraudulent and in contravention of the provisions of the IBC.
10. From the material available on record, it emerges that Respondent Nos. 1 and 2 failed to disclose the existence of several bank accounts of the Corporate Debtor despite repeated queries raised by the IRP/RP in the CoC meetings.



Subsequently, accounts with Central Bank of India, Axis Bank and Lakshmi Vilas Bank were discovered independently by the RP. Such concealment of accounts by the suspended management clearly demonstrates lack of cooperation and deliberate suppression of material information from the Resolution Professional.

11. Under Section 17(1)(d) of the Code, upon commencement of CIRP, all financial institutions maintaining accounts of the Corporate Debtor are mandated to act only upon the instructions of the Interim Resolution Professional/Resolution Professional. Further, the powers of the Board of Directors stand suspended by operation of law.
12. The record reveals that after initiation of CIRP on 19.04.2017, Respondent Nos. 1 and 2 continued operating the undisclosed account being current account no. 0114690000000016 with Lakshmi Vilas Bank and undertook substantial debit transactions aggregating to Rs.20,25,57,788/- during the period February 2017 to August 2017. The amounts were transferred to entities in which the Respondent No.1 and 2 were interested and these were related parties. These debit entries/transfer of funds



took place on 26.05.2017 and 29.08.2017. The said transactions constitute transfer and depletion of assets of the Corporate Debtor during the subsistence of moratorium and are therefore in direct violation of Section 14(1)(b) of the Code. The continued operation of the account by the suspended directors after commencement of CIRP on 19.04.2017 was in direct contravention of the moratorium under Section 14 and the statutory consequences flowing from Section 17(1)(b) and Section 17(1)(d) of the Code.

**13.** The explanation offered by Respondent Nos. 1 and 2 is absent as they chose not to contest the proceedings. Consequently, the averments made by the Applicant regarding concealment of accounts and siphoning of funds remain unrebutted and accordingly, adverse inference is drawn against Respondent Nos. 1 and 2.

**14.** This Tribunal further notes that a substantial amount of Rs.10,64,77,212/- was transferred to Respondent No. 4, namely Dharam Paul Metal Pvt. Ltd., which has been alleged to be a related/sister concern of the Corporate Debtor. No material has been produced to establish the commercial justification or legitimacy of the said transfer.



15. In absence of any material demonstrating legitimate consideration or bona fide business purpose for the transfer of funds to Respondent No. 4, and considering that the said entity is a related/sister concern, this Tribunal holds that Respondent No. 4 being a recipient of funds without demonstrable consideration, is liable as a beneficiary of fraudulent transactions. Hence, Respondent No. 4 is liable to contribute to the assets of the Corporate Debtor.
16. The Respondent Nos. 1 and 2 were operating undisclosed bank account. Credits would mostly be from the unaccounted sales and debits were to related parties indicating that the receipts which belong to the corporate debtor were diverted to related parties.
17. Section 66 of the Code is reproduced as follows:-

**Sec. 66 : 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 minimising the potential loss to the creditors of the corporate debtor.*

*1[(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.*

- 18.** It is pertinent to note that Section 66 of the Code empowers this Authority to pass appropriate orders where it is established that the business of the Corporate Debtor has been carried on with an intent to defraud creditors or for any fraudulent purpose, or where the directors knew or ought to have known that there was no reasonable prospect of avoiding insolvency and failed to exercise due diligence.
- 19.** This Tribunal further observes that the conduct of Respondent Nos. 1 and 2 also attracts the provisions of Sections 68, 69 and 70 of the Code, as the transactions were undertaken with intent to defraud creditors, conceal



assets of the Corporate Debtor and deliberately circumvent the authority of the Resolution Professional during CIRP.

**20.** The Applicant has submitted that the bank account with Lakshmi Vilas Bank was not disclosed and transactions were not accounted in the regular books of account. The conduct of Respondent Nos. 1 and 2 in concealing accounts, not reporting transactions in the regular books of account, operating the same during CIRP and diverting funds to related entities amounts to fraudulent and wrongful trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016. The business of the corporate debtor was carried out with the intent to defraud the creditors because money which should have been paid to them was transferred to related parties clandestinely. The transactions were clearly intended to defeat the interests of creditors and frustrate the CIRP process.

**21.** Insofar as Respondent No. 3 Bank is concerned, this Tribunal finds that the Applicant has failed to place sufficient evidence demonstrating that the Bank had prior knowledge of the CIRP before 04.01.2018. The impugned transactions pertain to February 2017 to August 2017.



Although the Applicant has alleged oral communication and email correspondence dated 29.12.2017, no conclusive proof of prior service or acknowledgment has been produced to establish deliberate collusion on the part of Respondent No. 3.

**22.** Therefore, in absence of cogent evidence establishing intentional collusion or knowledge of CIRP at the relevant time, Respondent No. 3 cannot be held liable for the impugned transactions. However, the conduct of Respondent Nos. 1 and 2 squarely falls within the mischief sought to be prevented under the Code.

**23.** In view of the foregoing discussion, the present application is partly allowed in the following terms: -

- i. The transactions amounting to Rs.20,25,57,788/- undertaken from Current Account No. 0114690000000016 maintained with Respondent No. 3 during the CIRP period are declared fraudulent and unauthorized. The same is also held to be in violation of Section 14 of the Code.
- ii. Respondent Nos. 1 and 2 are held liable under Sections 66, 68 and 70 of the Insolvency and Bankruptcy Code, 2016 for carrying out fraudulent transactions and wrongful trading during CIRP.



- iii. Respondent Nos. 1, 2 and 4 are jointly and severally directed to contribute a sum of Rs.20,25,57,788/- to the assets of the Corporate Debtor within a period of **45 days** from the date of this order.
- iv. The aforesaid amount shall be payable along with interest @ 12% per annum from the date of filing of the present Interlocutory Application i.e, 01.07.2020 till its realization.
- v. In the event of non-compliance, the Applicant/Liquidator is at liberty to initiate appropriate execution proceedings, including criminal proceedings before the competent authority, in accordance with law against Respondent Nos. 1, 2 and 4 for violation of provisions of the Insolvency and Bankruptcy Code, 2016.
- vi. The reliefs sought against Respondent No. 3 Bank are rejected in absence of sufficient evidence establishing collusion or prior knowledge of CIRP at the relevant point of time.

24. Accordingly, **I.A. No. 585/(AHM)/2020** stands partly **allowed** and disposed of in above terms. No order as to costs.

Sd/-

**SANJEEV SHARMA**  
**MEMBER (TECHNICAL)**

Alpesh (PS)

— SD —

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**