NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 325 of 2025

(Arising out of the Impugned Order dated 18.12.2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-I, in I.A. No. 479 of 2024)

IN THE MATTER OF:

1. **Mr. Dinesh Keshawrao Atkare**
Having its address at:
Muramba Village, Taluka Murtizapur,
PO Kinkhed, District Akola – 444107 **...Appellant No.1**

2. **Mr. Madan Keshawrao Atkare**
Having address at:
Muramba Village, Taluka Murtizapur,
PO Kinkhed, District Akola – 444107 **...Appellant No.2**

Versus

Ms. Palak Swapnil Desai
Erstwhile Resolution Professional of
Santoshi Barrier Film India Pvt. Ltd.
Flat No. 901, 9th Floor, Park Vistas,
Opposite Lallubhai Park, Near MTNL, **...Respondent**
Andheri West, Mumbai – 400058

Present:

For Appellant	:	Mr. Gaurav Mitra, Sr. Advocate with Mr. Dhruv Gupta and Ms. Lavanya, Advocates.
For Respondent	:	Mr. Devul Dighr and Mr. Manish Jha, Advocates.

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

[Per: Arun Baroka, Member (Technical)]

This Appeal is directed against the impugned order dated 18.12.2024 passed by the National Company Law Tribunal, Mumbai Bench-I, in I.A. No. 479 of 2024 ("Impugned Order"). The application was preferred invoking Section 66 of the Insolvency and Bankruptcy Code, 2016 ("Code"). By virtue of the Impugned Order, the Adjudicating Authority directed the Appellants to remit ₹17,23,05,603.50, upon recording a finding that the machinery hypothecated in favour of the Financial Creditors was not the machinery which was found at the premises of the Corporate Debtor.

Submissions of the Appellant/ Suspended Directors

2. The Appellant claims that those were allegations of irregularity and not fraudulent business as contemplated under Section 66 of the Code. It claims that even if the allegation of a machine swap is taken as true, this act, in and of itself, does not automatically constitute a "fraudulent business" under Section 66 of the Code. A single fraudulent transaction is not a pointer to the entire business being fraudulent. The Appellant relies on the judgment of this Appellate Tribunal in the case of **Renuka Devi v. Regen Powertech, (2023 SCC Online NCLAT 4726)** wherein it was held that a single fraudulent act on a Corporate Debtor during business does not itself necessarily infer that the business was carried on with the intent to defraud creditors. Paragraph 30 of the said decision reads thus:

> "30. It must be borne in mind that whenever a "fraud" on a "corporate debtor" is committed, in the course of carrying "business", it does not necessarily mean that the "business" is being carried on with an intent to "defraud" the "creditors". In this connection, this "Tribunal" pertinently, points out that if the "directors" of a "company" had acted on a bona fide belief that the "company" will recover from its "financial set back"/"difficulties"/"problems", then, it will not be liable for the "Act"/"offence" of "fraudulent trading", in the considered opinion of this "Tribunal"."

3. The finding of the Ld. Adjudicating Authority is based on a single disputed transaction, which is not sufficient to satisfy and meet the requirements of Section 66 of the Code as per the precedent set by the NCLAT. In the present case, the Ld. NCLT has failed to meet this high standard of proof and has not established a pattern of fraudulent business.

4. The said proposition that the intent to defraud the creditors by carrying on business CD is a sine qua non for a finding that the Section 66 of the Code is applicable as has been held by Hon'ble Supreme Court in the matter of **Piramal Capital and Housing Finance Ltd Vs 63 Moons Technologies Ltd. dated 1st April 2025 [Civil Appeal Nos. 1632-1634 of 2022]**, the relevant extract of which is held as under:-

> "55. So far as section 66 is concerned, the same falls under Chapter VI and it pertains to the "fraudulent trading or wrongful trading." Subsection 1 of section 66 provides that if during the CIRP or a liquidation process, it is found that any business of the CD has been carried on with intent to defraud creditors of the CD 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 CD, as it may deem fit. From the bare reading of section 66(1), it is very much discernible that the said provision pertains to the "fraudulent trading or wrongful trading" in respect of the business of the CD.
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> 56. Thus, there is a clear distinction between the avoidance applications that may be filed by the resolution professional in view of

section 25(2)(j) for avoidance of transactions in accordance with Chapter III of the Code, and the applications that may be filed by the resolution professional in respect of the fraudulent trading or wrongful trading under section 66, which falls under Chapter VI of the Code. The Legislature has consciously kept the applications in respect of fraudulent trading or wrongful trading falling in Chapter VI, outside the purview of section 25(2), which requires the resolution professional to undertake the actions and file applications for the avoidance of transactions in accordance with Chapter III. Both, the avoidance applications under Chapter III and the applications in respect of fraudulent trading or wrongful trading under Chapter VI, operate in different situations. The powers of the Adjudicating Authority in respect of the avoidance applications filed under Chapter III and the powers of the Adjudicating Authority in respect of the applications pertaining to the fraudulent and wrongful trading filed under Chapter VI, have also been separately circumscribed."

5. The Appellant also claims that the findings of the Ld. Adjudicating Authority, on the identity of the machinery are contradictory. The NCLT's order contains mutually contradictory findings regarding the identity of the machinery. While the order proceeds to hold that the Appellants was liable for the discrepancy, it simultaneously casts doubt on the ability of the parties to conclusively identify the machines (para 21 of the Impugned Order). This creates a fundamental flaw in the NCLT's reasoning. The NCLT's conclusion that the machinery at the premises is not what was hypothecated is directly contradicted by its own admission of the lack of a convincing case by the Resolution Professional (RP) on the identity of the machinery. Particularly when, the tribunal has acknowledged that it is not its prerogative to determine the identity of the machinery, but rather was

observed to be a matter of investigation beyond its jurisdiction. It has also noted that the parties may approach the appropriate forum to resolve that dispute. This is clear from paragraph 22 of the impugned order, which states that it is not *"this Tribunal's prerogative to determine whether the machine actually installed at the Corporate Debtor's premises was the C.I. Flexographic Machine or the Flexographic Press, as that would be a matter of investigation beyond the jurisdiction of this Tribunal and the parties may approach the appropriate forum to resolve that dispute"*. It is of pertinence to note that once the tribunal has come to a finding that it has no jurisdiction to decide the issue of identity of machineries, which is at the core of the controversy then the Tribunal cannot venture into adjudication of the Section 66 application at all and same should have been dismissed in limine for want of jurisdiction.

6. The NCLT's finding is in direct conflict with the report of Ankit Goel, an IBBI empaneled expert, who was appointed by the Appellants to inspect the machinery. The Tribunal has failed to give due weight to this expert report by an IBBI empaneled chartered engineer, which directly refutes the vague and unsubstantiated claims of the RP's valuer.

7. The Appellant also rebuts the valuation report, prepared by the Resolution Professional, and also claims estoppel against the Financial Creditors. The appellant claims that the entire action under Section 66 of the Insolvency and Bankruptcy Code, 2016, originated from an email dated 12.10.2023 by Pranav Ambaselkar, a valuer appointed by the RP.

This email claimed that Rotogravure Printing machines were found instead of the C.I. Flexographic Press. This claim has been fully rebutted by the actions and conduct of the financial creditors themselves, which establish a clear case of estoppel and waiver.

8. The Appellant claims that the identity of the machinery was duly established and verified on multiple occasions. A Court Receiver appointed by the Hon'ble Bombay High Court submitted a report verifying and confirming the presence of the machine, a Flexographic Press NSA-14. This report was signed by the financial creditor's representative.

9. The Financial Creditors took possession of the machinery under Section 13(4) of the SARFAESI Act on 19.09.2020, without raising any objections regarding the machine's identity.

10. The Appellant claims that the Financial Creditors' prior acceptance and verification of the machinery's identity, both through the Court Receiver's report and their own due diligence, create a clear case of estoppel. They cannot now, through the RP, question the identity of the very machine they previously verified and took possession of.

11. The Appellant further contends that the entire email of 12.10.2023 by Pranav Ambaselkar was rebutted by relying on the affidavit of Francis Fernandes, the purported supplier of the machine, who denied having supplied machinery or parts to the Corporate Debtor. The affidavit, on pages 452-456 of Annexure A17, directly contradicts the valuer's report,

which was the very basis of the RP's case. This goes to the root of the case and establishes that the very genesis of the Section 66 action was incorrect and malafide.

12. The Appellant further claims even on the assumption that the machinery was not what was originally intended, the NCLT's order to pay ₹17,23,05,603.50 is legally and factually incorrect. The amount represents the equivalent price of the machines as per the application, which fails to account for several crucial factors.

13. The NCLT's order for damages is based on an incorrect calculation, devoid of factoring in the depreciation of the hypothecated asset/machinery and without deducting the realisable/market value of the asset/machinery found at the premises. On demurrer, it is submitted that the correct approach should have considered the depreciated and realizable value of the assets. The appellant claims that the Hypothecated Price (₹17,23,05,603.50) should have been Depreciated Value of Hypothecated Machine less Realisable Value of Machines at Premises.

14. Therefore, the impugned order does not consider the depreciated value of the machinery at the time of the Corporate Insolvency Resolution Process (CIRP). Equally, the NCLT also fails to deduct the realizable value of the machines that were actually found at the premises. The appellant claims that this ground alone, is fatal to the validity of the impugned order.

15. The Appellant claims that the NCLT's order suffers from several legal and factual infirmities. The order is based on contradictory findings, ignores the principle of estoppel, miscalculates the potential damages, and incorrectly applies the provisions of Section 66 of the IBC. The Appellants submit that the impugned order should be set aside as it is based on a flawed interpretation of the facts and the law, and is contrary to established precedents on the applicability of Section 66.

Submissions of Respondent No. 2/Liquidator

16. The Respondent No. 2 submits that undisputedly, the Corporate Debtor had availed 2 (two) loans from Tata Capital Financial Services Limited for an amount of ₹ 8 Crores and Hero Fincorp Limited (now Phoenix ARC on account of assignment of loan) for an amount of ₹ 4 Crores for the purchase of 2 (two) C.I. Flexographic Press Machines, 6 colours Varieties along with its accessories.

17. The Corporate Debtor purchased the C.I. Flexographic Press with 6 Colour Variety along with accessories from Brick and Byte Innovative Products Private Limited vide Invoice No. 107 dated 23rd December 2016 for total amount ₹11,50,33,603.50/- by utilizing the proceeds of loan obtained from Tata Capital Financial Services Limited to the tune of ₹ 8,00,00,000/. The said invoice duly reflects the delivery note number and the vehicle number through which it was dispatched. (Invoice at Page No. 178 of the Appeal Memo).

18. The Corporate Debtor further purchased second C.I. Flexographic Press with 6 Colour Variety from Nyles Sales Agencies Private Limited vide Tax Invoice No. NSA/16-17/1182 dated 14th March 2017 for a total amount of ₹5,72,72,000/-by utilizing the proceeds of loan obtained from Hero Fincorp Limited (now Phoenix ARC) for an amount of ₹ 4,00,00,000/-. The said invoice also contains details of vehicles through which the said machine was dispatched to the factory premises of the Corporate Debtor, being D-51, MIDC Buti-Bori, Nagpur. (Invoices at Page No. 177 of the Appeal Memo).

19. The Corporate Debtor secured the loan availed and amounts utilized for the purchase of machineries from the respective lenders by creating security interest in the form of hypothecation in favour of the said lenders i.e. Tata Capital Services Private Limited and Hero Fincorp Limited vide Hypothecation Agreements dated 21 October 2016 and 5th January 2017 (hereinafter referred to as "Hypothecation Agreements") and Appellant No. 1 itself has filed Form CHG-1 with MCA annexed at Page No. 179.

20. The Appellants despite producing invoices and creating security interest over C.I Flexographic Press Machine 6 colour variant, the Appellants thereafter contended that it made a decision to procure, 8 colour variant of the Flexographic Printing Machine. The Appellants could not produce any invoices or evidences to discharge the burden of proof and show the Invoice and/or the documents of title under which Flexographic Press Machine 8. colour variant was purchased and as to why no prior consent of the secured lenders were obtained.

21. The Respondent No. 2 states that what machines were actually found were neither C.L. Flexographic 6 or an 8 colour variant but was rather a Rotogravure Printing Machine which is substantially lower in value than a C.I. Flexographic Press Machine and therefore, evidently there has been fraud played upon by the Appellants upon the Corporate Debtor and its creditors particularly the secured creditors. (Valuer Mangesh Ketkar Report dated 17.07.2023 Page No. 423 of Appeal Memo & Valuer Pranav Ambaselkar Report dated 13th September 2023 Page No. 433 of the Appeal Memo).

22. The Respondent No. 2 states that in fact, the entire falsity of the case of the Appellants is exposed from the fact that, their entire case is based upon an overall insinuations and contentions made by them without any iota of corroborative or of documentary evidence on whether and how it has purchased an 8 colour variant of Flexographic Printing Machine instead of 6 colour variant of C.I. Flexographic Press Machine without even informing secured lenders. The Respondent No. 2 further submits that neither the Appellants could produce the invoices for purchase of an 8 colour variant and/or cancellation of the invoices for purchase of the 6 colour variant (without prejudice to the proof of delivery of machines under the said Invoices) nor could the Appellants place any documents on record to support as to why and under what circumstances the make, model, manufacture type etc. of machine was removed or why there were inconsistencies in the labels of the machines than those mentioned in the invoice. The same is without prejudice to the fact that, neither of the said 2 (two) C.I. Flexographic Press Machines or even Flexographic Printing Machine as contended by the Appellant were

found or available at the factory premises of the Corporate Debtor. (Valuers Email dated 12th October 2023-Page No. 193 of Appeal Memo & Valuer Pranav Ambaselkar Report dated 13th September 2023 Page No. 433 of the Appeal Memo)).

23. The Respondent No. 2 submits that both the valuers appointed by the RP being Mangesh Khedkar and Pranav Ambaselkar registered with the Board and being Mechanical Engineers have categorically observed in their valuation report that both machines at site are Rotogravure Printing Machine. It is further submitted that the valuer Pranav Ambaselkar, Chartered Engineers in his valuation report dated 13th September 2023 has stated that there exists evidence wherein it appears that machinery had been installed but since it had been removed. Therefore, it is evident that in order to defraud the creditors, Rotogravure Printing Machines of substantially less value has been installed there at instead of C.1. Flexographic Press Machine, under the said modus operandi, in order to defraud the creditors by swindling away and taking out of the reach of the creditors, the said C.I. Flexographic Press Machines over which security interest was created in favour of the secured lenders having value of ₹17,23,05,603.50 (Rupees Seventeen Crores Twenty Three Lakhs Five Thousand Six Hundred Three and Fifty Paise only) respectively as against Rotogravure Printing machines having value of merely ₹40,00,000/-only approximately. (Valuers Email dated 12th October 2023-Page No. 193 of Appeal Memo).

24. The Respondent No. 2 therefore submits that the relevant experts on this subject have given an determinate and conclusive opinion and evidence on the nature of the machines, which demonstrate beyond any reasonable doubt that C.I. Flexographic Press Machines have been moved out or probably disposed of, to keep them out of the reach of the creditors/secured lenders in order to defraud them by replacing them with Rotogravure Printing Machines of substantially lower value or rather having a scrap value about 20 to 30 lakhs as against the original price of ₹ 17,23,05,603.50/-.

25. Further, the double standards in the case of the Appellants can be further better ascertained from the fact that the Appellants on one hand question the findings of 2 (two) "independent" "chartered engineers"/valuers having requisite qualifications as a "Mechanical Engineers" who were appointed by the Resolution Professional in terms of the provisions of the Insolvency Code and therefore, under statutory mandate, having requisite qualification and on the other hand seek quite hypocritically seek to establish their case that the machines in questions are Flexographic Printing Machines 8 colour variant on the basis of independent valuer appointed by Appellants themselves without any statutory mandate or prior order/approval from the Hon'ble Adjudicating Authority having qualification of an "electrical engineer". (Valuer Ankit Goel Certificate of Comparison and Technical Superiority dated 5th July 2024, appointed Suo Moto by the Appellant Page No. 405 to 409 of the Appeal Memo). The Appellants, on one hand questions the findings of such valuers appointed by the RP and the senior industrial expert stating that the senior industrial expert did not actually visit or inspect the machines in

question and on other hand relies on and seeks to solely establish their case based on opinion of valuer Mr. Ankit Goel appointed suo moto by them who never actually inspected the said machines by himself but had rather merely sent a representative having no technical knowledge whatsoever and merely on the basis of photographs clicked by him, gave an opinion on certain comparative features of machines at site and not even a determinate opinion that machines are Flexographic Printing Machines 8 colour variants and yet, the Appellants quite astoundingly contend that they are in fact Flexographic Printing Machines 8 colour variants and from the aforesaid, it is evident that the case of Appellants is without substance and fall flat on its head. (Impugned Order dated 18.12.2024 Para 14 to 17 at Page No. 131 & 132 of the Appeal Memo).

26. Respondent No. 2 submits that viewed from any angle or perspective, the fact that loans were obtained to purchase (two) machines of certain description C.L. Flexographic Press Machine 6 colour variant by the Corporate Debtor through the Appellants in charge and control of the Corporate Debtor and inability on the part of the Appellants being in control of the Corporate Debtor to handover the possession of the same or account for the same is a manifest fraud or even otherwise, if the Appellant had. procured loan against purchase of certain specified equipment and subsequently, did not purchase or account for the same, in any event, otherwise also, this is apparent fraud in itself committed by the Appellants. The Respondent No. 2 submits that once if fraud is perpetrated and a transaction intends defrauding the creditors has been quite intentionally committed by the Appellants in charge of the

Corporate Debtor, the Appellants become liable to contribute the amount of money for which the fraud is perpetrated vide the said transactions defrauding creditors. The exact nature and the manner in which the fraud was perpetrated and hence transaction defrauding creditors was undertaken by the Appellants are of no consequence.

27. The Respondent No. 2 further states that, it is glaring to note that the make, type, as well as the registration number mentioned upon the machine was not identifiable which appears to be a deliberate attempt to tamper to suppress the identification of machine from the RP/Liquidator and make identification of machine difficult to be identified and at the same time no explanation whatsoever, was provided as to why the machines on factory site which are of 2012 make and plate details are of Frans Engineering Corporation while the C.1. Flexographic Press Machines were purchased from Nyle Sales Agencies Private Limited and Brick & Bite Innovative Products Private Limited, which clearly demonstrates that the machines were replaced with Rotogravure Machines, otherwise, there is no occasion or reason as to why the make and manufacturer of the said machines can possibly change or the Appellants would simply, without any need or benefit or logic change the plate of the maker or manufacturer from the machine and insert name of another manufacturer, unless it was a part of a larger design or conspiracy to defraud creditors. (Valuers Pranav Ambaselkar Email dated 12.10.2023 Page No. 193 of the Appeal Memo) (Affidavit in Reply of Appellant before Bombay High Court Para 10 of Page No. 201 of Appeal Memo) (Email of RP dated 16th October 2023-Page No. 196 of the Appeal Memo).

28. Even the Hon'ble High Court of Bombay in the order passed on 8^{th} January 2020 passed in Commercial Arbitration Petition (L) No. 1603 of 2019 in paragraph No. 9 has recorded the inconsistencies in the stand of the Appellant that despite the loan documents clearly mentioning the vendor and the year of manufacturing as of 2016, but there are even records now to indicate said machine at site was not of manufacturer in the year 2016 but 2017 and some parts supplied by Brick & Byte Innovative Products relates to some printing machinery units without specifications and not to the machine itself while only one machine at the site was bearing endorsement of the manufacturing year as of 2017 which the Hon'ble High Court noted raises more questions than giving the answers. (Page No. 355 of Appeal Memo).

29. The Respondent No. 2 submits that on CIRP being commenced on 18^{th} April 2023, the Appellants were duly bound to handover C.I. Flexographic Press 6 Colour Variant or in any case Flexographic Printing Machine 8 Colour Variant as contended by Appellants themselves, but what machines were available on site after possession was taken over by the RP on 5^{th} July 2023 pursuant to order dated 8^{th} June 2023 passed by Hon'ble NCLT, Mumbai Bench in I.A. (IBC) 2363 of 2023 directing station officer to expand assistance for the same on account of non-cooperation by the Appellant. The real substance of the case lies in the said fact as to machines available on site when RP took over control of registered office and possession of the site and what machines were at site in the year 2020 or 2021 is inconsequential. Therefore, evidently and beyond reasonable doubt, a transaction was done to keep assets out of reach of creditors and to benefit themselves from their own

acts of fraudulent trading in such assets which squarely within the meaning of Section 66 of the Code.

30. The Respondent No. 2 states that this Hon'ble Appellate Tribunal in the case of **Gopal Kalra vs Akhilesh Kumar Gupta (Company Appeal (AT) (Ins) No. 567 of 2024)** vide its very recent judgment dated 3rd July 2025 relying on the decision of the Hon'ble Supreme Court in the case of **Anuj Jain, IRP for Jaypee Infratech Limited vs Axis Bank Limited & Ors. (Civil Appeal No. 8512-8527 of 2019)** held that fraud under IBC is a matter of inference based on pattern and substance of transaction. Courts are not required to have direct proof of criminal intent, circumstantial evidence, when sufficiently compelling can justify a finding of fraudulent trading. The said case was also based on fraudulent trading based on fictious trading or transactions under which payments were made by the Corporate Debtor to third party sellers. The basis of such application was the forensic audit report backed by field investigation report that these entities were not having address as purported place of business as per the documents. The Hon'ble Adjudicating Authority have to consider the facts and proving finding where transactions were orchestrated or undertaken to cause financial loss to the Corporate Debtor and/or its creditors. A copy of the said Judgment is hereto annexed as Annexure "A".

31. A copy of Joint Inspection Report dated 4th July 2024 which was undertaken vide order dated 9th May 2024 passed by the Ld. NCLT and which was also forming part of original pleading vide Additional Affidavit dated 10th

August 2024 but not annexed is hereto annexed as Annexure "B". The said inspection report exposes the Appellants of its false hood that if two flexographic printing machines were purchased then why they were different in size and why does their own valuer Ankit Goel refer to second machine on site as 6 colour variant. Hence, it is prayed that present Appeal be dismissed with cost.

Analysis and Findings

32. We have considered the submissions of the parties and perused the material placed on record. The principal question for consideration is whether the Adjudicating Authority was justified in exercising jurisdiction under Section 66 of the Code and in directing the Appellants to make contribution to the assets of the Corporate Debtor on account of the removal and replacement of the machinery financed and hypothecated in favour of the Financial Creditors.

33. At the outset, the documentary record establishes that the Corporate Debtor had obtained finance from the two Financial Creditors for purchase of two C.I. Flexographic Press Machines of six-colour variety. The relevant invoices record the purchase and dispatch of the machines to the factory premises. The machinery was also subjected to hypothecation in favour of the Financial Creditors. Thus, the existence of the financed and hypothecated machinery is not founded merely upon an oral assertion; it is supported by contemporaneous documentary material.

34. The Appellants' principal defence is that the machinery subsequently found at the premises was an alternative machine of better specifications and that the change had been orally discussed with the Financial Creditor. We find no contemporaneous documentary evidence on record establishing that the Financial Creditors have ever by virtue of any documents consented to substitution of the hypothecated machinery. Significantly, the material relied upon by the Liquidator indicates that the explanation concerning an alternative machine was advanced only subsequently. In the circumstances, the plea appears to be an afterthought and cannot displace the documentary evidence relating to the original financed machinery.

35. The contention that the Financial Creditor (Hero Fin Corp. Ltd., HFCL) had earlier taken possession of the machinery under Section 13(4) of the SARFAESI Act and did not then raise an objection regarding its identity does not, by itself, create an estoppel against examination of the machinery during the insolvency process. The question before us is not whether an earlier possession exercise conclusively determines the identity of the machinery for all purposes, but whether the material available in the insolvency proceedings supports the finding that the assets financed and hypothecated to the creditors were subsequently removed and replaced to the detriment of the Corporate Debtor and its creditors.

36. We are also unable to accept the submission that the reports relied upon by the Resolution Professional are so contradictory or inconclusive as to render the Section 66 proceedings unsustainable. The record contains the

opinions of two independent valuers regarding the machinery found at the premises. It is worthwhile to note the reports of experts which was done in terms of Regulation 35 of the IBBI (CIRP) Regulations 2016, are quite revealing. The valuation report of Mangesh Kedkar indicates that the fair value and the liquidation value of the plant and machinery are about ₹ 96.9 lakhs and ₹ 77.51 lakhs, respectively, and the installed machinery is a rotogravure printing-type machine. The second report of Mr. Pranav Ambaselkar indicates that the fair value is ₹ 79.04 lakhs and the liquidation value is ₹ 63.43 lakhs and the installed machinery is a rotogravure printing-type machine. The photographs attached with this report clearly indicate the label of Frans Engineering Corporation with its address noted therein, which is placed on record at page 443.

37. On further inquiry the valuer had clarified that, specifically, the C.I flexographic machines for which invoices were shown to him were not present on site but there was the presence of a rotogravure printing machine. The valuer also notes that during their on-site assessment they observed the existence of machinery foundations that suggested that machines had previously been installed but had subsequently been removed. The valuer also brings to the notice of the liquidator that the most reliable way to validate the presence of particular machinery is by cross-checking the serial number, model number, or make of the on-site machine with the information outlined in the invoices or documents. However, in this particular case, they faced challenges verifying the serial number and model number due to either missing or mismatched nameplates.

38. Thus we find that the reports, read with the physical indications at the factory premises and the absence of documentary material accounting for the alleged substituted machinery, provide material from which the Adjudicating Authority could draw an inference. The report produced by the Appellants' own expert does not, in our view, satisfactorily displace that evidence, particularly when the expert did not himself undertake a direct inspection of the machinery and the opinion was based upon photographs and comparative features.

39. The fact that the Appellants dispute the identity or description of the machinery does not deprive the Adjudicating Authority of jurisdiction under Section 66.

40. The observations in paragraph 22 of the Impugned Order have to be read in the context in which they were made. Relevant extract of the paragraph is as follows:

> "22. It is abundantly clear from this timeline that the machine originally purchased was the C.I. Flexographic Machine and that the machine currently at the premises of the Corporate Debtor is the Rotogravure Machine. It is not this Tribunal's prerogative to determine whether the machine actually installed at the Corporate Debtor's premises was the C.I. Flexographic Machine or the Flexographic Press, as that would be a matter of investigation beyond the jurisdiction of this Tribunal and the parties may approach the appropriate forum to resolve that dispute."

41. The Adjudicating Authority under law could not be called upon to conduct a technical investigation in the nature of a criminal trial; it was

required to determine, on the basis of material before it, whether the business of the Corporate Debtor had been carried on in the manner contemplated by Section 66 of the Code. The finding of fraudulent conduct can be based upon the cumulative effect of documentary and circumstantial evidence. And if we peruse subsequent paragraphs of the impugned order, the things become clear and for that reason they are extracted as below:

> "23. The discrepancy in the documents and the invoices, the actual state and the identification of the machinery as Rotogravure Printing Machine and the unmistakable inconsistencies in the submissions of the Respondents, clearly demonstrate that the machines that the financial creditors financed, whether the C.I. Flexographic Machine or the Flexographic machine, are not the machines installed in the premises of the Corporate Debtor. Instead, the machines installed in the premises of the Corporate Debtor are Rotogravure Machines that are valued much less than the sanctioned machines. A high standard is always applied for the proof of a positive fact, while the standard of preponderance of probability is sufficient to prove a negative fact. In the present case, it is more probable than not that the Respondent Nos. 1 and 2 have changed the machinery in the Corporate Debtor's premises with machinery of much less value for their own unjust enrichment.
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> 24. In light of the above discussion, we find that the Respondent Nos. 1 and 2 acted in bad faith and defrauded the creditors by availing a loan of Rs. 12 crores for the purchase of certain machinery and have instead installed completely different machinery, that is valued at a much lower price, in the premises of the Corporate Debtor."

42. The plea that Section 66 of the Code, cannot apply because the case concerns only one transaction is equally without merit. For better

appreciation of the power relating to fraudulent or wrongful trading as per the Insolvency and Bankruptcy Code, the relevant provisions are extracted as below:

"Section 66-Fraudulent 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 or the liquidator 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, or by a liquidator 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 the 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.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under subsection (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.

[Emphasis supplied]

43. Section 66(1) of the Code, does not prescribe that fraudulent trading must necessarily be established through a series of independent transactions. What would be material is whether the business of the Corporate Debtor was carried on with intent to defraud creditors or for a fraudulent purpose. The removal of high-value secured machinery and its replacement by substantially lower-value machinery, if established on the evidence, is not a mere technical irregularity. It directly affects the asset base of the Corporate Debtor and the security and recovery prospects of its creditors. We find that the adjudicating authority is sufficiently empowered to delve into the issue of fraudulent or wrongful trading and the resolution professional has rightly moved the application. The Adjudicating Authority was well empowered to direct the suspended director of the Corporate Debtor to make such contribution to the assets of the Corporate Debtor as it deemed fit.

44. Furthermore, we are conscious of the principle, relied upon by the Appellants, that a finding under Section 66 of the Code, requires the statutory ingredients to be established and that mere negligence or an isolated

irregularity cannot automatically be characterized as fraudulent trading. The authorities cited by the Appellants therefore do not lay down that direct evidence of fraudulent intent is indispensable in every case. On the contrary, the nature of the enquiry permits the adjudicatory authority to draw a conclusion from the totality of the circumstances. Thus we find that the appellant's reliance on **Renuka Devi (supra)** is of no assistance to it.

45. The decision in **Piramal Capital and Housing Finance Ltd. (supra)** also makes clear the distinct nature of proceedings under Section 66, different from avoidance application. The distinction noted in this judgment does not assist the Appellants where the material on record, taken cumulatively, establishes the requisite fraudulent purpose.

46. In the present case, several circumstances operate cumulatively:

(i) The original machinery was financed by the financial creditors and supported by invoices and dispatch particulars;

(ii) The machinery was hypothecated in their favour;

(iii) The suspended Board did not permit timely possession of the Corporate Debtor's assets after commencement of CIRP;

(iv) Possession was ultimately obtained only pursuant to the orders of the Adjudicating Authority and with police assistance;

(v) The inspection material records indications that machinery had been removed from the premises;

(vi) The machinery found at the site was identified by the independent valuers as substantially different and of considerably lower value;

(vii) The alleged substituted machinery is not supported by the contemporaneous purchase documentation which one would ordinarily expect; and

(viii) There is no satisfactory evidence of prior approval or consent of the secured creditors for substitution of the hypothecated assets.

47. The cumulative effect of these circumstances is significant. The expensive machinery which constituted the subject matter of the financing and security interest was required to be available for the benefit of the Corporate Debtor and its creditors. Its disappearance, coupled with the presence of substantially lower-value machinery and the failure of the persons in control of the Corporate Debtor to satisfactorily account for the substitution, constitutes compelling circumstantial evidence of conduct intended to keep valuable assets beyond the reach of creditors. We therefore find no perversity or illegality in the conclusion of the Adjudicating Authority that the original machinery had been removed.

48. The Appellants have also questioned the quantum of ₹17,23,05,603.50. Once the finding of fraudulent removal of the secured machinery is upheld, the direction under Section 66 is intended to restore the assets of the Corporate Debtor to the extent determined by the Adjudicating Authority. The Appellants have not demonstrated before us that the quantum directed by the

Adjudicating Authority is so arbitrary or unsupported by the record as to warrant appellate interference. The plea regarding depreciation and realizable value, in the circumstances of the present case, does not dislodge the substantive finding that the financed and hypothecated machinery was removed and that the Corporate Debtor's asset position was thereby depleted.

49. We also reject the submission that the Resolution Professional or Liquidator was required to conduct a forensic investigation of every aspect of the alleged removal before an application under Section 66 could be maintained. The insolvency process cannot be rendered ineffective merely because the precise manner in which an asset was removed cannot be reconstructed with mathematical certainty. The adjudicatory determination is based upon the evidence available on record and the cumulative inferences arising therefrom.

50. The conduct of the suspended Board in resisting or delaying the taking over of possession assumes relevance in the present factual matrix. The CIRP commenced on 18.04.2023, whereas possession of the assets was ultimately taken on 05.07.2023 pursuant to the orders of the Adjudicating Authority. The intervening period, when the persons in control did not permit the Resolution Professional to take possession, is a circumstance which, when considered with the inspection and valuation material, strengthens rather than weakens the inference drawn by the Adjudicating Authority.

51. For the foregoing reasons, we are satisfied that the Adjudicating Authority correctly exercised its jurisdiction under Section 66 of the Code.

The finding is not based upon a bare allegation or an isolated discrepancy, but upon the cumulative effect of documentary evidence, inspection reports, valuation reports, the absence of satisfactory contemporaneous explanation and the conduct of the suspended Board. The Appellants have failed to demonstrate any error of law, perversity or material irregularity warranting interference under Section 61 of the Code.

Conclusion

52. In view of the foregoing discussion, we find no merit in the Appeal. The Impugned Order dated 18.12.2024 passed by the Ld. National Company Law Tribunal, Mumbai Bench-I, in I.A. No. 479 of 2024 is hereby affirmed. The direction requiring the Appellants to remit/contribute ₹ 17,23,05,603.50 to the assets of the Corporate Debtor is upheld. The Liquidator is permitted to continue with the liquidation process and to take all consequential steps in accordance with the Code and the orders of the Adjudicating Authority.

53. We further note that the Appellant/Suspended Board of Directors have filed a frivolous appeal and has wasted the precious time of this Appellate Tribunal. Accordingly, we are constrained to impose sufficient cost to deter such litigants from wasting the precious time of this Appellate Tribunal.

Order

54. The Appeal is dismissed. The order dated 18.12.2024 passed by the National Company Law Tribunal, Mumbai Bench-I, in I.A. No. 479 of 2024 is confirmed. The direction issued under Section 66 of the Insolvency and Bankruptcy Code, 2016, including the direction for contribution of ₹17,23,05,603.50, is upheld. The Liquidator is permitted to continue with the

liquidation proceedings in accordance with law and to take all consequential and necessary steps for preservation and realization of the assets of the Corporate Debtor. We dismiss the Appeal. All related pending Interlocutory Applications, if any, stand disposed of. In the facts and circumstances of the case, both the Appellants shall bear costs of ₹ 5,00,000/- each, to be deposited in the Prime Minister's National Relief Fund.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
September 17, 2026.

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