

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1044 of 2024

[Arising out of the Order dated 07.05.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench, Court-V), in I.A. 677 of 2023 in C.P(IB). No. 1023 of 2021]

IN THE MATTER OF:

1. Mr. Nitin Ramchandra Jadhav

Having residence at:
Bungalow No. 6, 30 Greens, G No. 333-35,
Behind Disha Sanskruti Silk City,
Golwandi, Paithan Road,
Aurangabad-431005

...Appellant No.1

2. Mr. Bhavrao Gore

Having residence at:
Flat No. 1, Yashoda Heights,
D.P Road, Khamgao - 443303

...Appellant No.2

3. Mr. Anmol Kamchandra Jadhav

Bunglow No-6, 30, Green -Golewadi,
Paithan Road, Aurangabad 431107

...Appellant No.3

Versus

1. Mr. Vijendra Kumar Jain,

Original Applicant
Resolution Professional of
Gajanan Solvex Ltd.
Registered office at; Kanchansobha Debt
Resolution Advisors Private Ltd,
1507, B wing, One BKC, G-Block,
Bandra Kurla Complex, Mumbai- 431003

..Respondent No.1

2. Mr. Ram Sethia

Liquidator of
Gajanan Solvex Ltd
1004, Tower B, Celestia Spaces,
Tokershi Jivraj Road, Sewri,
Off Zakaria Bunder Road,
Mumbai, 400015

..Respondent No.2

Present:

For Appellant : Mr. Anuj Tiwari, Ms. Shalini Basu, Mr. Vaibhav Vats, Mr. Sameer Mishra & Mr. Shivendra Nath Mishra, Advocates
For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak

Kalra, Advocates for liquidator.

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

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the Appellants assailing the order dated 07.05.2024 passed in IA No. 677 of 2023 in CP IB No. 1023 of 2021 (impugned order by the National Company Law Tribunal, Mumbai, Court-V (Adjudicating Authority) whereby the Ld. Adjudicating Authority directed the appellants to contribute Rs. 9,04,61,725/- along with additional unquantified amount to the Corporate Debtor (CD).

2. Brief facts necessary for the disposal of the instant appeal appears to be that on an application moved by the financial creditor (State Bank of India) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) insolvency resolution process (CIRP) was initiated against the CD Gajanan Solvex Ltd. Vide order dated 20.07.2022 of Ld. Adjudicating Authority passed in CP/1023/IBC(MB)/2021 and Mr. Vijendra Kumar Jain (Respondent No. 1) was appointed as the Interim Resolution Professional (IRP) , who issued the public announcement and constituted the Committee of Creditors (CoC) on 12.08.2022 and was also appointed as Resolution Professional (RP) in the first meeting of the CoC held on 18.08.2022.

3. It is further reflected that in the 2nd CoC meeting dated 03.09.2022 the CoC appointed Mr. Parekh Shah and Lodha as the Forensic Auditor of the CD to carry out the transaction audit of the books of the accounts of the CD for the last 5 years, however it was noted by the CoC in its meeting dated 29.09.2022 that Suspended Directors had failed to furnish the

audited financials and tally Back-up of accounts for the financial years 2017-2018 to 2021-2022 and also for the period ranging from 01.04.2022 to 20.07.2022 along with certain other documents as sought by the RP and forensic auditor and in this regard an application bearing IA No. 3392 of 2022 was also filed by the RP under Section 19 (2) of the Code.

4. It is further reflected that CD had invested Rs. 8,84,91,725/- in its subsidiary company namely M/s. Rio Resource PTE. Ltd. (Rio Resource) which is based in Singapore and had a fixed deposit of 3 Million United States Dollars (USD) with the Indian Bank, Singapore Branch. The RP appears to have informed the CoC that the Indian Bank had filed an application against M/s Gajanan Oil Pvt. Ltd. which was stated to have availed the credit facility by creating a lien on the above fixed deposit, before the Hon'ble High Court of Bombay and an ad- interim injunction was granted and also that the Mr. Nitin Jadhav Suspended Director of the CD informed that there was no lien on this fixed deposit.

5. It is also reflected that in the 4th CoC meeting held on 28.10.2022 the RP informed appointment of a new forensic auditor namely Shambu Gupta and Company due to the in action of earlier forensic auditor. Consequently, in the 5th CoC meeting held on 08.12.2022 credit report of Dun and Bradstreet was presented and the RP apprised that as of as on date no shares of M/s Rio Resource PTE. Ltd. were held by M/s Gajanan Solvex Ltd. (CD) and 100% shareholding of M/s Rio Resource PTE. Ltd. is now held by M/s Bellwether International Trade PTE. Ltd. (Bellwether) and the name of Rio Resource PTE. Ltd. has now been changed as Aspira Company PTE. Ltd. and one Amogh Malviya and Mr. Chee Teng Joo are now its new Directors

from June 2022, however the audited financials of the CD as on 31.03.2022 still showing investment of the CD in M/s Rio Resource PTE. Ltd. of Rs. 8,84,91,725/-. It is stated that as per the report these shares have been transferred on 20.02.2019 and no consideration for the same is shown to have been received by the CD.

6. In the report of the forensic auditor a finding is also recorded that as on 23.06.2017 M/s Rio Resource PTE. Ltd. was allotted 19,00,000 shares for Rs. 8.85 Crore and after such investment the CD was holding 51% share in M/s Rio Resource PTE. Ltd., which has become a subsidiary of the CD. The RP stated to have sought explanation from the Suspended Board of Management regarding this and it was informed that on 20.02.2019 the CD transferred the above mentioned 19,00,000 shares to Amogh Malviya and Mr. Chee Teng Joo the new Directors of M/s Bellwether International Trade PTE. Ltd. while in the books of accounts of the CD this investment of Rs. 8,84,91,725/- clearly reflected as the investment in the shares of M/s Rio Resource PTE. Ltd. under the head Investments in the subsidiary.

7. It is further reflected that the Suspended Board of Director vide its email dated 12.01.2023 stated that they have entered into a contact with Aero Steel Resources Ltd. (Aero Steel), UAE and a share transfer agreement with Bellwether, according to which the CD had sold its shares in M/s Rio Resource PTE. Ltd. to Bellwether. While as per the audited balance sheet of the CD of the year 2021-2022 the CD still holds the investment in M/s Rio Resource.

8. It is further reflected that the RP has stated in his application that through share transfer agreement the above mentioned shares of the CD are

shown to have been transferred for a consideration of Rs. 19.95 Crores and an explanation has been given by the CD that a penalty of 1.8 million USD was settled with Aero Steel Resources Ltd. against payment of 1.37 million USD by Bellwether which is in contradiction to the guidelines issued by the RBI.

9. It is further reflected that the forensic auditor was also of the view that some sales invoices were fraudulently created in order to show fictitious sale and also that the CD is shown to have made transactions amounting to Rs. 282.56 Crores with certain firms and entities owned by the individuals who were the ex-employees of the group companies of the CD and also that the CD purchased goods of Rs. 84 crores from M/s Shakti Soya Industries while the GST registration of this company was cancelled with effect from 31.12.2017 but as per the books of the accounts of the CD GST was levied on purchase of goods from this company even after cancellation of the registration. Likewise, the forensic auditor observed that CD have shown to have sold goods worth Rs. 134.42 crores to M/s Shri Tirupati Traders which was owned by Deepak Vyas an Employee of the group company and also that the inventory was brought down to a considerable low in the financial year 2017-2018, 2018-2019 and the reduction in sales was deliberately shown considerably low in the financial year 2018-2019. The forensic auditor also observed that sale of Rs. 19,70,000/- to Ms/ SR Minerals is found to be fake as no such party existed in the books of accounts of the CD.

10. The RP after being satisfied filed the aforesaid application before the Ld. Adjudicating Authority and Ld. Adjudicating Authority by passing the

impugned order directed the appellants to contribute amount of Rs. 9,04,61,725/- /- to the assets of the CD with a direction to make additional contributions on account of profit earned on the sale of shares of M/s Rio Resources PTE. Ltd. with a further direction to get the matter investigated by SFIO with consequential directions. Aggrieved by the same the appellants have come in appeal.

11. Ld. Counsel for the Appellants submits that the Ld. Adjudicating Authority has committed a mistake and failed to take into account that the entire application moved by the RP is based on the transaction audit report without placing on record any independent material while the transaction auditor themselves have qualified their findings by stating that their information may not be fully complete. In this regard reliance is placed on ***State Bank of India vs. Dommeti Surya Ramakrishna Saibaba and Ors., CA (AT) (CH) (Ins) No. 461 of 2023.***

12. It is further submitted that the transaction with Aero Steel Resources Ltd. was a genuine commercial settlement and could not be termed as a sham agreement and the RP has failed to establish any nexus between the CD and Aero Steel and that was a genuine transaction.

13. It is further submitted that keeping in view the law laid by this Appellate Tribunal in ***Union of India vs. Maharashtra Tourism Development Corporation and Anr., (2019) SCC Online NCLAT 1414*** submits that the Adjudicating Authority has no jurisdiction to direct investigation by the SFIO.

14. It is further submitted that the Ld. Adjudicating Authority has passed the impugned order without attributing any role or involvement to the

appellants in the transaction in question and the application moved by the RP is silent with regard to any specific acts or omission by the appellant. Reliance in this regard has been placed on ***Gopal Kalra vs. Akhilesh Kumar Gupta CA (AT) (Ins) No. 567 of 2024.***

15. While highlighting the phraseology of Section 66 (1) of the Code it is submitted that a high degree of proof is required to act under this Section and reliance in this regard has been placed on ***Union of India vs. Chaturbhai M and Company, (1976) 1 SCC 747.***

16. It is further submitted that standard of proof from proving fraud is heavy on the applicant and the Respondent RP has failed in this regard. Reliance has been placed on ***Nalinesh Kumar Paurush and Ors. vs. Arvind Mittal, RP, CA (AT) (Ins) No. 346 of 2024.***

17. Ld. Counsel for the Respondent No. 2- Liquidator of the CD submits that there is no illegality in the impugned judgment as it was evident that the CD despite being under financial distress and even after initiation of recovery action by the financial creditor sold its shareholding in its subsidiary M/s. Rio Resources PTE. Ltd. based in Singapore without any justifiable valuation and failed to bring the sale proceeds of the same in the CD on the pretext of sending the proceeds to Aero Steel Resources Ltd. of UAE showing the same to be for the settlement of penalty for breach of contract by the CD which was evidently appearing to be a sham agreement and also a sale transaction of Rs. 19,70,000/- was also conspicuously a fraudulent transaction as no record with regard to the same was available in the record of the CD.

18. It is further submitted that CD had acquired 19,00,000 shares in Rio Resources for Rs. 8.85 Crore which amounts to 51% of the shareholding of the same and the shareholding of the Rio Resources at that point of time was in terms that the CD was having 19,00,000 shares and Pillai Nandkumar was having 18,21,000 shares and thereafter the CD stated to have entered into an agreement with Aero Steel Resources Ltd. Dubai on 15.10.2017 for supply of 100000 metric tons of Soya @ 360 USD per metric ton, amounting to 36 million USD and in 2018 the CD was classified as NPA and on 29.08.2018 notice under Section 13(2) of the SARFAESI Act was issued against it and it was thereafter on 31.12.2018 the share purchase agreement was executed and the shares of the CD in Rio Resources were transferred to Bellwether for 1.37 million USD to settle the alleged penalty imposed by the Aero Steel for non-performance of the agreement.

19. It is further submitted that the 51% share of the CD in Rio Resources were sold in consideration of Rs. 19.95 Crore however that money was not brought in the CD and the balance sheet of the CD of the years 2019 till 2022 was showing the investment of Rs. 8,84,91,725/- in Rio Resources and the fact of sale of shares could only be disclosed by the Suspended Board of Directors of the CD only on 12.01.2023 while the CIRP against the CD was initiated on 20.07.2022.

20. It is further submitted that the forensic auditor in its report has analysed the whole of the transactions and found the sale of shares and consequent transfer of the consideration to Aero Steel at Dubai directly by the Bellwether is a fraudulent transaction which was executed only for the purpose of diverting the assets of the CD.

21. It is further submitted that sales and purchase agreement dated 15.10.2017 executed between the CD and Aero Steel was a sham agreement wherein a clause has been shown that in case of breach the CD would be liable to compensate the buyer to the extent of 5% of the Contract value and it is under this sham agreement the consideration of the sale of the shares in Rio Resources has been diverted to a sham company namely Aero Steel.

22. It is further submitted that the Aero Steel and the CD did not transact any business in the past there is no communication of any kind between them and keeping in view the fact that the said information was not shared by the Suspended Board of Directors for a long time with the CoC or RP, the agreement with Aero Steel at Dubai was a fake and sham agreement and has been shown only for the purpose of diverting the asset of the CD.

23. It is further submitted that so much so the Suspended Board of Director committed another illegality in signing the balance sheets of the CD post initiation of CIRP which was legally not permissible and likewise the transaction of sale of Rs. 19,70,000/- in favour of M/s SR Minerals is also a fake transaction as nothing has been found by the forensic auditor in the books of accounts of the CD with regard to this transaction and thus the impugned judgment passed by the Ld. Adjudicating Authority is not required to be interfered with.

24. We have heard Ld. Counsel for the parties and have perused the record.

25. Section 66 of the Code is important for our consideration and the same is reproduced as under:

“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.

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”.

The requirement of Section 66 (1) is that if during the Corporate Insolvency Resolution Process or in liquidation process it is found that any 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 by the RP may pass an order that any persons who were knowingly parties to the carrying on the business in such manner would make such contributions to the assets of the CD as it may deem fit. Sub-section 2 of

this section also provides that on an application by a resolution professional during the Corporate Insolvency Resolution Process (CIRP) the adjudicating authority may direct the director or partner of the CD 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 insolvency process in respect of the CD and such director or partner did not exercise due diligence in minimizing the potential loss to the creditors. Thus the necessary ingredients of invoking Sub Section (1) appears to be that the business of the CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose. and for Sub Section (2) that 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 such director or partner did not exercise due diligence in minimizing the potential loss to the creditors. Thus both these Sub Sections take care of two different factual situations.

26. This Appellate Tribunal in **COMPANY APPEAL (AT) (CH) (INS) NO. 461/2023, STATE BANK OF INDIA vs DOMMETI SURYA RAMA KRISHNA SAIBABA** decided on 18.08.2025 held as under: -

“10. We are in an disagreement with the arguments of the learned counsel for the Appellant that, the order is not based upon a sound reasoning, for the reason being that if the application under Section 66 of the I & B Code, 2016, is being attempted to be considered exclusively based upon the Forensic Auditor' Report, the same has to be established on its own merit and its genuineness on the strength of supporting documents and evidence which has not been produced to be by the Tribunal.”

The crux of this decision is that the forensic transaction report is alone is not sufficient to label a transaction fraudulent in absence of any supporting document or any other reliable evidence”.

27. This Appellate Tribunal in **Swapan Kumar Saha v. Ashok Kumar Agarwal, (2025) ibclaw.in 911 NCLAT**, while considering many cases, including those relied on by Ld. counsel for the appellants, held as under:

“28.....b. Can Section 66(1) of the Code be interpreted or invoked or made operational without recourse to Section 66(2) of the Code? Do they operate independent of each other or jointly?”

44. We further note that the next subsection 66(2) relates to specific provisions for a Director or partner of the CD for which CIRP is going on. This subsection provides that if before the insolvency commencement date, a director or partner knew or ought to have known that CIRP could not have been avoided and failed to exercise due diligence in minimising potential loss to the creditors, AA may direct the erring director or partner to be liable and make such contributions to the assets of the CD as it may deem fit. We observe that the first provision (section 66(1)) is very broad but not the second one (Section 66(2))

45. From a bare reading of Section 66(1) and Section 66(2) of the IBC we find that both have self-contained provisions, with clear mechanisms for their invocation during a CIRP. Further, a perfunctory glance at Section 67 of the IBC will make it abundantly clear that the draftsmen and legislators

clearly intended for Sec 66(1) and Section 66(2) to operate independently, as the opening line of Section 67(1) and 67(2) of the IBC would reflect,”

46. Appellant places its reliance on decision of this Appellate Tribunal in the judgement of 03.07.2025 in **Gopal Kalra v. Akhilesh Kumar Gupta [2025 SCC Online NCLAT 1129]**, wherein the Bench framed the issue to be adjudicated upon as – “I. Whether the transactions undertaken by the Appellant in the LED Bulb business during FY 2016-17 constituted fraudulent trading under Section 66(1) of the Code?”. We find that the bench proceeded to adjudicate upon the issue by first categorically stating the ingredients to be met in order to attract Section 66(1) of the IBC. The relevant paragraph has been reproduced below:

“32. To determine whether these transactions amount to fraudulent trading, we must apply the ingredients of Section 66(1) of the IBC, which authorizes the Adjudicating Authority to direct any person who was knowingly a party to carrying on business with intent to defraud creditors or for any fraudulent purpose, to contribute to the assets of the Corporate Debtor. This requires us to examine:

- i. Whether there was an intent to defraud; and*
- ii. Whether the Appellant was a knowing party to such conduct.”*

Therefore, instead of supporting this case of the Appellant, the judgement supports the case of the Respondent-Liquidator. ”

*47. The Respondent also places reliance of the decision of this Appellate Tribunal in **Sangeeta Jatinder Mehta and Anr. v. Kailash Shah RP of New Empire Textile Processor Private Limited [CA(AT)(INS) 104 of 2024]** wherein the Bench has held,*

“7. Section 66, sub-section (1) provides that if it is found that any business of the Adjudicating Authority may on the application of the RP 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.”

*48. Finally, reliance is also placed by the Appellant on the decision of this Appellate Tribunal in **Renuka Devi Rangaswamy, Interim Resolution Professional of M/s. Regen Infrastructure Services Pvt. Ltd. v. Madhusudan Khemka, Suspended Director of M/s. Regen Infrastructure Services Pvt. Ltd. [2023 SCC Online NCLAT 1722]** wherein the Hon’ble Bench held that*

“38. The Appellant has a ‘duty’, to establish to the satisfaction of this ‘Tribunal’, that a ‘person’, is knowingly carrying on the business with the ‘Corporate Debtor’, with an ‘dishonest intention’, to ‘defraud’, the ‘Creditors’. For a ‘Fraudulent Trading’/ ‘Wrongful

Trading’, necessary materials are to be pleaded by a ‘Litigant’/ ‘Stakeholder’, by furnishing ‘Requisite Facts’, so as to come within the purview of the ingredients of Section 66 of the I & B Code, 2016. Suffice it, for this ‘Tribunal’, to pertinently point out that the ingredients of Section 66(1) and 66(2) of the I & B Code, 2016, operate in a different arena.”

28. This appellate tribunal again in **Nalinesh Kumar Paurush and Others v. Arvind Mittal and Another, 2025 SCC OnLine NCLAT 1537**, after considering, *Regen Powertech Pvt. Ltd, Renuka Devi Rangaswamy , Shibo Job Cheeran* (Supra) opined in paragraph no. 44 that to attract section 66 of the Code though the standard of proof would be preponderance of probability but the same is subject to the heavy proof to the applicant, as each and every commercial transaction which has resulted in the loss may not be labelled as fraudulent. This observation is in the background that the party who is alleging the existence of a fact is obliged to prove the same and it cannot be taken as proved without any substantial material or evidence produced before the court. Thus the applicant of an application under section 66 of the Code is obliged to prove the contents of the application by placing adequate material and evidence on record and in addition the Court may also take into consideration the attending facts and circumstances in consideration on the principle that a fact may also be proved by leading circumstantial evidence. it is also to be recalled that the onus in civil matters keep on shifting and when the burden has been discharged by the one party it is obligatory on the contesting party to discharge its onus.

29. Hon'ble Supreme Court again in ***Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd., (2025) 256 Comp Cas 707: 2025 SCC Online SC 690*** held as under:

“60. However, in cases of “fraudulent or wrongful trading” in respect of the business of the CD as contemplated in section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, but is empowered to pass orders to the effect that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. The Adjudicating Authority in such applications may also direct that the director of the CD shall be liable to make such contribution to the assets of the CD as it may deem fit, as contemplated in section 66(2). In case of fraudulent trading or wrongful trading, it would be a matter of inquiry to be made by the Adjudicating Authority as to whether the business of the CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose.”

30. In ***Union of India vs Chatur Bhai M Patel & Co. (1976) SCC 747***, Hon'ble Supreme Court held that suspicion howsoever grave cannot take the place of proof and circumstances alleged by the appellant therein are not sufficient to prove fraud against Respondent.

31. Perusal of record would reflect that during the CIRP of CD Gajanan Solvex Ltd. an application was filed by the IRP of the CD being IA No. 677 of

2023 stating therein that in pursuance of the decision taken by the CoC the decision was taken to appoint a forensic auditor of the CD and incidentally Shambu Gupta and Company was appointed as the forensic auditor who has filed its report and further the RP informed the CoC about the shareholding of the CD in its subsidiary Rio Resources based at Singapore having 51% of share (19,00,000 shares) which were purchased for an amount of Rs. 8,84,91,725/- and thereafter in the 5th CoC meeting held on 08.12.2022 the DNB report of subsidiary Rio Resources was presented by the RP and it was found that on that date there were no shares of the CD were found in the subsidiary and the 100% shareholding of the same was held with one M/s Bellwether and also that the name of the company has been changed with effect from June 2022 to Aspira Company Pte. Ltd. and some other persons have been appointed as the Directors of the same while the audited financials of the CD as on 31.03.2022 were still showing the investment of the CD in subsidiary Rio Resources for an amount of Rs. 8,84,91,725/- while as per the DNB report these shares have already been transferred on 20.02.2019 and no consideration for the same has been received by the CD and despite multiple reminders to the Suspended Board of Directors about this consideration it was on 12.01.2023 the CD came up with a contract with Aero Steel Resources Ltd. and share transfer agreement with Bellwether and stated that the CD has sold its share in M/s. Rio Resources to Bellwether for consideration approximately Rs. 19.95 Crores which is only 3.45% of the net worth of the Rio Resource as on 23.11.2022 as Rs. 282 Crores and with regard to the non-receipt of consideration by the CD it was stated that a penalty of Rs. 1.8 million USD was to be paid to the

Aero Steel Resources Ltd. in lieu of breach of afore-stated contract and the same has been settled against payment of 1.37 million USD which have been paid by Bellwether and thus the aforesaid transaction of selling the shareholding in Rio Resource and non-receipt of the consideration in the opinion of the IRP was a fraudulent transaction and in this way the money of the CD has been siphoned to Aero Steel which was a sham company.

32. The defence of the appellant is in terms that the CD was having 19,00,000 shares along with Pillai Nand Kumar (18,21,000 shares) in its subsidiary Rio Resource at Singapore and on 31.12.2018 the CD entered into a share purchase agreement with Bellwether to sale 19,00,000 shares for consideration of 1370000 USD for the purpose of paying the penalty to Aero Steel at Dubai for breach of contract committed by the CD and the penalty of 18,00,000 USD was settled in 1370000 USD and the same were transferred directly to Aero Steel by the Bellwether to which the shares were sold. It is further the defence of the appellant that with regard to the sale transaction of Rs. 19,70,000 to M/s SR Minerals the same was subsequently cancelled and the goods were not supplied nor the money was receivable by them.

33. Perusal of the impugned judgment would reveal that the Ld. Adjudicating Authority has found that the forensic auditor has reported in its report that in the audited balance sheet of the financial year 2021-2022 CD was having an investment in Rio Resource Singapore but suddenly on 06.01.2023 the CD claimed that this investment was sold on 31.12.2018 however this investment was continue to be reflected in the balance sheet of

the CD and thus the CD has either misreported or was concealing this transaction from its creditors which comes under fraudulent transaction.

34. Ld. Adjudicating Authority has also noticed the forensic audit report in terms that as per the terms of the contract with Aero Steel Resources Ltd. in case of breach of contract the penalty could be imposed up to 5% of the contract value but no such information was disclosed in the audited balance sheet of financial year 2017-2018 and thus came to the conclusion that the amount of Rs. 8.85 Crore invested in the subsidiary Rio Resource has been siphoned off as no credible evidence has been produced by the Directors against the findings of the forensic auditor.

35. Ld. Adjudicating Authority has also noticed that falsification of books of the accounts has also been made by the Suspended Board of Director by concealing the transaction of sale of shareholding in Rio Resource as they continue to show the investment of Rs. 8,84,91,725/- in Rio Resource while it was sold much earlier and also notice that after the issuance of notice under Section 13 (2) of the SARFAESI Act on 29.08.2018, sensing the insolvency this fraudulent transaction has been shown as there was no reasonable prospect of avoiding the CIRP.

36. The Ld. Adjudicating Authority also noticed that so much so the consideration of the sales of the shareholding in Rio Resource was not brought into the CD and to keep that amount out of the CD and away from the reach of the creditors of the CD an agreement is shown to have been executed with Aero Steel Resources UAE and the transaction made by Bellwether to Aero Steel allegedly in discharge of penalty was never brought on record and the same was revealed for the first time after the admission of

the CD into CIRP and thus hold that the entire transaction with respect to the Aero Steel is fake and false so as to take away the funds away from the CD to the detriment of its creditors.

37. Keeping in view all the facts and circumstances of this case and the material which is available on record it is reflected that the CD was having investment in Rio Resource Singapore (its subsidiary) of 51% shareholding (19,00,000 shares) and this investment was shown in the audited balance sheet of the CD up to financial year 2021-2022 however this investment is shown to have been sold by the Suspended Directors of the CD on 31.12.2018 and significantly the investment of Rs. 8.85 Crore in the Rio Resource was continuously shown by the CD in its financials.

38. It is also evident that during the whole of the CIRP period the conduct of the Suspended Board of Directors has remained non-co-operative and in this regard an application under Section 19 was also filed by the RP and it was despite many queries and reminders of the IRP the information pertaining to the sale of 19 lakhs shareholding in Rio Resource was not provided by the Suspended Directors.

39. It is crystal clear that despite the sale of the shareholding in Rio Resource the Suspended Directors continuously showing their investment in Rio Resource of Rs. 8.85 Crores in their balance sheets and it was only when the information was revealed by the IRP the Suspended Directors informed to have sold their shareholding way back in 2018 to Bellwether. Thus we concur with the findings recorded by the Ld. Adjudicating Authority in terms that showing the investment of Rs. 8.85 crores in the financials of the CD till 2022 despite the same was sold way back in 2018 was nothing

but an act of misguiding the creditors of the CD so that the consideration of the sale of the shareholding be kept away from the reach of the creditors of the CD.

40. It is also conspicuously reflected that the agreement with the Aero Steel of the supply of 100000 metric tons of Soya @ 360 USD per metric ton, is shown to have been executed on 15.10.2017, however there is no mention of the same in the financials of the CD and the consideration of the shareholding sold to Bellwether in Rio Resource is shown to have been transferred to the Aero Steel Resources UAE allegedly in settlement of a penalty of Rs. 1.37 million USD.

41. It also appears to be an admitted position that this transaction of payment of the penalty of 1.37 million USD by Bellwether to Aero Steel has never been brought on record, before the CD was placed under insolvency.

42. During the course of deliberations, we made a pointed query to Ld. Counsel for the appellant as to whether any transaction has been held by the CD with the Aero Steel in the past and we did not get any satisfactory answer. No satisfactory explanation has been given by the Suspended Director of the CD pertaining to the payment of the penalty from the proceeds of the sales of share to the Bellwether to the Aero Steel.

43. We are of the considered view that the initial onus to prove the facts attracting Section 66 of the Code is on the RP/IRP but when this burden has been discharged by the IRP/RP the onus shifts to the Suspended Directors to explain the transactions which have been labelled as fraudulent and it is on the basis of the evidence/material brought on record by the parties just adjudication could be made by the Adjudicating Authority.

Keeping the sale proceeds of the shareholding in Rio Resource (Singapore) out of the reach of the CD in the facts and circumstances of the case appears to be an attempt on the part of the Suspended Directors of the CD to keep that amount away from the CD so that it remains out of the reach of the creditors of the CD as at that point of time the Directors of the CD might have sensed the approaching sound of insolvency as the proceedings under the SARFAESI Act had already initiated.

44. We are of the considered view that which was only a suspicion at the stage of selling of the shareholding by the Appellant in the Rio Resource to the Bellwether and not showing it in the financials of the CD and to the contrary, despite selling of the shareholding in the Rio Resource, continuously showing as an investment of Rs. 8.85 Crores in the audited balance sheet of the CD, become a proof of fraudulent transaction when the consideration of the sale of shareholding in Rio Resource to Bellwether, was shown to have been directly transferred to the Aero Steel and it has been claimed that the whole consideration has been transferred to the Aero Steel by the Bellwether in settlement of penalty of 1.37 million USD which was imposed by the Aero Steel for non-completion of the contract.

45. At the cost of repetition, we reiterate that the agreement shown to have been executed between the Aero Steel and the CD was nothing but an agreement which may be drafted subsequently in order to siphon the receivables of the CD.

46. So far as the other transaction of sale of Rs. 19,70,000/- to M/s SR Minerals is concerned it has been explained by the Suspended Director of the CD that the said sale was never made and was cancelled however this

explanation is not substantiated by any documentary evidence and it also appears to have been executed to misappropriate Rs. 19,70,000/-.

47. So far as the direction of the Ld. Adjudicating Authority pertaining to referring the matter to be investigated by SFIO is concerned, it is submitted by Ld. Counsel for the Appellant that such direction could not be passed by Ld. Adjudicating Authority. It is further submitted that such direction under Section 212 of the Companies Act, 2013 could only be passed by Central Government, only when Central Government forms an opinion that it is necessary to investigate into the affairs of the company by the SFIO. Reliance has been placed on ***Maharashtra Tourism Development Corporation (supra)***. Ld. Counsel for the Respondent Liquidator however submits that keeping in view the fraudulent transactions executed by the appellant, such directions were necessary in the facts and circumstances of the case. We notice that by passing the impugned order apart from directing the appellants to contribute (19.95 Crore to the asset of the CD, which in our considered opinion is justified) direction has also been passed to investigate the matter by SFIO and the copy of the order has also been forwarded to SFIO for compliance. We are in agreement with the submissions made by Ld. Counsel for the Appellant. Admittedly the procedure for investigation in the affairs of the company has been provided under Section 212 and 213 of the Companies act, 2013 and keeping in view the provisions contained under Section 213 of the Companies Act, 2013 the discretion to get the matter investigated by the SFIO only vests in Central Govt., and if after the investigation ordered by the Central Govt., it is of the opinion that the matter further required to be investigated by SFIO, it can

do so. However, the discretion lies solely with the Central Govt. and the Tribunal cannot order straightaway investigation by SFIO. We do not want to devote pages on this issue as the matter has been sent at rest by a coordinate Bench of this Appellate Tribunal in Maharashtra Tourism Development Corporation (supra) as under:

“In view of the aforesaid position of law also, the procedure laid down under Section 213 of the Companies Act, 2013 can be exercised by the Tribunal/Adjudicating Authority, as held above.

Further, after the investigation by the Inspector, if case is made out and the Central Government feels that the matter also requires investigation by the ‘Serious Fraud Investigation Office’ under Section 212 of the Companies Act, 2013, it is open to the Central Government to decide whether is such case the matter may be referred to the ‘Serious Fraud Investigation Office’ or not. This will depend on the gravity of charges as may be found during the investigation by the Inspector.

In view of the aforesaid position of law, we are of the view that the Adjudicating Authority was not competent to straight away direct any investigation to be conducted by the ‘Serious Fraud Investigation Office’. However, the Adjudicating Authority (Tribunal) being competent to pass order under Section 213 of the Companies Act, 2013, it was always open to the Adjudicating Authority/Tribunal to give a notice with regard to the aforesaid charges to the promoters and others, including the appellants herein and after following the procedure as laid down in Section 213, if prima facie case was made out, it could refer the matter to the Central Govt. for investigation by the Inspector or Inspectors and on such investigation, if any, actionable material is made out and if the Central Govt. feels that the matter requires investigation through the ‘Serious Fraud Investigation’, it can proceed in accordance with the provisions as discussed above. Impugned order shows parties have been heard on the charges claimed by the ‘resolution professional’.

We, accordingly, modify the impugned order dated April 16, 2019 and refer the matter to the Central Government for investigation through any Inspector or Inspectors”.

48. Keeping in view all the facts and circumstances of the case and for the reasons given herein before we do not find any good ground to interfere in the impugned judgment passed by the Ld. Adjudicating Authority in paragraph no. 43 of the same, pertaining to the contribution to be made by the appellants to the asset of the CD, except the direction given to investigate the matter by the SFIO. Therefore, with regard to the direction of the Adjudicating Authority to investigate the matter through SFIO, we modify the impugned order and refer the matter to the Central Govt. for investigation through Inspector or Inspectors. The matter is thus referred to the Secretary, Ministry of Corporate Affairs for investigation by Inspector/Inspectors strictly in accordance with law.

49. In view of above the appeal is **partly allowed**.

50. There is no order as to the costs.

51. Pending IA's if any are also closed.

52. The Registry is directed to transmit a copy of the impugned order and also of this order to the Secretary Ministry of Corporate Affairs for compliance.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
20.05.2026.

sr