IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.302
IA/505(AHM)2021 in CP(IB) 342 of 2018

Proceedings under Section 66 IBC

IN THE MATTER OF:

Shri Ramchandra Dallaram Choudhary Liquidator Of Vijay Timber Industries Pvt Ltd ....**Applicant**
V/s
Gulabchand Jain & Anr. ....**Respondent**

Order delivered on: 13/07/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)

AD/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

IA No. 505 of 2021
In
CP (IB) No. 342/AHM/2018

(An Application filed under Section 66 of the IBC, 2016)

IN THE MATTER OF:

Shri Ramchandra Dallaram Choudhary,
Liquidator of Varia Aluminium Private Limited,
Having office at 9-B, Vardan Tower,
Near Vimal House, Lakhudi Circle,
Navrangpura, Ahmedabad-380014, Gujarat

...Applicant

Versus

1 **Gulabchand Jain**
Erstwhile Director of
Vijay Timber Industries Private Limited,
Residing at : Plot No 52-53,
Near Mount Carmal School,
Sector 4, Kutch, Gandhidham 370210,
Gujarat

2 **Ashwin Gulabchand Jain**
Erstwhile Director of
Vijay Timber Industries Private Limited,
Residing at: Plot No 52-53,
Near Mount Carmal School,
Sector 4, Kutch, Gandhidham 370210,
Gujarat.

.... Respondents

Order pronounced on 13.07.2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

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Present:

For the Applicant : Mr. Atul Sharma, Adv. and Mr. Arjun Padhiyar, Adv.

For the Respondent 1 & 2 : Mr. Sunil Bhavsar, Adv.

JUDGEMENT

1. This application is filed under Section 66 of the IBC, 2016 by the Liquidator of the Corporate Debtor (hereinafter refer to as "CD")- Vijay Timber Industries Private Limited *inter alia* seeking following reliefs;

   a. *To pass appropriate order directing the Respondents jointly and/or severally to pay sum to the tune of Rs.959.26 Lakhs plus the amount with respect to various assets given as Collateral Security to Punjab National Bank;*

   b. *To pass an appropriate order under Section 66 of the Insolvency and Bankruptcy Code, 2016;*

2. The CD entered into CIRP under section 7 of the IBC 2016 filed by the Punjab National Bank vide order dated 13.02.2020 thereafter, vide order dated 31.12.2020 liquidation was initiated and the applicant was appointed as liquidator.

3. The applicant has relied upon the forensic audit report conducted for the period from 01.04.2015 to 21.02.2020

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submitted by M/s Pipara & Co, Charted Accountant, LLP and alleged various transactions as fraudulent transactions defrauding the creditors within the meaning of section 66 of the code, which are stated as hereunder:

a. The Corporate Debtor unlawfully reduced its closing stock value by a total of Rs. 4,59,000/- during the financial years 2017-18 and 2019-20. This was done by passing stock journal entries that had no explanation, no narration, and no supporting documents in the accounting system. The Audit Report for the 2015-20 review period proves that this stock did not actually exist, because the company only did job work for a related party and the stock quantities never changed.

b. It is submitted that during the period under review, the Corporate Debtor unlawfully wrote off Sundry Debtors amounting to Rs. 7,09,49,678/- without any justification or supporting documentation. The said write-off was executed through a single journal entry just 135 days prior to the admission of the Corporate Debtor into the Corporate Insolvency Resolution Process (CIRP), right before the records were handed over to the Resolution

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Professional. Further stated that Electrical Installation Furniture & Fixtures (Asset) amounting to Rs.73,200/- (Rupees Seventy Three Thousand Two Hundred Only)was Written off without substantiation, through single JV 135 days before admission in CIRP i.e. before handing over accounting information to the Resolution Professional.

c. The applicant submitted that the Corporate Debtor engaged in a wood-peeling job work contract with its related party, M/s. Nakoda Logistics Private Limited. During the review period, an unsubstantiated payment of Rs. 1,11,95,000/- was made to the said related party under the guise of "Sundry Debtors.

d. It is submitted that the Forensic Audit Report records a material discrepancy between the book value of the Plant & Machinery and the assets found upon physical verification. It is submitted that, as per the report, out of 34 assets reflected in the list furnished to the registered valuer, 20 assets were not produced for physical inspection and 5 assets were found to have been scrapped. It is further submitted that the suspended

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management informed the valuer that only some of the machines belonged to the Corporate Debtor, while the remaining machines were owned by a third party operating the plant. Consequently, while the book value of the Plant & Machinery as on 31.03.2020 stood at Rs. 1,41,57,121/-, the registered valuer assessed its fair value at only Rs. 26,68,000/-. On the basis of the said valuation, the Forensic Auditor concluded that the Plant & Machinery stood overstated in the books to the extent of Rs. 1,14,89,121/-.

4. The Applicant submitted that the Forensic Audit Report records that the Corporate Debtor had let out various assets charged as collateral security in favour of Punjab National Bank without obtaining the prior approval of the secured creditor. It is submitted that the Forensic Auditor has, therefore, treated the rent agreements as void ab initio. Further submitted that the Applicant has already instituted proceedings under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble NCLT, Ahmedabad Bench against the alleged tenants of the Corporate Debtor. It is further submitted that despite

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requests, the suspended management failed to furnish the latest rent agreements. Applicant also stated that the Forensic Audit Report records that, after the commencement of the CIRP on 13.02.2020, the Corporate Debtor carried out certain payments, sales, and other transactions without obtaining the approval of the Resolution Professional. The Applicant requested to the suspended board vide letter dated 13.03.2021 to provide clarifications/justifications along with supporting evidence by 20.03.2021 but no response received. It is submitted that these are the illegal and fraudulent transactions done by the respondents which are required to be contributed by the respondents in the liquidation process of the corporate debtor.

5. The Respondent Nos. 1 and 2, in their reply, have denied the allegations levelled in the application and have contended that the Applicant had earlier filed IA No. 309/2020 raising issues relating to the Corporate Debtor's financials, assets and liabilities, shareholders, employees, job work agreements, statutory compliances, banking, registrations, and other records. It is submitted that the

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Respondent had extended full cooperation and furnished all information available in its records, whereafter the Applicant, being satisfied, withdrew the said application, which was permitted by this Hon'ble Tribunal vide order dated 17.09.2020. It is, therefore, contended that the issues forming the subject matter of IA No. 309/2020 cannot be reagitated in the present application under Section 66 of the Insolvency and Bankruptcy Code, 2016.

6. The Respondent submitted that all requisite information and clarifications sought by the Applicant have been duly furnished from time to time in response to various emails and telephonic communications. It is further submitted that pursuant to the hearing dated 25.06.2020, the final list was also provided, and even in respect thereof, complete information and clarifications were duly supplied except Balance sheet of the financial year 2019-20 because of COVID 19 situation it could not be given. Further submitted that the closing stock mainly consisted of material that had been lying unused for many years. Since the goods were wood-based products, they had completely

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deteriorated over time. This fact was also verified and supported by audit vouchers.

7. The Respondents submitted that the issue of sundry debtors amounting to Rs. 7,09,49,678/- has already been duly clarified, and the relevant details were furnished to the Applicant and the Bank from time to time. It is submitted that most of the debts are over ten years old, relate to the NPA period, and have already been written off, and that no objection was ever raised by the Bank earlier regarding the same.

8. It is further submitted that the amount of Rs. 73,200/- pertains to impairment of assets, which is duly recognized under accounting principles and Income Tax Rules. It is submitted that since the assets had no market value (i.e., zero value), they were written off in the books of account as impairment, and no separate transaction is reflected in the audited financial statements.

9. It is submitted that the transaction of Rs. 1,11,95,000 cannot be treated as a fraudulent transaction, as the amount remains outstanding in the books of Nakoda Logistics Pvt. Ltd. and the company is willing to make

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payment subject to Punjab National Bank issuing a No Due Certificate for NLPL's settled facilities, releasing NLPL from the proceedings in EXBH-47 of OA-27 dated 29.11.2012, and returning the original title documents of the guarantors. It is further contended that PNB has unjustifiably retained the original documents relating to Survey Nos. 409/1 and 409/2, despite not granting the proposed enhancement of credit facilities, solely due to the outstanding dues of the Corporate Debtor.

10. The Respondent submitted that the allegation regarding the non-existence of plant and machinery is misconceived, as the Corporate Debtor had established the project by incurring substantial investment. It is contended that the financial stress and eventual shutdown resulted from the delay and subsequent refusal by the PNB to finance the escalated project cost, which disrupted operations and liquidity, compelling the Corporate Debtor to undertake job work using hired for machinery for its survival of approx 360.00 lakhs. This is also mentioned in valuation report.

11. The Respondent submitted that the PNB had prior knowledge of the tenancy in the mortgaged properties, as

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reflected in the Court Commissioner's report. It is further argued that the Bank directly received rent Rs. 81000/- from one of the tenants, M/s Garg Trading Co, without informing the Corporate Debtor and has not disclosed how the said amount was appropriated after the account was classified as NPA.

12. Further submitted that the transactions amounting to Rs. 1,30,569/- after initiation of CIRP are duly explained. It is stated that cheque No. 001017 for Rs. 90,000/- was issued on 11.02.2020 towards professional fees for legal services rendered to the Corporate Debtor, though it was cleared on 15.02.2020. Further, cheques No. 001018 (Rs. 8,472/-) and 001020 (Rs.16,945/-) were issued on 12.02.2020 towards insurance of the Corporate Debtor's assets. It is also stated that cheque No. 001019 (Rs. 4,236/-) relates to remuneration of Respondent No. 2. Accordingly, it is contended that the said payments were either pre-CIRP or for legitimate expenses of the Corporate Debtor.

13. The Respondent submitted that clarification could not be submitted as the Auditor became unresponsive after the ACB raid on its office, despite follow-up and extension

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sought. It is further stated that the forensic report does not consider the Corporate Debtor's claim of Rs. 1188 crores, which was already intimated to the RP and is subject to a suit pending counter claim. The Respondent alleges that the RP has failed to act on the issue and is inclined towards liquidation rather than resolution.

14. The Respondent stated that NLPL's claim of Rs. 658 crores and M/s Saloni Forest Products Ltd.'s claim of Rs. 340 crores were rejected by the then RP on the ground of no connection with the Corporate Debtor, despite submission of supporting details. It is further stated that this Hon'ble Authority, vide orders dated 16.11.2021 in IA-578 and 27.11.2021 in IA-653, directed the RP to reconsider both claims. Further submitted that under Section 18 of the IBC, the Applicant is entitled to take control only of the assets owned by the Corporate Debtor, and in respect of properties given on rent/lease, possession can be taken only in accordance with due process of law.

15. The Applicant has filed affidavit and submitted that during CIRP, as Resolution Professional, and later as Liquidator, he filed IA Nos. 701, 702, 703, 704, 705 and 706 of 2020

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seeking eviction of alleged lessees from the Corporate Debtor's premises. It is stated that this Hon'ble Tribunal, vide order dated 14.03.2024, allowed all the said applications and directed the lessees to vacate the premises.

16. Both the parties have filed their written submissions.

17. Heard the counsel for the applicant as well as the respondents. Perused the material available on record.

18. Observations:

a. Upon considering the pleadings, the forensic audit report and the material placed on record, we note that an application under Section 66 of the Insolvency and Bankruptcy Code, 2016 can be entertained only when the Applicant establishes, on the basis of cogent material, that the affairs of the Corporate Debtor were carried on with intent to defraud creditors or for any fraudulent purpose. However, before invoking the jurisdiction of this Tribunal under Section 66, the Resolution Professional is mandatorily required to comply with the procedure prescribed under Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,

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2016 by independently forming an opinion as to whether the Corporate Debtor has been subjected to transactions covered under Sections 43, 45, 50 or 66 of the Code, and thereafter making an independent determination before filing the application.

b. In the present case, the alleged reduction in closing stock of Rs.4,59,000/- has been explained by the Respondents as deterioration of old wood-based stock, and no material has been produced to establish fraudulent write-off. Similarly, the write-off of sundry debtors amounting to Rs.7,09,49,678/- and impairment of Electrical Installation, Furniture & Fixtures of Rs.73,200/- have been explained as accounting adjustments relating to irrecoverable debts and impaired assets, without any evidence of diversion of assets or wrongful gain. The payment of Rs.1,11,95,000/- to Nakoda Logistics Pvt. Ltd. continues to be reflected as recoverable in its books and has not been shown to be siphoned off or misappropriated. Likewise, the discrepancy relating to Plant & Machinery, the lease transactions, and the post-CIRP payments of

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Rs.1,30,569/- have been explained by the Respondents, and the Applicant has failed to place any independent material to establish fraudulent intent or wrongful trading.

c. The audit report prepared by M/s Pipara & Co. LLP has not placed on record any contemporaneous document. The Resolution Professional independently not analysed the transactions, applied his own mind and formed the statutory opinion and determination contemplated under Regulation 35A. Further, the forensic audit report itself contains express limitations regarding the nature and scope of its findings. The report records that it was prepared only for the information and use of the Resolution Professional, that its observations do not constitute legal or expert opinion, and that independent expert advice should be obtained before initiating any proceedings. The report also acknowledges that complete books of account and records were not made available during the audit and that its findings were based upon partial information received from various sources. It further clarifies that the auditors neither intended nor

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agreed to act as expert witnesses, nor to provide expert evidence or testimony in any judicial proceedings. The report also expressly states that its observations on statutory or regulatory provisions do not constitute legal or expert opinions and that the Client should obtain independent expert opinion before initiating any action. Thus it was incumbent upon the Resolution Professional to form an independent opinion about fraudulent transactions but RP appears to have relied only on forensic audit report.

d. In view of the aforesaid disclaimers, the forensic audit report can at best constitute an investigative aid for enabling the Resolution Professional to examine the affairs of the Corporate Debtor and form an independent opinion under Regulation 35A. The report, by itself, cannot substitute the statutory satisfaction required to be arrived at by the Resolution Professional nor can it be treated as conclusive proof of fraudulent trading under Section 66 of the Code.

e. The burden of establishing fraudulent trading lies upon the Applicant. This Tribunal is therefore of the

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considered view that the Resolution Professional/Liquidator has not complied with the mandatory procedure contemplated under Regulation 35A of the CIRP Regulations before invoking Section 66 of the IBC. The application proceeds solely on the basis of the forensic audit report stating it is not expert opinion thereby demonstrating that the Resolution Professional has failed to independently form the statutory opinion and determination as required under the Code. Consequently, the present application is devoid of merit and is liable to be rejected.

19. In view of the above, we order as follows:

ORDER

IA No. 505 of 2021 in CP(IB) No. 342 of 2018 is rejected and disposed of.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

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