

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1994 of 2024

[Arising out of the Order dated 20.08.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-I, Mumbai in IA No. 1768/2023 in CP (IB) No. 3755/MB/2019]

IN THE MATTER OF:

Shri. Hrushikesh Balkrishna Paranjape,

1. Having Address at: A35,
Brahmanwadi, Adivare,
Kondsar Budruk, Rajapur,
Ratnagiri, Maharashtra - 416 707
Email: hrushikesh.paranjape@gmail.com

...Appellant

Versus

1. **Shri. Ajay Marathe, Discharged
Resolution Professional for**

M/s. Paranjape Agro Products India Private
Limited,
R/at 201, Aadhar Height, Opp. Bhagshala
Maidan,
Dombivali (W), Thane, Maharashtra - 421
202
Email: aiaym7@rediffmail. Com

...Respondent No.1

2. **Canara Bank, through its Stressed Asset
Management Branch,**

O/at Circle Office Building, 8th Floor, 'B'
Wing, C - 14, G-Block, Bandra - Kurla
Complex, Bandra (E), Mumbai, Maharashtra
- 400051.
Email: cb15550@canarabank.com

...Respondent No.2

Present:

For Appellant : Mr. Avinash R. Khanolkar, Advocate.
For Respondent : Mr. Prakash Shinde, Advocate.

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 Appellant – Promoter Director of the CD i.e M/s Paranjape Agro Products India Pvt. Ltd. against the order passed by the NCLT, Mumbai Bench on 20.08.2024 in I.A No. 1768 of 2023 passed in CP (IB) No. 3755/MB/2019 which was moved by the Resolution Professional of the CD under Section 43, 44, 45, 49, 50 and 66 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) whereby a direction of contributing Rs. 6,56,25,806 /- has been given to the Appellant.

2. Brief facts necessary for disposal of the appeal appears to be that the CD was admitted into CIRP vide order dated 10.06.2022 on a petition i.e. CP (IB) No. 3755/MB/2019 filed by the Canara Bank under Section 7 of the Code and one Shri Ajay Marathe was appointed as the Resolution Professional of the CD.

3. It is also reflected that the CoC was constituted by the RP after collating the claims and the same was comprising of only one member i.e. Respondent No. 2.

4. It is also reflected that in the 1st CoC meeting held on 13.07.2022, Dharkar and Kothari, Chartered Accountant was appointed as the transaction auditor to conduct transaction audit of the CD and to prepare the transaction audit report of the CD for the period commencing from 01.04.2017 to 10.06.2022 in order to identify transaction which may be preferential, undervalued or made for defrauding creditors as well as fraudulent under Section 43, 45, 49, 50 and 66 of the Code.

5. The aforesaid CA/transaction auditor conducted audit of the CD for the aforesaid period and prepared and submitted its report dated 12.11.2022 and identified certain transactions which were in violation of Section 43, 44, 50, 45, 49 and 66 of the Code.

6. The Transaction Auditor in its report, amongst other, found that the CD has written off amount receivables from the Appellant to the tune of Rs. 2.04 Cr. for the financial year 2018-19 and Rs. 0.38 Cr. for the financial year 2019-20 which according to the transaction auditor was an undervalued transaction and the same was recorded in the annual financial statement of the CD.

7. The transaction auditor has also found that stocks which were shown to have been sold by the CD to M/s Shree Cashew Products (proprietorship concern of the Appellant) were sold at a low rate than the cost of the product as per the records maintained by the tally.

8. The transaction auditor has also found that stock in trade amounting to Rs. 6,56,25,806/- has been written off in the books of accounts of the CD and this write off in inventory is considered as extraordinary item and to be disclosed separately in the financial statement as per the requirement of schedule III of the Companies Act 2013, as in the opinion of the auditor, the written off amount is significant and constitute 232% of total income earned during financial year 2019-20 and also that no separate note in the financial statement describing the reason which leads to write off the stock was available and it was also highlighted that the value of the physical stock was not appropriate and thus the possibility that the value of closing stock was inflated/misreported in the financial statements and according to the

transaction auditor these transactions were not in the ordinary course of the business and nor in the interest of the CD and the said transactions have been benefited the related parties as well as the management of the CD in a beneficial position, therefore, are undervalued and fraudulent.

9. It is further reflected that after applying its mind, the RP took the view to move an appropriate application before the Adjudicating Authority and consequently I.A No. 1768 of 2023 was filed before the Tribunal under Section 43, 44, 45, 50 and 66 of the Code with the following prayers: -

“a. That this Tribunal be pleased to take cognizance of the facts of the present application and the transaction audit report dated 12th November, 2022 and take necessary actions against the Respondent under the Code:

b. This Tribunal be pleased to declare the transaction with Respondent as undervalued transaction as under Section 45 of the Code and take necessary action under Section 47 of the Code.

c. That this Tribunal be pleased to pass orders to declare that the amount of Rs.2.04 crores and Rs. 0.38 crores is a transaction under Section 45 of the Code and direct the Respondent to return the stock and/or pay the amount of Rs.2.04 crores and Rs. 0.38 crores to the Corporate Debtor,

d. That this Tribunal be pleased to pass orders to declare that the amount of Rs.6.56,25,806/- is a transaction under Section 66 of the Code and direct the Respondent to repay the amount to the Corporate Debtor:

e. That this Tribunal be pleased to pass such further and other directions as it may deem fit under the provisions of Sections 44, 45, 66. 67 and 69 of Code:”

10. The Adjudicating Authority after providing an opportunity of being heard to the parties held that the business of the CD has been carried on with an intent to defraud the creditors and found the case under Section 66 of the Code and directed the Respondent No. 1 to make contribution of Rs. 6,56,25,806/- to the CD.

11. Aggrieved by the same, the instant appeal has been preferred by the Appellant.

12. It is to be recalled that after hearing Ld. Counsel for the parties an opportunity was granted to them to file written submissions till 9th January 2026, however the appellant did not file any written submissions till this appeal is notified for pronouncement of judgment, however Ld. Counsel for the Respondent has filed written submissions. We have already heard Ld. Counsel for the parties in-depth.

13. Ld. Counsel for the appellant while drawing our attention towards the impugned judgment submits that Ld. Tribunal has committed any illegality in allowing the application moved by the Resolution Professional with regard to the transaction pertaining to the writing off of the inventory pertaining to Rs. 6,56,23,806/-.

14. It is further submitted that application as it stands today could not be allowed by Ld. Tribunal as the same was required to be prosecuted by the Resolution Professional while the same is been prosecuted by successful resolution applicant of the CD.

15. It is further submitted that the Ld. Tribunal has completely disregarded the fact that the Respondent No. 1 has failed to prove any fraudulent intention of the appellant for performing the alleged transactions and it was not even a case of the Respondent no.1 or in the transaction audit report that the said stock was in existence with the CD and the CD has sold the said stock in the market and proceeds of such sale has been misappropriated.

16. It is vehemently submitted that there is no evidence with regard to the misappropriation of the said stock and the reality is that the appellant had got an order for export of the cashew however due to the happening of the covid and movement restrictions the said stock, being a perishable item, deteriorated and remains of no value as the appellant could not get sufficient fund assistance from any bank, to fulfill the export order in time and it is in this background the inventory has been written off.

17. It is further submitted that the Ld. Tribunal has passed the impugned order relying on the unit visit reports and stock audit report conducted by the Respondent No. 2, however, while relying on the same a fact has been disregarded that the stock audit report relied on in transaction audit report is a halfhearted report as the requisite documents were not available with the stock auditor at the relevant time and this fact can be ascertained from a copy of email sent by the appellant to stock editor on 22.07.2019.

18. It is also submitted that the CD has filed income tax return for the year 2019-2020 wherein a loss of Rs. 8 Cr has been shown which considers the loss of stock in question and the said ITR has also been accepted by the income tax department. Therefore, there was no cogent evidence which may reflect that the inventory has been misappropriated by the appellant.

19. Ld. Counsel for the Respondent No. 1 on the other hand submits the short issue which arises for adjudication of this appellate tribunal is, as to whether the appellant as the Promoter and Director of the CD has indulged in the fraudulent transaction to defraud the creditors of the CD.

20. It is submitted that after not getting any cooperation from the appellant the Resolution Professional of the CD appointed Dharkar and

Kothari, Chartered Accountants as the Transaction Auditor to conduct the audit of the CD for the period from 01.04.2017 to 10.06.2022 and they submitted a detailed Transaction Audit Report (TAR) on 12.11.2022 wherein various transactions have been labeled as fraudulent and preferential.

21. It is further submitted that it has been clearly stated in the TAR that the stock in trade amounting to Rs. 6,56,25,806/- was written off in the books of account of the CD and this being an extraordinary item was required to be disclosed separately in the financial statement as per the requirement of scheduled-III the Companies Act, 2013.

22. It is further submitted that the amount shown to have been written off constitute 232 % of the total income of the CD earned during financial year 2019-2020. However, no separate note in financial statement describing the reason for writing off of the stock was available and the value of the physical stock was not appropriate and thus, there is every possibility that the value of closing stock was inflated/misreported in the financial statements.

23. It is further submitted that the Appellant being the Promoter, Director, Directors of the Corporate Debtor during the relevant time have indulged in the aforementioned transactions which are not in the ordinary course of the business and are also not in the interest of the Corporate Debtor and the creditors of the Corporate Debtor and have been done with the intention to defraud creditors and also benefited the related parties and put the Appellant, management in a beneficial position. Moreover, the Appellant in the Affidavit in Reply dated 14th October 2023, filed in the IA No. 1768 of 2023 admitted that they have carried out the Transactions

during the relevant period of time. Therefore, the Appellant is liable to bring back the amount of Rs.6,56,25,806/-.

24. Ld. counsel for the Appellant has relied on the following case Laws: -

(i) Company Appeal (AT) (Ins.) No.699 of 2021 dated: 29.03.2023, Shri Baiju Trading and Investment Private Limited v/s. Mr. Arihant Nenawati (Liquidator for Royal Refinery Private Limited) & Ors. Para Nos. 41, 43, 49 and 50.

(ii) Company Appeal (AT) (Ins.) No.293 of 2021, Judgment dated: 05.12.2022, Mr. Thomas George v/s. K. Easwara Pillai & Ors., Para No. 12.

25. Section 66 of the Code for convenience is reproduced as under:

"Section 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."

26. In **Piramal Capital and Housing Finance Limited v. Moons Technologies Ltd. & Ors. [2025 SCC Online SC 690]**, Hon'ble Supreme Court opined as under: -

"60. However, in cases of "Fraudulent or Wrongful trading" in respect of the business of the CD as contemplated Civil Appeal Nos. 1632-1634 of 2022 Page 94 of 145 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 CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose.

61. In view of the above, the Applications filed in respect of "Fraudulent and Wrongful trading" carried on by the CD, could not be termed as "Avoidance Applications" used for the Applications filed under Sections 43, 45 and 50 to avoid or set aside the Preferential, Undervalued or Extortionate Civil Appeal Nos. 1632-1634 of 2022 Page 95 of 145 transactions, as the case may be. There is clear demarcation of powers of the Adjudicating Authority to pass orders in the Avoidance Applications filed by the Resolution Professional under Section 43, 45 and 50 falling under Chapter III and the Applications filed by the Resolution Professional in respect of the Fraudulent and Wrongful trading of CD, under Section 66 falling under Chapter VI of the IBC. If the Resolution Professional has filed common applications under Sections 43, 45, 50 and also under Section 66, the Adjudicating Authority shall have to distinguish the same and decide as to which provision would be attracted to which of the Applications, and then shall exercise the powers and pass the orders in terms of the provisions of IBC."

27. This Appellate Tribunal again in **Shibu Job Cheeran & Ors. v. Ashok Velamur Seshadri Liquidator of M/s. Archana Motors Ltd. (2023 SCC OnLine NCLAT 804)**, held as under:

"43. It is therefore clear that for establishing the fraudulent purpose, it must be shown that the Ex-Directors of the 'Corporate Debtor' knew that the Company was insolvent but continued to run business with dishonest intentions. On a broader sense, concealment of true

financial position of the 'Corporate Debtor' can also be covered under such provisions.

44. This 'Appellate Tribunal', therefore, observes that the following elements need to be established for success of Section 66 Application, namely, (i) Business of the 'Corporate Debtor' has been carried out with an intent to defraud the creditors. (ii) Directors participated in carrying on business of the 'Corporate Debtor' despite knowing likely insolvency of the 'Corporate Debtor'."

28. This appellate tribunal in **Swapan Kumar Saha v. Ashok Kumar Agarwal, (2025) ibclaw.in 911 NCLAT**, 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,"

29. In **Company Appeal (AT) (Ins.) No.699 of 2021, Shir Baiju Trading and Investment Private Limited v/s. Mr. Arihant Nenawati (Liquidator for Royal Refinery Private Limited) & Ors.**, this Appellate Tribunal held in

Paras Nos. 43, 49 and 50 as under: -

"43. It is noted that the requirements of Section 66(1) of the I & B Code, 2016 is also satisfied as it is a settled principle of law that the beneficiaries of fraud is presumed to be a party to the fraud, as laid down by the Hon'ble Supreme Court in the case of Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education, [(2003) 8 SCC 311]as follows: - "10. It is also a matter of great suspicion as to how another marksheet was issued in his favour on 1-9-1986 with the words "WB" particularly when the Principal of the College admittedly was made known about the order dated 1-9-1985 passed by the first respondent cancelling the examination of Respondent No. 3. Thus, it is evident that a fraud was committed. Respondent No. 3 is the sole

beneficiary of the said fraud and it, as much, must be presumed that he was a party thereto.: (emphasis supplied)

49. It is seen that the intent to defraud the creditors”, under Section 66(1) of the I & B Code, 2016 is further established by the fact that the ‘Respondent Nos. 2 & 3’ had provided different books of accounts in different proceedings before the ‘Adjudicating Authority’ with a clear intent to fraudulently deprive the creditors of the ‘Corporate Debtor’ from the admitted amounts.

50. This ‘Appellate Tribunal’ observed that the ‘Appellant’ is a principal beneficiary of fraudulent and wrongful trading and therefore the ‘Adjudicating Authority’ has rightly held this transaction as fraudulent under Section 66 of the I & B Code, 2016.”

Section 66 of the IBC, 2016, thus deals with two different situations. Section 66(1) of IBC, 2016 deals with ‘Fraudulent Trading’ and Section 66(2) of IBC, 2016 deals with ‘Wrongful Trading’. Section 66(1) of IBC, 2016 imposes liability on ‘any person’ who were knowingly parties to the carrying on the business with a dishonest intention to defraud the creditors, to make contribution to the assets of the Corporate Debtor. Therefore to qualify under Section 66(1) of IBC, 2016, the transaction should be knowingly transacted with a dishonest intention to defraud the creditors of the CD, while under Section 66(2) of IBC, 2016 , which deals with ‘Wrongful Trading’, Liability can only be fixed upon only ‘Director’ or ‘Partner’ and for a transaction to qualify under this Sub Section it must be shown that the parties to such transaction knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvency proceedings and they did not take due diligence with a view to minimizing the potential loss to the creditors of the company. The facts alleged and evidence produced must satisfy the ingredients of this section and the facts from which the intention to defraud may be deduced must be proved to satisfy the conscience of the ‘Tribunal’ on the scale of ‘preponderance of probability’. However, it will

depend on the facts and evidence of each case to assess as to whether the particular transaction may be treated as fraudulent or not.

30. Having heard Ld. Counsel for the parties and having perused the record, we now proceed to appreciate the facts and circumstances of the present case on the touch stone of the law laid down in above mentioned cases. We notice that out of various transactions highlighted by transaction auditor being preferential and fraudulent, Ld. Tribunal has granted the relief with regard to prayer 9 (e) of IA No. 1768 of 2023 (wrongly shown as prayer 9 (d) in the opening part of the impugned order) and the said prayer is reproduced as under:

“e. That this Hon’ble Tribunal be pleased to pass orders to declare that the amount of Rs. 6,56,25,806/- is a transaction under Section 66 of the Code and direct the Respondent to repay the amount to the Corporate Debtor.”

31. It is also evident that with regard to the aforesaid prayer it is contended in the application moved by the Resolution Professional before the adjudicating authority that the stock in trade amounting to Rs. 6,56,25,806/- was written off in the books of accounts of CD and writing of an inventory is considered as extraordinary item and required to be disclosed separately in financial statement as per the requirement of schedule-III of the Companies Act, 2013. More so, when the amount is significant and constitute 232% of total income earned during financial year 2019-2020, however no separate note in the financial statement of the relevant year describing the reasons leading to writing of the stock was available. It is also contended therein that the value of the physical stock was not appropriate and thus there is possibility that the value of closing stock has been inflated/misreported.

32. It is further stated in the application that the aforesaid transaction is fraudulent and appellant was the Director of the CD at the relevant time and have indulged in the above transactions which are not in the ordinary course of business and were also not in the interest of the CD and these transactions have benefitted the related parties and also put the management in a beneficial position and therefore the appellant is required to bring back this amount of Rs. 6,56,25,806/- as the said transaction squarely falls within the ambit of Section 66 of the Code.

33. In the reply filed by the appellant it is stated that while making aforesaid allegation of making fraudulent transactions the Resolution Professional has not exercised due diligence and merely made an averment that transaction of write off the perished stock is fraudulent in nature without any existence of element of fraud as required for invocation of Section 66 of the Code.

34. It is further contended that Section 66 (1) of the Code, itself warrants and casts a responsibility on the Resolution Professional to demonstrate that alleged transactions have been carried out to defraud the creditors and the Resolution Professional has failed in establishing so and thus for want of any fraudulent intention on the part of the appellant the application was devoid of any force.

35. It is further stated in the reply filed by the appellant before the Adjudicating Authority that the CD at the relevant time was managed by the other Directors and the appellant was deliberately kept out of the proceedings and the transaction of writing of the stock has been made

pursuant to the accounting standards passed by the Board through a Resolution.

36. It is also stated that the CD is in the business of processing, manufacturing, export of cashews and during the period of July/August 2019 got a huge export order of cashew and in this regard huge amount of cashew seed was procured by him and for want of sufficient fund he could not complete the order and in the meantime Covid -19 also happened and restricted all the movements throughout the Country and due to the passage of time the stock of cashew seeds remained lying ideal at one place and got perished and in this background the stock was written off.

37. Ld. Adjudicating Authority after going through the record drawn conclusions that the writing of the stock was in order to wash non-existent inventory and this act was for cleaning the books of accounts of the CD to wipe of a non-existent inventory in view of CIRP Petition which was filed on 11.10.2019, as there was no reasonable prospect to avoid the CIRP and thus directed the appellant to contribute Rs. 6,56,25,806/- to CD the relevant part of the impugned judgment is reproduced as under:

“4.5. The management has explained that the write off arose from failure of the Corporate Debtor in execution of export order due to non-availability of credit facility for the purpose and thereafter onset of Covid-19 pandemic. We find from the order dated 10.06.2022 passed by this Tribunal admitting the Corporate Debtor in to CIRP process that the account of the Corporate Debtor was classified as NPA on 03.04.2018 after occurrence of default on 03.01.2018. On perusal of audited financial statement for year ended 31.03.2020 we find that the Corporate Debtor was carrying an inventory of Rs. 7,41,99,136.00 as on 31.03.2019 and Rs. 7,96,65,854.00 as on 31.03.2018. If we look at the explanation in the backdrop of these financial data we find it difficult to accept the contention because the Corporate Debtor was already carrying an inventory of Rs. 7,96,65,854.00 as on 31.03.2018, when

its account was classified as NPA immediately thereafter, and the shelf life of the Cashew is stated to be one year while the Corporate Debtor continued to hold inventory of Rs. 7,41,99,136.00 as on 31.03.2019 also even though the total purchases during the Financial Year 2018-19 are stated to be of Rs. 36,68,982.33. An application under Section 7 was filed by the lender Canara Bank on 11.10.2019, accordingly, the stock write off was in order to wash away non-existent of inventory, which was also observed in the unit visit reports ad stock audit reports as alleged by the Transaction Auditor. In view of these facts, we have no hesitation to hold that the inventory write off was an act of cleaning the books to wipe of non-existent inventory in view of CIRP petition having been filed on 11.10.2019 and there being no reasonable prospect of avoiding of commencement of CIRP. The Hon'ble NCLAT, Chennai Bench in the case of Mr. Shibu Job Cheeran, & Ors. Vs Mr. Ashok Velamur Seshadri, Liquidator of (M/s Archana Motors Limited) has held "43. It is therefore clear that for establishing the fraudulent purpose, it must be shown that the Ex-Directors of the Corporate Debtor knew that the Company was insolvency bust continued to run business with dishonest intentions. On a broader sense, concealment of true financial position of the Corporate Debtor can be also covered under such provisions."

4.6. Accordingly, we consider it appropriate to hold that the business of the Corporate Debtor has been carried on with an intent to defraud creditor and it is a fit case to pass an order under Section 66 of the Code, directing Respondent No. 1 to make contribution of Rs. 6,50,25,806/-. The other Director is the family member of the Respondent No. 1 accordingly; we don't find any force in the argument of non-joinder canvassed by the Respondent. The Respondent shall pay this money to Corporate Debtor within 30 days from the communication of the said order".

38. At this juncture, we also notice the report of the transaction auditor with regard to the certain transactions, which has been filed by the transaction auditor wherein the transaction auditor has stated the response of the management of the CD in terms that non-compliance of the companies Act was due to the financial distress and their account was declared NPA on 03.04.2018 and situation was severed by happening of the

covid which has paralyzed their entire business and also that there statutory audit for year 2018-2019 and 2019-2020 could only be completed on 01.12.2020 and 03.12.2020.

39. At this juncture, it is to be recalled that the CIRP of the CD was initiated vide order of Ld. Tribunal dated 10.06.2022. The transaction auditor has also noticed in its report that there was difference between sales reported in financial statement and sales reported in GST Returns and without approval of the board the appellant has paid the liabilities of the company and so far as the impugned transaction is concerned it was categorically reported by the transaction auditor that as per the audited financial statements for financial year 2019-2020 there was a reduction in stock in trade amounting to Rs. 6,56,25,806/- and there is no separate note regarding the reason for reduction of such stock in the financial statements and also that the same was not matching with the stock records maintained in tally.

40. It is also highlighted that as per the unit visit report and stock audit report it is evident that value of physical stock was not appropriate and there may be a possibility that the value of the closing stock was inflated or misreported in the financial statements.

41. It is also opined that write off of the stock in trade merely in the books of accounts without having its physical existence amounting to Rs. 6.56 Crore is considered as activity carried on with fraudulent purpose and is squarely covered within the ambit of Section 66 of the Code.

42. It was highlighted by the transaction auditor that the stock records which were maintained by the CD are not proper and no records were found

for physical verification of the same and the same was also noticed by the stock auditors and bankers at the time of Unit Visits and Inspection done by them and the transaction auditor in support of this conclusion has enclosed the unit visit reports and stock audit reports and ultimately concluded as under:

“Write off of Stock

It is apparent from the records provided by the bank that there was no physical stock present at the plant at any time after the loan was sanctioned and only value of stock was inflated in the books and records which leads writing off the excess book stock in the financial statements as on 31st March 2020. Mentioning false amount of stock in the financial statements to maintain the limits sanctioned by the bank that should be considered as fraudulent transactions u/s 66 of the IBC 2016”.

43. Thus, the defense which has been taken by the appellant is that to fulfill an export order, huge procurement of huge amount of cashew seed was done and as the funds were not given by the banks, the export assignment could not be fulfilled and also that the processed and non-processes cashew seeds were kept lying in the stock for a long time and keeping in view the low shelf life of these seeds and of no maintenance during the covid period and lockdown imposed, the seeds become useless and was written off.

44. We have already noticed the report of the transaction auditor wherein, on the basis of documentary evidence and the evidence supplied by the concerned bank it has been concluded that there was in fact no physical stock at the plant, at any time after the loan was sanctioned and it is only the value of stock which was inflated in the account books without purchasing the stock and was ultimately written off in financial statements

as on 31.03.2020 mentioning false amount of stock in the financial statement.

45. We during the course of hearing, also put a pointed query to Ld. Counsel for the appellant to the effect as to whether there is any documentary evidence or proof of purchase of cashew seeds and it was answered that the cashew seeds were purchased from various petty farmers and documentary evidence is not available with regard to the same.

46. Having considered all the facts and circumstances of this case, we find that in the audited financial statement for the year ending as on 31.03.2020 the CD was shown carrying an inventory of Rs. 7,41,99,136/- as on 31.03.2019 and of Rs. 7,96,65,854/- as on 31.03.2018. Ld. Adjudicating Authority find it difficult to accept the defense of the appellant as the CD was already carrying an inventory of Rs. 7,96,65,854/- as on 31.03.2018 when its account was classified as NPA and the shelf life of the cashew seed or cashew is stated to be of only one year and interestingly the CD continued to hold the inventory of Rs. 7,41,99,136/- as on 31.03.2019 even though the total purchases during the financial year 2018-2019 is shown to be of Rs. 36,68,982/- it is to be recalled that an application under Section 7 of the Code was filed by the Canara Bank on 11.12.2019. Thus, we are in agreement with the conclusion drawn by Adjudicating Authority that this writing off of stock was done in order to wash away the non-existent inventory which was only shown in the books of accounts.

47. Keeping in view the documentary evidence available on record and lack of any acceptable explanation from the appellant with regard to the writing off of the inventory amount of Rs. 6,56,25,806/-, we do not want to

take any other view then taken by Ld. Adjudicating authority which appears to be legally and factually sound and it is established that the writing off of the inventory in the books of account of the CD was only for the purpose of cleaning of the books of accounts of the CD to wash a non-existent inventory meaning thereby no cashew seed or cashew was purchased and it was only a paper work which is also substantiated by the evidence mentioned by the transaction auditor to the effect that during the unit visit of the bank officials no such inventory was ever found at the plant of the CD.

48. In view of above the appeal is devoid of merits and is **dismissed** as such there is no order with regard to the costs. Pending IA's if any also disposed of.

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

[Indevar Pandey]
Member (Technical)

New Delhi.
22.01.2026

sr/sc