

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Ins) No. 1129 of 2022**

**[Arising out of the Order dated 14.07.2022, passed by the  
'Adjudicating Authority' (National Company Law Tribunal,  
Kolkata Bench, Kolkata), in I.A No. 600/KB/2021 in C.P (IB)  
No. 1198/KB/2018]**

**IN THE MATTER OF:**

1. Rana Sarkar  
183, Rajdanga, Main Road  
Kolkata – 700 107  
West Bengal

**...Appellant**

**Versus**

1. Mr. Bimal Agarwal,  
Resolution Professional of Dagcon (India)  
Private Limited,  
AAA Insolvency Professionals LLP,  
AVB & Associates, P-2 New CIT Road,  
3<sup>rd</sup> Floor, Room No. 302,  
Kolkata – 700 073, West Bengal
2. Mr. Arunendu Sarkar,  
9/65, Jagatipota,  
Kolkata – 700 152,  
West Bengal
3. Mrs. Snigdha Sarkar,  
Kandi, Dangapara,  
Murshidabad – 742 137,  
West Bengal
4. DAG Creative Media Pvt. Ltd.,  
143A, Rasbehari Avenue,  
Kolkata – 700 029  
West Bengal

**...Respondent No. 1**

**...Respondent No. 2**

**...Respondent No. 3**

**...Respondent No. 4**

**Present:**

**For Appellant** : Mr. Gaurav Mitra, Ms. Niharika Sharma, Ms. Lavanya, Advocates.

**For Respondent** : Mr. Amar Vivek, Mr. Aditya Gauri, Mr. Anant Jain & Ms. Damini Srestha & Mr. Aryan Chhabra, Advocates for RP.

**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 under Section 61 of the Insolvency and Bankruptcy Code, 2016 (Code) against the impugned order date 14.07.2022 passed by Ld. National Company Law Tribunal, Kolkata Bench in CP (IB) No. 1198/KB/2018 whereby the IA bearing No. 600/KB/2021 was moved under Section 66 of the Code was allowed and the appellant was directed to deposit a sum of Rs. 1,00,700/- (One lakh seven hundred only) and sum of Rs. 10,54,00,000/- (Ten crores fifty-four lakhs only) jointly with other directors of the corporate debtor (CD) with a consequential interest of 8% p.a. within one month of the date of passing of the order.

2. We find from the record that in fact 4 appeals were filed by the appellant as well as other Directors of the CD. CA (AT) (Ins) No. 1129 of 2022 is the instant appeal filed by one of the Director of the CD, namely Rana Sarkar, CA (AT) (Ins) No. 1130 of 2022 was filed by the Respondent No. 4 of the instant appeal namely, DAG Creative Media Pvt. Ltd. and the CA (AT) (Ins) No. 1145 of 2022 was filed by Mr. Arunendu Sarkar who has been arrayed as Respondent no. 2 in the instant appeal and who is reported to have died. Another appeal, CA (AT) (Ins) no. 1146 of 2022, was filed by Mrs. Snighda Sarkar who has been arrayed as Respondent No. 3 in the instant appeal.

3. The record would further reveal that all aforesaid appeals including the instant appeal were connected and were being listed together and the fact of the death of Respondent No. 2, Arunendu Sarkar was brought to the

knowledge of this appellate tribunal on which notices were issued to the legal representative of the Respondent no. 2 Arunendu Sarkar (deceased) in the appeal filed by him and they were served, as has been recorded in the order sheet of this appeal of date 28.08.2024 and noticing their absence this appellate tribunal had directed to proceed against them ex-parte in connected appeal no. 1130 of 2022. Thus, the LR's of the Respondent No. 2 even after having full knowledge of the pendency of the instant appeal as well as the connected appeals chose not to appear/ contest this appeal. The Respondent No. 3 and 4 namely, Mrs. Snigdha Sarkar and DAG Creative Media Pvt. Ltd. have also filed appeals, as stated herein before and they did not appear in this appeal as well as in the appeals filed by them and on this score the appeals filed by them were dismissed for non-prosecution. Thus, the Respondent No. 3 and 4 have also chosen to remain absent and in this scenario we have heard Ld. Counsel for the appellant and Ld. Counsel for the Resolution Professional i.e. Respondent No. 1.

4. Brief factual matrix of this appeal appears to be that the CIRP of the CD had commenced vide order dated 20.11.2019, passed in CP (IB) No. 1198/KB/2018 and Respondent No. 1 was appointed as the Interim Resolution Professional (IRP) and in the first CoC meeting he was also confirmed as the RP of the CD, which was also confirmed by Ld. Tribunal vide its order dated 02.01.2020.

5. The Respondent No. 1 has alleged non-cooperation by the Suspended Directors of the CD and a direction in this regard was issued by Ld. Tribunal in pursuance of an application filed by the RP under Section 19 (2) of the Code, wherein, it was alleged that documents and possession of the assets

has not been handed over by the Suspended Directors of the CD to the RP and also that they are not cooperating with him.

6. It is also alleged by the RP that this matter was brought by the appellant before this appellate tribunal also by filing an appeal and this appellate tribunal vide its order dated 04.02.2020, passed in CA (AT) (Ins) No. 211 of 2020 Rana Sarkar vs. Asset Reconstruction Company (India) Ltd. and Anr. directing the Suspended Management of the CD, to hand over the assets and records of the CD immediately to the RP.

7. The RP stated to have collected details of various bank accounts of the CD and smelling foul transactions therein appointed Neha B Agarwal and Company as the transaction auditor to conduct the transaction audit of CD and upon receiving the transaction audit report, wherein certain transactions are held to be doubtful and fraudulent, moved an application before Ld. Tribunal under Section 66, 67 of the IBC, which has been allowed by Ld. Tribunal by passing the impugned order, which is the subject matter of this appeal , which has been preferred by the appellant-Rana Sarkar (Suspended Director of the CD).

8. Ld. Counsel for the appellant, while drawing our attention towards the impugned judgment, submits that Ld. Tribunal has passed the impugned judgment without application of judicial mind and without appreciating the facts and material placed on record in right perspective, has endorsed the view taken by the RP which was based only on the bank accounts of the CD and the report of the transaction auditor, without independently analysing the evidentiary value of the same.

9. It is vehemently submitted that Ld. Tribunal has failed to fulfil its duty, of application of judicial mind, pertaining to the impugned transactions in order to assess, so far as the appellant is concerned, as to whether they actually fall under the preview of Section 66, by holding that it cannot sit in an appeal against the opinion formed by the RP.

10. It is submitted that it was incumbent upon Ld. Tribunal to independently scrutinize and analyse the impugned transactions, before labelling these transactions as fraudulent. However, Ld. Tribunal has miserably failed to perform its duty.

11. It is further submitted that Ld. Tribunal has also failed to assess as to whether the ingredients and requirements of Section 66 are satisfied in the instant case and also failed to note that the transaction audit report was prepared solely on the basis of the bank statements while no financial statement of the CD was available post financial year 2011-2012.

12. It is further submitted that Ld. Tribunal has not considered and appreciated the explanation tendered by the appellant and other Respondents and therefore the findings arrived at by Ld. Tribunal cannot be deemed conclusive or determinative. There is no application of mind of the tribunal with regard to the fact as to whether the impugned transactions are fraudulent or wrongful while the main ingredient of Section 66 of the Code is the establishment of the intent to defraud creditors or to carry on business for fraudulent or wrongful purpose, which was completely lacking in this case.

13. It is also submitted that Ld. Tribunal has failed to appreciate that appellant was neither in the management of the day to day affairs of the CD

nor was the signatory to any of the bank account of the CD at the time of happening of these transactions which was also evident by the averments made in the appeal filed by the Managing Director of the CD namely, Arunendu Sarkar, who has died during the pendency of his appeal and his appeal was never pursued by his legal heirs and has been dismissed for non-prosecution.

14. It is also submitted that so far as the cash withdrawal of Rs. 693 lakhs, Rs. 203 lakhs, 60 lakhs, Rs. 9 lakhs and Rs. 89 lakhs alleged to have been withdrawn as cash in the year 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 are concerned, it is explained that appellant had resigned from the company on 27.05.2016, however his resignation was not accepted by the Board of Directors on account of appellant's personal guarantee which was given to the institutional creditors, however, the then Director of the CD namely, Arunendu Sarkar (deceased) was primarily in charge of the affairs of the CD and he has already admitted so, in his appeal i.e. CA (AT) (Ins) No. 1145 of 2022 and thus it was clear that appellant was not in charge of the affairs of the CD. The appellant was also not a signatory to any of the accounts of the CD and it has also not been alleged by the Respondent No. 1. However, even when these aspects were brought in the knowledge of Ld. Tribunal, these have not been considered in right perspective and the findings have been based against the appellant, only on the transactional audit report which was based only on the bank accounts of the CD.

15. It is further submitted that so far as payment received by the appellant and the deceased Arunendu Sarakar of Rs. 9 lakhs is concerned

the same is the Directors remuneration and this has been completely ignored by the RP as well as by Ld. Tribunal.

16. It is further submitted that the having regard to the nature of business of the CD, cash withdrawals were made for being used for labour, site expenses and mess bill and in fact he had spent a huge money, from his own pocket, pertaining to various litigations, in which the CD was involved and this amount was never paid to him.

17. Ld. Counsel for the appellant in support of his submissions has relied on following case laws:

a.Piramal Capital and Housing Finance Ltd.(Formerly known as Dewan Housing Finance Corporation Ltd.) vs. 63 moons Technologies Ltd. [Civil Appeal Nos. 1632-1634 of 2022 dated 01.04.2025]

b.Atlanti Spinning and Weaving Mills Ltd. vs. Dolly Investment Company Pvt. Ltd. [Civil Appeal No. 7420 of 2023 dated 07.08.2025]

c.Renuka Devi Rangaswamy vs. MR. Madhusudan Khemka [CA (AT) (CH) (Ins) No. 356 of 2022]

d.Mr. Shibu job Cheeran & Ors. vs. Mr. Ashok Velamur Seshadri [CA (AT) (CH) (Ins) No. 350 of 2021]

e. Ramakrishna Forgings Ltd. vs. Ravindra Loonkar [Civil Appeal No. 1527 of 2022]

f. Mr. Nalinesh Kumar Paurush vs. Mr. Arvind Mittal [CA (AT) (Ins) No. 346 of 2024]

g. Swapan Kumar Saha vs. Ashok Kumar Agarwal [CA (AT) (Ins) No. 2355 of 2024].

Ld. Counsel for the appellant has relied on law propounded by Hon'ble Supreme Court in Civil Appeal No. 1527/2022 RamKrishan Forgings Ltd. vs. Ravindra Loonkar, RP of ACIL Ltd., decided on 21.11.2023 in the context that the Resolution Plan has already been approved and therefore there was no occasion for the Ld. Tribunal to have considered the recovery as directed.

18. Ld. Counsel for the Respondent No. 1/RP submits that there is no error or infirmity so far as the impugned judgment is concerned as after assuming the charge of the IRP, after initiation of CIRP on 20.11.2019, he filed an application under Section 19 (2) of the Code and vide order dated 02.01.2020, passed therein, directions were given to the Suspended Directors of the Corporate debtor to handover the books of accounts and other relevant information to the RP. Moreover, this appellate tribunal has also directed the Suspended Directors to hand over assets and records of the CD, however, they remained absolutely non-cooperative, through out.

19. It is further submitted that in these circumstances the RP engaged a transaction auditor i.e. Neha B Agarwal and Company on 18.02.2021 to examine the CD's bank record and financial transactions as the CD's books of accounts were not provided by the Suspended Management including the appellant and it was in the auditor's report, certain evidence had surfaced on the basis of which an opinion was formed by the RP and he filed an application under Section 66 and 67 of the IBC before tribunal.

20. It is vehemently submitted that RP found massive cash withdrawals aggregating to Rs. 10.54 Crores between financial year 2011-2012 to 2015-2016, and no acceptable explanation with regard to these huge cash withdrawals was given and it was stated that these cash withdrawals were



used for labour, site expenses, mess bills, however no supporting documentation was provided and in absence of any voucher or project record such explanation are untenable.

21. While highlighting transaction of withdrawal of cash of Rs. 6,92,77,265/- against realisation of Rs. 8,06,90,064/- on 20.11.2012, Cash withdrawal of Rs. 203 lakhs in financial year 2012-2013, cash withdrawal of Rs. 59,57,500/- against realisation of Rs. 35,096,271/- in financial year 2013-2014, Cash withdrawal of Rs. 886,500/- against realisation of Rs. 12,987,038/- in financial year 2014-2015 and finally Cash withdrawal of Rs. 8,993,000/- against realisation of Rs. 1,366,349/- in the financial year 2015-2016, it is submitted that in these years' total cash withdrawal of Rs. 10.54 Crores have been made and this pattern of substantial debt recovery followed by unjustified cash withdrawal establishes a clear diversion of funds from the CD and thus it is evident that Suspended Directors have siphoned of significant money for the benefit of themselves and related parties, to defraud the secured financial creditors.

22. It is further submitted that the CD's bank accounts revealed refund of Rs. 79.70 lakhs to (i) DAG Creative Media Pvt. Ltd. (Rs. 15.20 lakhs) (ii) Gour Gopal Sarkar (Rs. 1.007 lakhs) (iii) Singdha Sarkar (Rs. 63.50 lakhs, on the pretext of repayments of unsecured loans or consultancy fees, however no supporting document was provided and it is to be noticed that Gour Gopal Sarkar aforesaid is the father of the Suspended Director Rana Sarkar (Appellant) who has received money on the pretext of receiving consultancy payment and Snigdha Sarkar is the wife of deceased Suspended Director Arunendu Sarkar and it was also established that Suspended

Director Rana Sarkar was also a Director of DAG Creative Media Pvt. Ltd., during the relevant time and thus the questionable payments were made to the related parties and absence of any documentations fortifies that by showing these transactions the money of the CD has been siphoned out of reach of the creditors of the CD

23. It is further submitted that so much so Rs. 43.42 lakhs are shown to have been paid to Suspended Directors (Rs. 16.86 lakhs to Arbinda Sarkar and Rs. 26.56 lakhs to Arunendu Sarkar) in the name of reimbursement and advances for supplier payments, however ledger reconciliation shows that Arunendu Sarkar paid Rs. 56,57,000/- into the company's HDFC account and received Rs. 83,12,800/- resulting in an excess payment of Rs. 26,55,800/- and therefore, the supplier payments have been routed through a Directors personal account instead of CD's bank account which is a clear indication of diversion of funds outside the company's system and non-compliance of ROC filings, which have been made only upto 2011 fortifies the ill intention of diversion of funds out of CD by appellant and other directors.

24. It is vehemently submitted that intention of the appellant to defraud the creditors of the CD is evident on record by these transactions and therefore all the ingredients of Section 66 IBC are attracted and thus no illegality has been committed by Ld. Tribunal in passing the impugned order.

25. Ld. Counsel for the Respondent No. 1 has placed reliance on following case laws:

(i) Swapan Kumar Saha vs. Ashok Kumar Agarwal, RP of PKS Ltd. CA (AT) (Ins) No. 2355 of 2024, decided on 06.11.2025.

(ii) Aditya Kumar Tibrewal, Resolution Professional, M/s Sri Balaji Forest Products Pvt. Ltd. vs. Om Prakash Pandey, CA (AT) (Ins) No. 583 of 2021.

(iii) State Bank of India vs. Dommeti Surya Rama Krishna Saibaba, Liquidator of Kumar Aquatech Agencies Pvt. Ltd., CA (AT) (CH) (Ins) No. 461 of 2023.

26. Having heard Ld. Counsel for the parties and having perused the record it is reflected that after being appointed as IRP in pursuance of order dated 20.11.2019, whereby the CIRP was initiated against the CD, the IRP complained of non-cooperation from Suspended Board of management of the CD, including the appellant and in this regard he filed an application before Ld. Tribunal under Section 19 (2) of the Code where on certain directions were given by Ld. Tribunal to the Directors of the CD.

27. It is also evident that this appellate tribunal also in CA (AT) (Ins) No. 211 of 2020 vide its order dated 04.02.2020, has directed the Suspended Management of the CD to hand over the assets and records of the CD, immediately.

28. It is also reflected that the RP collected bank statements of about 20 different banks accounts pertaining to the CD and on the basis of these documents formed an opinion that these transactions are doubtful and in this regard Neha B Agarwal and Company was appointed by him as transaction auditor to conduct the transaction audit of the CD and upon

receiving of the audit report the RP formed an opinion that there are certain fraudulent transactions and he moved an application bearing IA No. 600/KB/2021.

29. The record further reveals that aforesaid IA bearing No. 600/KB/2021 was moved by the Respondent No. 1/RP of the CD under Section 66 and 67 of the IBC with following prayers:

*“a. As this Tribunal may be pleased to allow this instant application and condone the delay in filing the said application due to non-co-operation by the Suspended Directors and hardships faced to gather relevant document/information to determine the doubtful transaction carried out in the name of the Corporate Debtor;*

*b. To direct Respondent No. 1 & 2 to make deposit of Rs. 10,54,00,000/- reported to have been withdrawn in cash in the account of the Corporate Debtor being A/C No. 01900202148899 maintained with UCO Bank;*

*c. To direct Respondent No. 3 to make deposit of Rs. 15,20,000/- reported to have been fraudulently transferred to DAG Creative Media Pvt. Ltd. in the account of the Corporate Debtor being A/C No. 01900202148899 maintained with UCO Bank;*

*d. To direct Respondent No. 2 to make deposit of Rs. 1,00,700/- reported to have been fraudulently transferred to Gour Gopal Sarkar, father of Rana Sarkar in the account of the Corporate Debtor being A/C No. 01900202148899 maintained with UCO Bank;*

*e. To direct Respondent No. 4 to make deposit of Rs. 63,50,000/- reported to have been fraudulently transferred to Snigdha Sarkar, wife of Late Arabinda Sarkar in the account of the Corporate Debtor being A/C No. 01900202148899 maintained with UCO bank;*

*f. To direct Respondent No. 1 to make deposit of Rs. 26,56,000/- reported to have been fraudulently transferred to Arunendu Sarkar in the account of the Corporate Debtor being A/C No. 01900202148899 maintained with UCO Banks”.*

30. Perusal of the application moved by the RP before the Ld. Tribunal would further reveal that following transaction of huge cash withdrawals, in the opinion of the RP, were fraudulent.

| <b>Sl. No.</b> | <b>Financial Year</b> | <b>Amount of Withdrawal (in lakhs)</b> |
|----------------|-----------------------|----------------------------------------|
| 1.             | 2011-12               | 693.00                                 |
| 2.             | 2012-13               | 203.00                                 |
| 3.             | 2013-14               | 60.00                                  |
| 4.             | 2014-15               | 09.00                                  |
| 5.             | 2015-16               | 89.00                                  |
|                | <b>Total</b>          | <b>1054.00</b>                         |

31. Apart from the aforesaid transaction the RP was also of the view that Rs. 15.20 lakhs was refunded to DAG Creative Media Pvt. Ltd. (DCMPL) as unsecured loan however the payment which was received from the DCMPL was Rs. 52,60,000/- and payment from the account of the CD to DCMPL was Rs. 67,80,000/- thus Rs. 15,20,000/- is stated to be paid in excess to the amount received from such creditor. It is to be recalled that appellant is stated to be a Director of the DCMPL also at the relevant time.

32. It is also pertinent to mention here that on the basis of the ROC records of DCMPL the appellant resigned from this company on 27.05.2016 while the CIRP of the CD was initiated in the year 2019. Likewise, Rs. 63,50,000/- shown to be taken as unsecured loan from Snigdha Sarkar which is shown to be refunded in full in the year 2012 and Snigdha Sarkar is shown to be the wife of another Suspended Director namely Arbinda Sarkar and thus is a related party to the CD and this transaction has been labelled as fraudulent.

33. Similarly, it is also to be recalled that payment of Rs. 26.56 lakhs which was shown to have been made to Arunendu Sarkar as reimbursement of different expenses is also labelled as fraudulent on account of the fact that payment of Rs. 56,57,000/- was taken to the HDFC account of the CD and a payment of Rs. 83,12,800/- was received from the said account pertaining to which a defence has been taken that this amount i.e. Rs. 26,55,800/- was paid as an advance to the suppliers however no document is stated to have been provided with regard to this transaction and likewise Rs. 16.86 lakhs were shown to be given to Mr. Arbinda Sarkar as an advance and this amount could not be realised as Mr. Arbinda Sarkar has died.

34. The report of the transaction auditor who has conducted the report of the transaction audit report of date 07.06.2021, was also placed before Ld. Tribunal and is also placed on record of this appeal and at page No. 133 to 136 of the said report certain transactions which have been found fraudulent has been highlighted which is also been placed as under:

**“D. Fraudulent Transactions**

66. (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 person 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 minimizing the potential loss to the creditors of the corporate debtor.

**2[(3)** Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]

**Explanation.** -For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

RBI by Mater Direction RBI Master Direction on Frauds-Classification and reporting by Commercial Banks and select FIs, DBS.CO.CFMC. BC.No.1/23.04.001/2016-17, classifies Fraud as

In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:

- a. Misappropriation and criminal breach of trust.
- b. Fraudulent encashment through forged instruments, **manipulation of books of account** or through fictitious accounts and conversion of property.
- c. Unauthorised credit facilities extended for reward or for illegal gratification.
- d. Cash shortages.
- e. Cheating and forgery.
- f. Fraudulent transactions involving foreign exchange

Any other type of fraud not coming under the specific heads as above



*Our Observation: It is observed that a huge amount of cash is withdrawn from and certain payments are made to related parties and Directors; for which no clarifications has been provided by any of the suspended board of Directors of the Corporate Debtor despite repeated mails and follow ups. These unusual series of withdrawals and lack of clarifications relating to certain payments made to related parties & directors creates a doubt with respect to the nature of transactions. Hence in the absence of any clarification, we believe this to be fraudulent in nature. Summary of all such transactions are mentioned below:*

| <b>Sl. No.</b> | <b>Financial Year</b> | <b>Amount of Withdrawal (Figure in Lacs)</b> |
|----------------|-----------------------|----------------------------------------------|
| 1.             | 2011-212              | 693.00 (Annexure:1)                          |
| 2.             | 2012-2013             | 203.00 (Annexure:2)                          |
| 3.             | 2013-2014             | 60.00 (Annexure:3)                           |
| 4.             | 2014-2015             | 09.00 (Annexure:4)                           |
| 5.             | 2015-2016             | 89.00 (Annexure:5)                           |
| 6.             | Total                 | 1054.00                                      |

*2. Unexplained Related Party Transaction:*

| <b>Sl. No.</b> | <b>Related Party</b>         | <b>Amount (Figure in Lacs)</b> |
|----------------|------------------------------|--------------------------------|
| 1.             | DAG Creative Media Pvt. Ltd. | 15.20 Lacs (Annexure:6)        |
| 2.             | Gour Gopal Sarkar            | 1.007 Lacs (Annexure:7)        |
| 3.             | Snigdha Sarkar               | 63.50 Lacs (Annexure: 8)       |

*3. Unexplained Payments to Directors:*

| <b>Sl. No.</b> | <b>Payments to Directors</b>             | <b>Amount (Figure in Lacs)</b> |
|----------------|------------------------------------------|--------------------------------|
| 1.             | Advance to Arabinda Sarkar               | 16.86 Lacs (Annexure:9)        |
| 2.             | Advance to Arunendu Sarkar               | 26.56 Lacs (Annexure:10)       |
| 3.             | Advance to Rana Sarkar & Arunendu Sarkar | 09.00 Lacs (Annexure: 11)      |
| 4.             | LIC Payment                              | 18.05 Lacs (Annexure: 12)      |
| 5.             | Medicclaim Payment                       | 01.64 Lacs (Annexure:13)       |

*4. Payments received from Allottee:*

| <b>Sl. No.</b> | <b>Payments to allottee</b>        | <b>Amount (Figure in Lacs)</b> |
|----------------|------------------------------------|--------------------------------|
| 1.             | Received from Pradip Kr. Chaudhuri | 180.00 Lacs (Annexure:14)      |
| 2.             | Received from B.C.Sen              | 231.70 Lacs (Annexure:14)      |
| 3.             | Remico enterprise                  | 21.00 Lacs (Annexure: 14)      |



35. It is on the basis of aforesaid material, Ld. Tribunal found these transactions as fraudulent and passed the order impugned herein. The relevant part of the order of the Ld. Tribunal is also reproduced as under:

*“5. We have heard the Ld. Counsel for the parties and perused the record. After consideration of the contentions of the parties and the record produced before along with the pleadings, we find that:*

*A.At page 66 i.e., part of transaction audit report a methodology of audit for conducting the transaction audit of corporate debtor was formulated. One of the important features of this methodology included decides analysing the documents and discussions with the Resolution Professional.*

*B.From the averments contained in the application we find that opinion of Resolution Professional while filing the instant application is not based merely on the report of the transaction audit as contended by the respondents. It was only after the satisfaction of the Resolution Professional it was thought appropriate to appoint the transactional auditor to determine the transactions more closely and in detail.*

*Contentions of the applicant as noted and summarized herein above which are supported by the record referred hereinabove, we find that the opinion of Resolution*

*Professional (RP) has been arrived at and in the manner as per the law laid down in the above referred case.*

*The opinion of Resolution Professional has been formed on the basis of the transactions noted individually from page 15 to 28 and supported by various documents in the form of Annexure-A3 to A18. There has been an independent exercise conducted by the Resolution Professional and this evident from the averments contained in these paragraphs.*

*C.Further as noted above in summary of arguments, there has been a detailed consideration on various aspects by the Resolution Professional while forming his opinion with respect to these transactions as fraudulent and after affording respondents sufficient opportunity to put forward their case. This is evident from number of E mails referred by RP in this application and noted above.*

*D.In view of the above, we find the plea of the respondents that the Resolution Professional did not form his independent opinion and merely relied upon the transaction report is explicitly incorrect and is therefore rejected.*

*E. We also may like to add here, this appellate authority does not sit in appeal over the opinion formed by the Resolution Professional. This adjudicating authority is only required to see there has been a due compliance of the provisions of law and in the present case we find*

*Resolution Professional has complied with the provisions of law and the parameters laid down by the Hon'ble Supreme Court in above referred judgment while forming his opinion the transactions to be fraudulent”.*

*6. For the foregoing reasons, this application is allowed as the transactions referred in application by RP are found to be fraudulent in terms of Section 66 of the Code and as a consequence of which respondents 1 to 4 are directed to deposit amounts as asked for in prayer part of the application and referred herein above along with interest @8% per annum within one month from today, i.e. the date of pronouncement of the order. IA stands disposed of.*

*7. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities”.*

36. 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.*

37. In **Renuka Devi Rangaswamy v. Mr. Madhusudan Khemka**  
**Suspended Director of M/s. Regen Infrastructure and Services Pvt. Ltd.**

[Company Appeal (AT)(CH)(Ins) No. 356 of 2022], relied on by appellant, this  
appellate tribunal held in paragraph No.37 as under; -

*"37 'Dishonesty', is an essential ingredient of 'Fraudulent Trading'. The 'Aspect of Dishonesty', is to be established and it cannot be inferred in any manner. Whether a 'Director', had exercised his skill, experience and general knowledge, to be expected of a person, in carrying out the 'duties of his functions', is to be determined for a 'Liability', in the considered opinion of this 'Tribunal'."*

38. Reliance has also been placed by Ld. Counsel for the appellant on  
paragraph 60 of **Piramal Capital and Housing Finance Limited v. Moons Technologies Ltd. & Ors.** [2025 SCC Online SC 690], relevant paragraphs  
of the same are reproduced 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."

39. In the case of **Mr. Nalinesh Kumar Paurush & Ors. v. Mr. Arvind Mittal Resolution Professional of Temple Leasing and Finance Limited**

[Company Appeal (AT) (Insolvency) No. 346 of 2024 & IA No. 6783 of 2024]

this appellate tribunal set aside order of the NCLT directing appellants to

contribute to the asset of the CD holding that "*the transactional audit report which may not be termed as a conclusive piece of evidence, has arrived at an erroneous conclusion that impugned transactions made by the appellant at the relevant point of time were fraudulent without adverting to see the impugned transactions in the broad spectrum of commercial wisdom.*"

40. The appellate tribunal again in **Shibu Job Cheeran & Ors. v. Ashok Velamur Seshadri Liquidator of M/s. Archana Motors Ltd. (2023 SCC OnLine NCLAT 804)**, the case relied on by appellant 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'."*

41. This appellate tribunal in **Swapan Kumar Saha v. Ashok Kumar Agarwal, (2025) [ibclaw.in](https://ibclaw.in) 911 NCLAT**, while considering many cases, including those relied on by Ld. counsel for the appellants, held as under:

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

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

*45. From a bare reading of Section 66(1) and Section 66(2) of the IBC we find that both have self-contained provisions, with clear mechanisms for their invocation during a CIRP. Further, a perfunctory glance at Section 67 of the IBC will make it abundantly clear that the draftsmen and legislators clearly intended for Sec 66(1) and Section 66(2) to operate independently, as the opening line of Section 67(1) and 67(2) of the IBC would reflect, ....."*

The crux of the above placed cases is that Section 66 of the IBC, 2016 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. Thus both these sub sections of Section 66 of the Code takes care of two different situations and also the scope of sub - section (1) and (2) of Section 66 of IBC, 2016 is different. No need to say that 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' certainly on the scale of 'preponderance of probability'. However, no strait jacket formula can be formulated to fit in all factual situations and it will depend on the facts and evidence placed in each case to asses as to whether the particular transaction may be treated as fraudulent or not. Thus 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.

42. Ld. Counsel for the Respondent apart from relying on Swapan Kumar Saha (supra) has also relied on ***State Bank of India vs. Dommeti Surya Rama Krishna Saibaba & Ors. (COMPANY APPEAL (AT) (CH) (INS) NO.461/2023 (IA NO.1444/2023)***, wherein this appellate tribunal held as under: -



*"11. In the absence of such supporting documents and evidence, we are of the view that, the Forensic Auditors Report alone, in its present shape, cannot be extracted to be applied for the purposes of deciding an application under Section 66 of the I & B Code, 2016, for the purposes of determining the fraudulent act, as it was alleged therein in the application. The plea of the Appellant herein and the Resolution Professional before the learned Adjudicating Authority is that because of non-cooperation of Suspended management, supporting evidence could not be produced. In such a case, only criminal investigation can unearth the evidence and learned Adjudicating Authority in para 12 of the Impugned Order has rightly noted that the FC has filed a complaint with CBI, New Delhi on 16.07.2022."*

The facts of this case is to be appreciated in the background of above place dictum of law.

43. We find that it is reflected from the record that the resolution professional since taking charge of the corporate debtor was complaining about the non-cooperation by the suspended directors of the corporate debtor, including the appellant. The resolution professional has also moved an application before the learned Tribunal under section 19(2) of the IBC and vide order dated 2nd January 2020 certain directions were given to the suspended Board of management of the corporate debtor to to cooperate with RP by handing over all books of accounts and required information of assets within seven days without fail, failing which liberty was given to the RP to approach the local police station. RP also informed learned tribunal that the registered office of the CD is under lock and directors are not giving access to RP to hand over possession.

44. Ld. Counsel for the appellant has relied on the law laid down by Supreme Court in *Atlanti Spinning* (Supra) wherein Supreme Court held that Sub-Section (1) of Section 66 makes it clear that before consequential directions as contemplated under sub-section (1) of Section 66, or under Section 67, are issued a finding would have to be recorded that the business of the corporate debtor has been carried on with the intent to defraud creditors of the corporate debtor or for any fraudulent.

45. We also notice that this appellate Tribunal vide order dated 4th February 2020, passed in I.A. No. 551 of 2020 in company appeal (AT) (Ins) No.211 of 2020, filed by the instant appellant has also directed the suspended directors of the corporate debtor to hand over the Assets and records of the corporate debtor to resolution professional. In this background the allegations which have been levelled by the resolution professional are that as the suspended Board of management of the corporate debtor was non cooperative and the relevant documents have not been provided by them to him, he himself collected the bank statements of 20 bank accounts of the corporate debtor and sensing foul transactions took a decision to get the transactional audit of the CD done and in this regard a transactional auditor was appointed.

46. We have already stated that resolution professional was consistently complaining about the non-cooperation of the suspended directors of the corporate debtor and despite order of Ld. tribunal and this Appellate tribunal and various reminders issued by the RP, when no material/ documents was made available to him, RP relied on the bank statements of

various bank accounts of the corporate debtor and on the basis of the entries found in these bank statements, pertaining to huge withdrawal of cash from the Corporate Debtor and payments to related parties, he took a decision to get the transaction audit done. We do not find any fault in the process adopted by the resolution professional as withdrawal of huge amount of cash prima facie is not a common practice in the corporate world and since no documents are shown to have been provided by suspended Board of management of CD, no alternate was available to the RP except to get the Audit done of the CD. Thus the decision of the resolution professional to appoint a transaction auditor is justified in the facts and circumstances of the case.

47. Coming to the transaction audit report submitted by the auditor, perusal of the same would reveal that apart from other facts the auditor has found the following unexplained cash withdrawals from the corporate debtor and pertaining to which no reasonable explanation was provided by the suspended board of directors. The details of the unexpected cash withdrawal found by the auditor as fraudulent is being reproduced as under:

**“1. Unexplained Cash Withdrawal**

*We have noted that large sum of money was withdrawn in Cash by the Corporate Debtor for which no reasonable explanation could be provided by the suspended board of directors.*

*The Summary of Cash withdrawal in following years is given below:*

| <b>Sl. No.</b> | <b>Financial Year</b> | <b>Amount of Withdrawal (Figure in Lacs)</b> |
|----------------|-----------------------|----------------------------------------------|
| 1.             | 2011-212              | 693.00 (Annexure:1)                          |
| 2.             | 2012-2013             | 203.00 (Annexure:2)                          |
| 3.             | 2013-2014             | 60.00 (Annexure:3)                           |
| 4.             | 2014-2015             | 09.00 (Annexure:4)                           |

|    |              |                    |
|----|--------------|--------------------|
| 5. | 2015-2016    | 89.00 (Annexure:5) |
| 6. | <b>Total</b> | <b>1054.00</b>     |

**2.Unexplained Related Party Transaction:**

| <b>Sl. No.</b> | <b>Related Party</b>         | <b>Amount (Figure in Lacs)</b> |
|----------------|------------------------------|--------------------------------|
| 1.             | DAG Creative Media Pvt. Ltd. | 15.20 Lacs (Annexure:6)        |
| 2.             | Gour Gopal Sarkar            | 1.007 Lacs (Annexure:7)        |
| 3.             | Snigdha Sarkar               | 63.50acs (Annexure: 8)         |

48. We also note that during the course of preparation of the audit report the auditor has given ample opportunity to the appellant as well as to other directors of the suspended Board of management of the corporate debtor to explain these huge cash withdrawals and it is also reflected from the transaction audit report that an email was also sent by the RP to the suspended board of directors on 17th March 2021 whereby they were requested to reply/explain within 5 days and the auditor has also provided details of the bank statements as the same was sought by the directors on 24th March 2021 through email and on 4th April 2021 physically. Mr Arunendu Sarkar and the appellant filed their responses on 29th April 2021 and in nutshell they explain that such huge withdrawal of money was drawn in cash to pay to the respective labours for the ongoing work, for site expenses and also for food and mess bills at different sites. The auditor, RP and Ld. tribunal has not found this explanation as justified, in absence of any documentary evidence.

49. We also notice that in the transaction audit report the transaction auditor has also found some transactions to have been transacted with related parties, the details of these transactions were also provided in the report and we are reproducing the same as under: -

## **2. Unexplained Related Party Transaction:**

| <b>Sl. No.</b> | <b>Related Party</b>         | <b>Amount (Figure in Lacs)</b> |
|----------------|------------------------------|--------------------------------|
| 1.             | DAG Creative Media Pvt. Ltd. | 15.20 Lacs (Annexure:6)        |
| 2.             | Gour Gopal Sarkar            | 1.007 Lacs (Annexure:7)        |
| 3.             | Snigdha Sarkar               | 63.50 Lacs (Annexure: 8)       |

## **3.Unexplained Payments to Directors:**

| <b>Sl. No.</b> | <b>Payments to Directors</b>             | <b>Amount (Figure in Lacs)</b> |
|----------------|------------------------------------------|--------------------------------|
| 1.             | Advance to Arabinda Sarkar               | 16.86 Lacs (Annexure:9)        |
| 2.             | Advance to Arunendu Sarkar               | 26.56 Lacs (Annexure:10)       |
| 3.             | Advance to Rana Sarkar & Arunendu Sarkar | 09.00 Lacs (Annexure: 11)      |
| 4.             | LIC Payment                              | 18.05 Lacs (Annexure: 12)      |
| 5.             | Mediclaime Payment                       | 01.64acs (Annexure:13)         |

50. It has been categorically stated by the auditor that the management of the CD was not willing to provide any verifications with respect to these transactions and therefore these issues were addressed by the auditor with respect to clear evidence available pertaining to huge cash withdrawals and certain payments which were made to related parties and no reasonable explanation of the same was given by the directors and thus the auditor hold these transactions as fraudulent in nature as the purpose for such withdrawal and payments was not explained.

51. In our considered opinion the auditor has involved the appellant and other directors of the suspended Board of management of the corporate debtor in preparation of the transaction audit report of the CD and it is evident that except lame explanation no reliable documentation was provided by the appellant or any of the directors, which may justify these huge cash withdrawals and related party transactions without any proper documentations.

52. We also notice that so far as appellant is concerned, he in this appeal has stated that at the relevant time, he was having dispute with the other directors of the corporate debtor from 2010 -11 and in fact he was not allowed by them to participate in the affairs of the company and the dispute has escalated to such an extent that a complaint was also filed at some police station on 24.01.2013. He further took a defence in para No. 7(vii) of the appeal that he resigned from the directorship of the corporate debtor in the year 2013. Significantly in the same breath the appellant in paragraph number 7(viii) 7(ix) and 7(x) of the memo of appeal has stated that he remained associated with the corporate debtor as he had given personal guarantee in favour of banks for the funds borrowed by the corporate debtor and he was also looking after the litigation of the corporate debtor and also expended huge amount from his own pocket. We notice that the appellant has himself filed copy of the reply filed by him before learned Tribunal and in paragraph No. 3(c) of the same has stated to have resigned from the directorship of the CD in 2016 while as noted above he in his appeal has stated the year as 2013, when he resigned from the directorship of the corporate debtor. We also do not find any document in support of this contention. In paragraph number 3(m) of his reply filed before Learned Tribunal appellant has also admitted that when disputes arose during the period 2010-11, there were large outstanding due to the company (CD) and also there were a series of litigations and for the conduct of these litigations he has also incurred about 36 lakhs from his own pocket i.e. for conduction of arbitration proceedings.

53. Aforesaid averments made by the appellant at first suggest that he is himself not sure as to in which year he had resigned and it gives an impression that the fact of his resignation from the directorship of the corporate debtor has been carved out subsequently and therefore his contention that he had resigned from the directorship of the corporate debtor could not be accepted to be genuine and truthful.

54. The averments made by the appellant before Learned tribunal would also reflect on the fact that the financial condition of the corporate debtor, at that point of time (year 2011-12), was not good and series of litigations were going on involving CD and also that huge amount was due on the corporate debtor. Appellant and other directors of the CD in the year 2011-12, when the financial condition of the corporate debtor was not sound and there was a series of litigation pending against it, had withdrawn, Rs. 203 lakhs in cash in the year 2012-13 followed by cash withdrawal of rupees 60 lacs, 9 lakhs and 89 lakhs in the year 2013-14, 2014-15 and 2015-16, respectively. In our considered opinion also these transactions, having regard to the timing of withdrawal and non-furnishing of any documentation appears to be per se fraudulent and this huge amount of cash was withdrawn when the corporate debtor was in financial distress and these huge cash withdrawals have not been justified by the appellant or any of the directors of the CD.

55. We also observe here that no doubt the formation of an opinion pertaining to fraudulent transaction and initial burden with regard to establishing transactions as fraudulent, is on the Resolution Professional, but the Resolution Professional could not be compelled to tender that evidence which is impossible for him to file. We may recall that the only

record which was available with the resolution professional was the bank statements of the Corporate Debtor and finding certain entries as suspicious, the RP formed an opinion and took a decision of transaction audit of the CD, which we have already approved and when his suspicion was fortified by the report of the transaction auditor, he rightly formed an opinion pertaining to these transactions being fraudulent and made to defraud the creditors of the corporate debtor and thereafter filed an appropriate application before the Tribunal. We do not find any illegality or to say any irregularity either in the forming of above opinion by the Resolution Professional or in filing the application before the Tribunal.

56. Apart from the cash withdrawals which have not been explained by the appellant and other directors of the CD there is another transaction which has been labelled as fraudulent by the resolution professional as well as by the learned Tribunal pertaining to the appellant. It is to be recalled that appellant was also the director of DAG Creative Media Private Limited (DAGCMPL) till 2016 and Rs 15.20 lakhs were refunded to (DAGCMPL) as it has been shown to have given unsecured loan to the CD. The ledger however shows and the payment which was received from this company was Rs. 5,260,000/- while the payment from the CD to (DAGCMPL) was Rs. 6,780,000/-. Thus Rs. 15.20 lakhs were paid to DAGCMPL in excess was with the intention to take the money out of the corporate debtor. We do not find any illegality in the conclusions drawn by the landed Tribunal in this regard also.

57. The Other transaction which has been branded as fraudulent by the Adjudicating Authority is with regard to the alleged unsecured loan of



rupees 6,350,000/- given to the CD by Snidha Sarkar, wife of another director of the CD, Arabinda Sarkar. This loan is shown to have been refunded in full in financial year 2012 while the CD was declared as a Non Performing Asset (NPA) on 29th March 2012. In our considered opinion this transaction which has been done with a related party just before the declaration of the CD as NPA and there is no documentation of alleged loan was prima facie done in order to siphon off the money out of the CD to defraud the creditors of the CD. Likewise, the payment made to deceased Director Arunendu Sarkar of Rs. 26.56 lakhs was correctly held to be a fraudulent transaction as apparently deceased Arunendu Sarkar had made payment of rupees 56,57,000/- to the HDFC account of the CD and he received rupees 83,12,800/-, thus rupees 26,55,800/- was received by the deceased Arunendu Sarkar in excess, while the same should have been deposited in the account of the CD. Similarly, rupees 16.86 lakhs are shown to have been paid in advance to the Director Arabinda Sarkar and it has not been explained as to why this payment is being made as no voucher or any book of account or relevant information was made available by the appellant or any other director, which may justify these transactions.

58. We have perused not only the impugned judgement but also the transaction audit report as well as the reply of the appellant filed before learned tribunal and are of the considered view that the opinion of the Resolution Professional pertaining to labelling these transactions as fraudulent and transacted with the intention to defraud the creditors of the CD was based on documentary evidence which was available before him in the shape of bank statements and the transaction audit report pertaining to

the CD. The Resolution Professional as well as the Adjudicating Authority has taken into consideration all the relevant facts, evidence and circumstances in order to arrive at a justified conclusion that the transactions in questions are fraudulent and have been made with the intention to defraud the creditors of the CD. It appears to be an admitted situation that no reliable document was ever provided by the appellant or any other director of the suspended Board of management of the CD to the resolution professional or before Adjudicating Authority or even before this appellate tribunal, which may justify these transactions to have been done in ordinary course of business.

59. The facts and documentary evidence available in this case is required to be appreciated in the background of this vital factual situation that the directors of the corporate debtor who are accused of making fraudulent transactions were also under an obligation to justify these transactions to establish that these transactions are such, which have been made in ordinary course of business and they cannot take any benefit of the lack of documentary evidence, which they themselves did not provide to the Resolution Professional. Once the burden has been discharged by the RP pertaining to the establishment of aforesaid transactions as fraudulent, the onus has shifted on the directors of the company, including the appellant to justify these transactions to have been done in ordinary course of business and if they did not produce any reliable documentary evidence in support of their explanation/justification they cannot avoid the liability under section 66 of the IBC. The vague reply given by the appellant in the instant case, to justify these transactions to have been done in ordinary course of business,

in our considered opinion is not sufficient enough to justify these transactions, especially when withdrawals of cash from the account of the CD were made when the company was admittedly in financial distress and facing various litigations.

60. Much emphasis has been given by Ld. counsel for the appellant with regard to the observation of learned tribunal to the effect that the appellate authority does not sit in appeal over the opinion formed by the resolution professional. In our considered opinion the judgment of the tribunal could not be read in piecemeal and the observations or averments made by the learned Tribunal, highlighted by Ld. counsel for the appellant could not be read in isolation, the impugned judgment is required to be read in full. It is evident that after making above observation, in the same breath, in para number 5E of the impugned judgment, it has been highlighted by the tribunal that in the present case it is found that resolution professional has complied with the provisions of law and the parameters laid down by the Hon'ble Supreme Court in the judgement of **Anuj Jain, Interim Resolution Professional for Jaypee infratech Ltd. vs. Axis Bank Ltd. & Ors. (2020) 8 SCC 401**). In paragraph 5C of the judgement learned tribunal has clearly opined that the opinion of the RP has been formed on the basis of the transactions noted individually from page number 15 to 28 of the application and are supported by various documents in the form of annexure i.e. A3 to A18 and also that there is an independent exercise conducted by the RP and further that there has been detailed consideration on various aspects by the RP, thus Ld. Tribunal has considered all the facts and documentary evidence pertaining to the impugned transactions and

then came to the conclusion that the opinion of the resolution professional with regard to these transactions is correct. We also do not find any perversity in this approach.

61. In view of above having considered all the facts, circumstances and evidence, made available on record by the parties and for the reasons given herein before, we do find any good ground to interfere in the impugned judgement passed by the learned Tribunal.

62. In result the Appeal filed by the appellant lacks merits and is hereby **dismissed**.

63. There is no order as to costs. Pending IA if any is also disposed of.

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

**[Naresh Salecha]**  
**Member (Technical)**

**New Delhi**  
**11.12.2025**

*sr*