

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1783 of 2026

[Arising out of the Impugned Order dated 20.08.2026 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench) in IA No. 709 (AHM) 2025 in CP (IB) No. 238 of 2023]

IN THE MATTER OF:

M/s. Ichhapore Textile Park Limited

Labour Colony-2, Flat No. 501, Sayan Textile Park,
At-Po Ichhapore, Village Ichhapore, Talu,
Ka Chorasi, Surat, Gujarat, India – 394270

...Appellant

Versus

Mrs. Neha Bhasin

Authorized Representative and Director of Primus
Insolvency Resolution and Valuation Pvt. Ltd.,
Resolution Professional for Girdhari
International Pvt. Ltd.
C-4-E/135, Janak Puri, New Delhi – 110058

... Respondent

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Mr. Himanshu Satija, Ms. Niharika Sharma, Ms. Ripul Swati and Mr. Suyash Shrivastava, Advocates.

For Respondent : Ms. Prachi Johri, Mr. Sachin Jain and Mr. Himanshu Sharma, Advocates.

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

I.A. No. 6762 of 2026: The present Appeal is filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("IBC") against the Order dated 20.08.2026 passed by the National Company Law Tribunal, Ahmedabad in IA. No. 709 (AHM) 2025 in CP (IB) No. 238 of 2023, whereby the Adjudicating Authority, Ahmedabad Bench, Court-I vide the Impugned Order in I.A. No.

709 of 2025, inter alia, held the transaction involving the Appellant and the ₹ 3.30 crore payment to fall within the scope of Section 66(1) and directed the Appellant to contribute ₹ 3,30,00,000/- along with interest to the assets of the Corporate Debtor. An I.A. No. 6762 of 2026 is moved by the Appellant for grant of interim stay.

2. The Appellant contends that it is an independent third-party commercial entity and is unconnected with the management, control or affairs of the Corporate Debtor. The Appellant and the Corporate Debtor entered into a bona fide commercial arrangement for a proposed sub-lease of 36 flats, for an agreed consideration of approx. ₹ 6.48 crore vide a Sub-Lease Agreement dated 02.12.2022. In furtherance of the said arrangement, the Corporate Debtor made part-payments aggregating ₹ 3,30,00,000/- to the Appellant on 10.11.2022, 11.11.2022 and 02.12.2022, i.e., well over a year before commencement of CIRP on 29.02.2024.

3. On the basis of a Transaction and Forensic Audit Report, the Respondent Resolution Professional filed I.A. No. 709 of 2025 under, inter alia, Sections 43 and 66 read with Section 25(2)(j) of the Code, seeking reversal of the said transaction, arraying the Appellant as Respondent No. 3. It is noteworthy to state that the application was filed nearly 16 months after commencement of CIRP and approx. 20 months after the impugned payments which is far beyond the 115-day period prescribed under Regulation 35A of the CIRP Regulations, 2016, without any application seeking condonation of delay.

4. The Appellant duly contested the application by filing a detailed Reply dated 14.11.2025, placing on record the Sub-Lease Agreement, bank records, financial statements and other supporting material showing/establishing the bona fide commercial character of the transaction. Despite the same, the Adjudicating Authority, vide the Impugned Order, has held the Appellant liable under Section 66(1) of the Code without recording the findings essential to sustain such liability. Aggrieved thereby, the Appellant has preferred the present Appeal.

5. The Appellant contends that the prime issue arising for consideration is whether the Adjudicating Authority could lawfully invoke Section 66(1) of the Code and fasten liability of ₹ 3,30,00,000/- together with interest upon the Appellant who is nevertheless an unconnected third-party entity, not being a director, promoter, officer or person in control of the Corporate Debtor and in the absence of:

- a) a specific and positive finding, based on cogent material, that the business of the Corporate Debtor was carried on with intent to defraud its creditors or for any fraudulent purpose; and
- b) cogent evidence establishing that the Appellant knowingly participated in the carrying on of such business in that manner.

The Appellant has three broad sets of arguments:

- 1. It claims that the transaction entered into by the Appellant and the Corporate Debtor was genuine.
- 2. The date of default and filing of the Section 7 petition are subsequent to the transaction.

3. The twin conditions of Section 66 of the Code remain unsatisfied.

These three sets of arguments presented by the Appellant are briefly noted hereunder:

- Transactions by the Appellant and the Corporate Debtor are genuine: The Appellant claims that the finding that the transaction is "bogus" or a sham transaction is contrary to the record. The Appellant is not a shell or paper entity, but an operating corporate entity engaged in the development of a textile park project - Sayan Textile Park, Ichhapore, Surat, comprising the very 36 flats that form the subject matter of the Sub-Lease Agreement dated 02.12.2022. The flats are also numbered to establish the Bonafide of the Appellant i.e. Flat No 101 to 108, 201 to 208, 305 to 308, 401 to 408, 501 to 508, LC-03 Building at Ichhapore Textile Park, Ichhapore, Surat. The Appellant's registered office stands relocated to the project site itself, where the relevant records, documentation and personnel engaged in the project are available. The net-worth/valuation certificates relied upon by the Appellant value the underlying property at approximately ₹6 crores, and the Appellant's financial statements for the relevant years reflect its revenue, assets and operations as a functioning entity- facts wholly inconsistent with the characterization of a shell or non-existent company. The aforesaid flats continue to remain with the Appellant pursuant to the Sub-Lease Agreement, and the Appellant remains ready and willing to deliver possession thereof in accordance with the commercial understanding between the parties. The Appellant's project is a genuine and ongoing commercial project, as is further corroborated by the fact that several other persons have purchased flats in the said project. These circumstances clearly establish that the project and the said transaction were neither bogus nor sham. On the contrary, the payments forming the subject matter of the present proceedings were made much prior to the commencement of

CIRP, ₹1,55,00,000/- on 10.11.2022, ₹1,45,00,000/-on 11.11.2022 and ₹30,00,000/-to ₹ 3,30,00,000/- on 02.12.2022, aggregating to ₹3,30,00,000.

- Default date and Filing of Section 7 Petition are Subsequent to the Transaction: The transaction with the Appellant was concluded in November-December 2022, and the Sub-Lease Agreement was executed on 02.12.2022, whereas the date of default is 01.09.2023 and Section 7 petition filed by the Financial Creditor - M/s. DRIP Capital Inc., came to be filed only on 04.10.2023, and the date of default relied upon therein is itself later in point of time than the transaction in question. The Corporate Debtor was admitted into CIRP only on 29.02.2024 which is over a year after the payments to the Appellant. There is, therefore, no material on record to suggest that, as on the date of the transaction, any default had occurred, any petition for initiation of insolvency proceedings had been filed or contemplated, or that the Corporate Debtor was otherwise known or knowable to be in financial distress. The Appellant is not alleged to have been part of the management of the Corporate Debtor. There is no finding that the Appellant knew of the financial affairs of the Corporate Debtor or was aware of the alleged claims of DRIP Capital Inc. at the time of the transaction. In the absence of such evidence, the subsequent insolvency of the Corporate Debtor cannot furnish the missing link between a bona fide commercial transaction and an allegation of fraud.
- Twin Conditions of Section 66 of the Code Remain Unsatisfied
It is contended by the Appellant that Section 66(1) requires twin findings (a) that the business of the Corporate Debtor was carried on with intent to defraud creditors or for a fraudulent purpose; and (b) that the person proceeded against was knowingly a party to the carrying on of the business in such manner. Both findings must rest on cogent, positive evidence and not on suspicion, inference or the

cumulative recitation of individually innocuous circumstances. The Impugned Order fails to satisfy either limb qua the Appellant.

The relevant extract the same is reproduced hereinbelow:

"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 or the liquidator pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit."

6. The appellant has placed its reliance on the judgment of this tribunal in the case of **Rakshit Dhirajlal Doshi and Anr. v. Chirag Shah [Comp. App (AT) (Ins.) 1855 of 2025]** of and claims that the threshold for establishing fraudulent trading under Section 66 of the Code is a high one and cannot be satisfied on the basis of mere suspicion. The allegation of fraud must be supported by cogent and compelling material demonstrating the requisite intent to defraud the creditors. The same was held by this Hon'ble Tribunal:

9.it is well settled that to establish a case under Section 66 of the IBC for fraudulent or wrongful trading, a high burden of proof is required. The degree of proof and evidence required should be of unimpeachable nature and beyond reasonable doubt. Mere suspicion or presumption of fraud would not suffice to attract the provisions of Section 66.

10. Mere possibility or presumption of fraud without conclusive evidence of intent to defraud cannot attract Section 66 of the IBC as this provision cannot be invoked except on clear and cogent evidence of intent to defraud creditors.

7. The Appellant has pleaded for reliance on another judgment of this Appellate Tribunal in the case of **Nalinesh Kumar Paurush & Ors. v. Arvind Mittal and Anr. [Comp. App (AT) (Ins.) 346 of 2024]** where it was held that:

“44..... To attract section 66 though the standard of proof would be of preponderance of probability but the same is subjected to the heavy proof to the applicant, as each and every commercial transaction which has resulted in "loss" may not be labelled as fraudulent.”

8. The Appellant further contends that the Ld. NCLT, in holding the transaction to be fraudulent, relied upon isolated assumptions and circumstances, including the accounting treatment of the consideration received for the sub-lease of 36 flats, the allegedly vacant office premises, the Appellant's paid-up share capital of INR 1,00,000/- and the alleged non-payment of stamp duty, without examining the entire material on record or the transaction in its proper perspective. Such selective appreciation of evidence, in the absence of any cogent material establishing fraudulent intent, cannot sustain a finding of fraud under Section 66 of the Code. The Appellant contends that the Adjudicating Authority has erred in invoking Section 66(1) of the Code without first establishing the requirement that the business of the Corporate Debtor was carried on with intent to defraud its creditors or for any fraudulent purpose and that the Appellant was knowingly a party to the carrying on of such business in such manner. Section 66(1) does not provide for recovery merely because a transaction entered into by a Corporate Debtor is subsequently found to be commercially questionable, inadequately documented, improperly accounted for, or otherwise capable of being characterized differently. The statutory requirement is of a fraudulent

purpose coupled with 'knowing participation', which has to be established on 'cogent material'. The Appellant was, at all material times, an independent third party with no role in the management, control or decision-making of the Corporate Debtor. The mere receipt of monies pursuant to an admitted commercial transaction does not, without more, establish "knowing participation" in fraud. No communication, arrangement, board resolution, payment instruction or other material has been identified in the Impugned Order connecting the Appellant to any alleged intention of the Corporate Debtor or its suspended management to defraud creditors.

9. It is the contention of the Appellant that the Impugned Order places considerable reliance on the fact that the amount received towards the consideration for the sub-lease of flats was reflected in the Appellant's books of accounts under the head 'Long-Term Unsecured Loans'. However, the mere classification of the amount under a particular accounting head cannot, by itself, determine the true nature of the transaction or establish any fraudulent intent on the part of the Appellant. The amount was treated as a liability and was not recognised as income, as the transaction was yet to be completed and the relevant contractual obligations remained to be fulfilled. In any event, the accounting treatment adopted by the Appellant, without anything further, could not have been made the basis for imputing fraud to the Appellant, or for establishing any relationship with the Corporate Debtor. The **Hon'ble Apex Court in the case of EPC Constructions India Ltd. v. Matix Fertilizers & Chemicals Ltd., [(2026) 2 SCC 272]**, held that:

“43..... However, the treatment in the accounts due to the prescription of accounting standards will not be determinative of the nature of relationship between the parties as reflected in the documents executed by them.”

10. Thus, mere reliance upon an accounting entry pertaining to the transaction with the CD neither establishes the commission of fraud to the requisite standard of proof nor, by itself, establishes any relationship or nexus between the parties so as to attract the provisions of Section 66 of the Code. The accounting classification of the sum as an "unsecured loan" in the Appellant's financial statements cannot, by itself, establish fraudulent intent. The disclosure reflects transparency rather than concealment. An adverse inference cannot be drawn from an accounting nomenclature without examining the manner in which the transaction was in fact recorded and the reasons therefor. The observations regarding the state of the Appellant's registered office (as inspected in July 2024, without notice to or in the presence of the Appellant) and its paid-up capital of ₹1,00,000/- are extraneous considerations bearing no nexus to the genuineness of a transaction concluded nearly two years earlier, and cannot substitute for the statutory finding of fraud required under Section 66(1).

11. The Respondent's own Transaction and Forensic Audit Report categorized the Appellant's transaction under Section 49 of the Code, and the Committee of Creditors, upon consideration of the Report at its 14th meeting dated 24.01.2025, did not categorize the transaction as fraudulent and found no conclusive evidence against the Appellant. The Impugned Order proceeds

in the teeth of this present and consistent record without adequately proving the fraud committed by the Appellant.

12. The Adjudicating Authority has proceeded on two mutually inconsistent premises: (i) that the amount of ₹ 3,30,00,000/- was in fact an unsecured loan/deposit and therefore an asset of the Corporate Debtor; and (ii) that if the transaction was considered to be an advance towards purchase of sub-lease rights, it was fraudulent. Having concluded that the transaction was an unsecured loan, the Adjudicating Authority was required to determine the legal consequences of such loan transaction on that basis. It could not simultaneously rely upon an alternative characterization of the transaction as an advance towards sub-lease rights for recording a finding of fraud.

13. The observation that "if the transaction is considered as an advance for purchase of sub-lease rights, then it was a fraudulent transaction" is itself conditional and does not constitute a positive finding establishing the fraudulent purpose required under Section 66(1). The Impugned Order therefore fails to establish, with certainty and on cogent evidence, what the actual transaction was, what precise fraudulent act was committed, and what precise knowledge or participation of the Appellant constituted the alleged fraud. The Transaction and Forensic Audit Report merely formed the basis for investigation and could not, by itself, constitute conclusive proof of fraud or the Appellant's knowledge thereof.

14. The Audit Report itself recorded the transaction involving the Appellant as one requiring examination and stated that the investment appeared

dubious, however, suspicion, doubt or an auditor's opinion cannot substitute for the statutory requirement of proving fraudulent intent and knowing participation under Section 66(1). Significantly, the Transaction Audit Report classified the transaction involving the Appellant under Section 49 i.e., Transactions Defrauding Creditors, whereas the application ultimately sought relief under Section 66 in respect of the said transaction. The Adjudicating Authority ought to have separately examined whether the ingredients of Section 66(1), as opposed to those of any other avoidance provision, were independently satisfied.

15. We have heard the learned counsel for the parties and also perused the material on the record.

16. We note that -M/s. DRIP Capital Inc, the Financial Creditor on 04.10.2023 filed Petition under Section 7 of the IBC, 2016 against Corporate Debtor - registered as CP(IB) No. 238/AHM/2023. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) by the Ld. NCLT, Ahmedabad Bench, in CP (IB) No. 238/AHM/2023 on 29.02.2024.

17. In its 4th CoC Meeting on 17.05.2024, the Committee of Creditors resolved to appoint M/s. Bansal R. Kumar & Associates as Transaction and Forensic Auditor for identifying transactions falling within the ambit of Sections 43, 45, 49, 50 and 66 of the Code for the period 01.04.2021 to 29.02.2024. The record reveals that due to non-cooperation of the suspended management with the resolution professional, the RP moved an application under Section 19(2) of the Code, being IA No. 556/AHM/2024, which was

allowed by the Adjudicating Authority on 01.07.2024. Thereafter, the transaction and forensic audit report concerning the Corporate Debtor was submitted by the auditor on 12.09.2024, which covered the transactions under Sections 43, 45, 49, 50, and 66 of the Code.

18. The transaction and forensic audit report was discussed in the 14th meeting of the COC on 24.01.2025. Thereafter on 15.05.2025. The Resolution Professional moved IA No. 709 of 2025 before the learned NCLT Ahmedabad Bench in CP(IB) No. 238/EHM/2023, seeking the reversal/avoidance of alleged PUF transactions under Sections 43 and 66 read with Section 25(2)(j) of the Code.

19. There are many different aspects of the transaction and forensic audit report but in this appeal is limited to the investment made in M/s Ichapore Textile Park Private Limited to the extent of ₹ 3.3 crore. The Adjudicating Authority has apart from other issues, framed that this as an issue No. 3, which reads: “whether the Corporate Debtor's payment of ₹ 3.30 crore to M/s Icchapore Textile Park Private Limited constitutes a fraudulent transaction within the meaning of Section 66 of the Code.” In its findings on this issue, it notes that this investment is made in a company which is registered in a single flat office with no documents and no stock. The paid-up capital of the company is only ₹1 lakh. No receipt of investments was produced and no property papers are provided. The impugned order further notes as follows:

“Upon consideration of the Application, Transaction and Forensic Audit Report, relevant bank entries, sub-lease agreement and its annexures, the reply and written submissions of Respondent No. 3 - M/s. Icchapore Textile

Park Pvt. Ltd., and the minutes of the CoC, this Adjudicating Authority observes that the issue under Section 66(1) of the Code is whether the payment of Rs. 3.30 Crore by the Corporate Debtor to Respondent No. 3 was made for a fraudulent purpose and whether Respondent No. 3 was knowingly a party to such conduct. Section 66(1) requires something more than a mere irregular or commercially unsuccessful transaction, namely, a finding of fraudulent purpose and knowing participation.”

The Adjudicating Authority further notes that:

“iv. In the present case, the material on record establishes that an aggregate amount of Rs. 3.30 Crore was paid to Respondent No. 3 (Ichhapore Textile Park. Ltd) (Rs. 1,40,25,000/- on 10.11.2022, Rs. 14,75,000/- on 10.11.2022 and Rs. 1,45,00,000/- on 11.11.2022 and Rs. 30,00,000/- on 02.12.2022], whereas the sub-lease agreement is dated 02.12.2022. Thus, a substantial amount of approximately Rs. 3 Crore had already been transferred before execution of the sub-lease agreement which is relied upon by Respondent No. 3 as the basis of the transaction.

v. The Respondent No.3 has objected to its inclusion as a Respondent because it is unconnected and unrelated to the management of Corporate Debtor and no relief as sought under section 66 can be alleged against the third party. ...”

Adjudicating Authority has further noted:

“x. As noted in point (iv) Above, the sub-lease agreement is dated 02.12.2022 whereas all the payments were made prior to that date. There is no contemporaneous correspondence between parties on record to establish that the payments were made for purchasing sub-lease rights in the property. The Respondent No.3 has claimed that as per sub lease agreement the corporate debtor is required to make further payments of Rs. 3,14,00,000/- which is still pending and the corporate debtor being in default the Respondent is entitled to forfeit the amount of Rs. 3,30,00,000/-.

xi. The Respondent No.3 has attached a copy of Sub-Lease Agreement dated 02.12.2022 (Pages 11 to 17 of its Reply) along with its Reply filed on 14.11.2025. This document is in Gujarati Language. A translated copy is available on pages 20 to 26 of the Reply. The document in Gujarati Language is on the letter head of Respondent No.3 and is not on a stamp paper. The Respondent No.3 has not provided any independent document to prove that the sub lease agreement was prepared contemporaneously.”

20. The Adjudicating Authority has also perused the statement of the notes on accounts for the financial year ending 31 March 2024 and also the year ending 31 March 2025 for the Appellant/M/s. Ichhapore Textile Park Private Limited and has found out that ₹3.30 crores is shown as an unsecured loan as on 31.03.2023, 31.03.2024, and also on 31.03.2025. The accounts of M/s. Ichhapore Textile Park Private Limited show the receipt from the corporate debtor as a long-term unsecured loan and not as revenue or income as it should have been the case if the contention of the respondent was that it was part of the consideration for subleasing of the flats. It further notes that the money paid by the Corporate Debtor to M/s. Ichhapore Textile Park Private Limited. is held to be a deposit by the Corporate Debtor and is an asset of the Corporate Debtor. Otherwise, payment for purchasing the sublease rights on flats is also an asset of the corporate. The adjudicating authority further notes as follows:

“xviii. We have considered the transaction audit report to understand the transaction, but the true character and nature of the transaction is established from the statutory audit report of the Respondent No.3. It appears that the CD diverted its fund to Respondent No.3 as an unsecured loan at the cost of the creditors of the CD. It could not pay to the Financial Creditor who filed application under section 7 of the Code and the CD was

to be admitted to the CIRP. The above facts conclusively prove that the CD made a payment of Rs. 3,30,00,000/- to Respondent No.3. The Respondent No.3 has accounted the transaction as an unsecured long-term borrowing from Girdhari International Pvt. Ltd and not as an advance towards sub-lease of flats. The sub-lease agreement is not on stamp paper. There is no contemporaneous document from the suspended management or the Respondent No 3 to prove that the amount was paid for sub-lease of property. Therefore, based on the documents on record, we hold that the amount of Rs 3.30 crores paid to Respondent No.3 is a deposit with Respondent No.3 in the nature of long-term unsecured loan and not as a part payment of sub-lease charges as has been claimed. The deposit with Respondent No.3 is an asset of the Corporate Debtor.

xix. Accordingly, on a cumulative assessment of the facts and circumstances, this Adjudicating Authority is satisfied that the payment of Rs. 3.30 Crore to Respondent No. 3 was an unsecured loan by the Corporate Debtor and is an asset of the corporate debtor. Further, the suspended management and the Respondent No.3 have unsuccessfully tried to give a colour of payment as a consideration for sub-lease of the flats. If the transaction is considered as an advance for purchase of sub-lease rights, then it was a fraudulent transaction, as the payment was made as a loan and by giving the colour of advance, the same was done with an intent to defraud the creditors and the Respondent No.3 was knowingly a party to the transaction considered as fraudulent.

xx. The facts establish that Respondent No. 3 was not merely an innocent recipient of money but was knowingly a party to the transaction carried out for a fraudulent purpose by the Corporate Debtor. Accordingly, the transaction falls within the ambit of Section 66(1) of the Code, and Respondent No. 3 is liable to contribute the amount received and interest thereon to the assets of the Corporate Debtor.

xxi. The money advanced to the Respondent No.3 belonged to the Corporate Debtor and the Respondent No.3 is liable to make contributions to the assets of the corporate debtor to the extent of amount of Rs. 3,30,00,000/- and additional interest computed at the rate of 12% per annum or SBI Term Deposit rate whichever is higher. The interest be computed from the date of receipt of money by the Respondent No.3 to the date of payment to the Corporate Debtor.”

21. The Appellant contends that the business of the Corporate Debtor was not being carried on with the intent to defraud its creditors or for any fraudulent purpose. The appellant claims that it was in this business as it was developing an integrated textile park specifically for the textile sector, with a further mandate to sublease parcels of developed plots and factory sheds thereon to the actual user who will be the members/shareholders of Ichhapore Textile Park Private Limited. The Appellant further brings to our notice that for this purpose it had been allotted land by GIDC and for this purpose it was also allotted land by Gujarat Industrial Development Corporation at Ichhapore Hazira, Surat estate and for this purpose it has produced or lease deed dated 14th September 2021 between GIDC and the Appellant. And it is in this background that the appellant had transacted business with the corporate debtor in having a sublease agreement with it.

22. The Appellant has relied upon the judgment of Hon’ble Supreme Court in **Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors. in Misc. Appl. No. 1302 of 2023** decided on 19.05.2023. The Relevant extract of the judgment is as follows:

“10. We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as

the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section”

Hon’ble Supreme Court, while delivering its judgment, has noted at para 4 that:

“4. Learned counsel for the applicant submits that the judgment and order dated 24.02.2023 dismissing the Special Leave Petition (Criminal) Diary No. 6732 of 2023 may be clarified to the effect that it shall not come in the way of the applicant herein, persuading the Resolution Professional to consider initiation of proceedings for recovery under Section 66 of IBC against the persons who, prima facie, appear to be primarily responsible for the fraudulent affairs of the corporate debtors, and also qua other persons and organizations with whom any business was carried out by the corporate debtor, fraudulently and illegally with mala fide intention.”

In the later part of the judgment the Hon’ble Supreme Court has given its clear findings, which are noted as below:

“7. In our considered opinion, in the name of seeking clarification, the endeavor of the applicant herein is to indirectly get over with the judgment and order dated 18.01.2023 in WP(C) (PIL) 04 of 2023 passed by Tripura High Court. Such an endeavor, in the guise of a clarification, cannot be permitted.

8. We may also observe that the **Tripura High Court** has rightly relied upon the observations made by this Court in a binding precedent, in **Usha Ananthasubramanian Vs. Union of India**, which pertains to a matter under Section 339(1) of the Companies Act, 2013 which is *pari materia* with Section 66 of IBC. The High Court in the case of Sudipa Nath (Supra) has rightly observed that:-

"13..... That Section 66 (1) also directed towards making such persons personally liable for such fraudulent trading to recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on NCLT to pass other such orders against organizations/legal entities (other than corporate debtors) with whom such business was carried out against any person responsible in such other Usha organizations/legal entities for carrying on business with corporate debtor. For the said purpose, the ratio of the judgment of the Hon'ble Supreme Court in Ananthasubramanian (supra) in the context of section 339 (1) one of the companies Act, 2013 as extracted above would clearly apply even in the context 66(1) of IBC. Accordingly, an application under Section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of resolution by the professional or liquidator or corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organization / legal entities. Such legal action is independent of Section 66(1)."

"

23. The Appellant further claims that the differences between Section 339(1) of the CA, 2013 and the Section 66(1) of IBC are only procedural. For better clarity in this matter, we extract these provisions as follows:

"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 or the liquidator pass an order that any

persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

Section 339(1) of the CA, 2013

If in the course of the winding up of a company , it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal , on the application of the Official Liquidator , or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:

Provided that on the hearing of an application under the sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.'

24. The Appellant submits that the differences between Section 339(1) of the CA, 2013 and Section 66(1) of the IBC are only procedural, as they concern the stage (winding up, as against CIRP or liquidation), who may apply, and the form of relief (personal responsibility for the company's debts, as against contribution to the assets of the corporate debtor). The operative words that decide who may be made liable are identical in substance. In fact, Section 66(1) is narrower than Section 339(1). It does not name 'any person, who is or has been a director, manager, or officer of the company' and applies only to persons who were knowingly parties to the carrying on of the business of the corporate debtor. The two provisions are therefore *pari materia*, and the

interpretation of Section 339(1) by the Hon'ble Supreme Court applies fully to Section 66(1) of the Code.

25. The appellant further contends that the **Hon'ble Supreme Court, in Usha Ananthasubramanian v. UoI, (2020) 4 SCC 122 (3-Judge Bench)**, interpreted this very expression in Section 339(1). It rejected the argument that the provision is wide enough to reach any person said to be knowingly connected with the fraud, and held:

"7. Section 337 refers to penalty for frauds by an officer of the company in which mismanagement has taken place. Likewise, Section 339 refers to any business of the company which has been carried on with intent to defraud creditors of that company. Obviously, the persons referred to in Section 339(1) as persons who are other than the parties 'to the carrying on of the business in the manner aforesaid' which again refers to the business of the company which is being mismanaged and not to the business of another company or other persons.

8. This being the case, it is clear that powers under these sections cannot possibly be utilised in order that a person who may be the head of some other organisation be roped in, and his or her assets be attached. This being the case, we set aside the impugned order passed by NCLAT and well as NCLT..."

26. The Appellant contends that the same reasoning applies to Section 66(1), whose words 'in such manner' refer back to 'any business of the corporate debtor'. The Appellant is a separate entity carrying on its own business as an SPV under the SITP. Its only connection with the CD is that it was the counter-party to the Sub-Lease Agreement dated 02.12.2022, and that does not amount to 'carrying on' the CD's business. The finding in Para

14(vi) of the Impugned Order, that a third party can be made liable under Section 66(1), is therefore contrary to **Usha Ananthasubramanian (supra) and Gluckrich (supra)**, and cannot be sustained.

27. The Appellant also places its reliance on another judgment of this Tribunal in **Royal India Corporation Limited Vs. Nandkishor Vishnupant Deshpande & Ors., 2024 SCC OnLine NCLAT 640**. The relevant paragraph is as follows:

“6.2 The learned counsel for the appellant relied upon the judgment of Hon'ble Supreme Court in Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors. 2023 SCC OnLine SC 1187, to support its contention that the remedy against third party is not available under Section 66 of IBC. It was submitted that the case of the RP that transaction is between related parties is not correct as it is not covered in the definition of 'Related Party' given in Section 5 (24) (m) (3) of IBC, 2016 as the key managerial person of the appellant for the period from 10.8.2018 to 9.1.2019 was not simultaneously associated with the corporate debtor. It was submitted that concept of related party arises only when a person is associated with corporate debtor and other such person at the same time.

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10.5 The facts of the present case are different and distinguishable from the cases cited by the Appellant. In the present case, there is a finding that Manoj Punamia was running several companies in its business of gold refinery. The finding of the Customs Department was that both the Appellant Company (RICL) and Corporate Debtor (RRPL) were being managed by Mr. Manoj Punamia. Mr. Manoj Punamia and his wife were said to be shareholders of the Appellant Company. In these circumstances, the appellant cannot be said to be a third party, as both RICL and RRPL are under the control of same person. During, the search action by DRI, documents/accounts were found which reflected that the Appellant owed

Rs. 1,58,07,56,469/ to the Corporate Debtor. We have also noted that the corporate debtor was virtually closed since May, 2019. The Appellant has not challenged the outstanding shown as on 20.05.2019 of Rs. 158,07,56,469/-. However, through entries, showing sale of gold to the Corporate Debtor, the outstanding amount was brought down to Rs.31,01,83,022/-. We note that no books of accounts were made available to the Resolution Professional by Corporate Debtor for this period. We also note that Statutory Auditor has also stated that Books of Accounts were not made available to him to conduct statutory audit. We also note that Resolution Professional has reported to the Committee of Creditors (CoC) that no inventory, corresponding to transaction shown by the Appellant was found by Resolution Professional. This is a case where the outstanding of Appx. Rs. 158 Cr. was brought down to Rs. 31 Cr. by alleged entries so as to reduce the amount due to the Corporate Debtor thereby reducing likelihood of recovery, causing loss to the creditors of the Corporate Debtor.”

28. The appellant contends that the above judgment in **Royal (Supra)** is an exception and the general principle has been laid down in the judgment of the Honorable Supreme Court in the matter of **Gluckrich (Supra)**, and will be applicable in the present case.

29. Basis above two judgments, Appellant claims that the remedy against the 3rd party is not available under Section 66 of the Code and claims that resolution professional can take such civil remedies against 3rd parties for recovery of dues payable to the Corporate Debtor, which may be available in law.

30. The Appellant brings to our notice that their contention was noted by the Adjudicating Authority but the findings at para 14 (viii) are not per the

ratio settled by the Hon'ble Supreme Court in **Usha Ananthasubramanian (supra) and Gluckrich (supra)**. The relevant findings of that adjudicating authority are noted as below:

"It has also been contended that the alleged transaction is covered within the contours of the exception carved out under Section 66 and the application is non-maintainable. However, the respondent has not explained the exception under which the transaction is covered and accordingly this contention is rejected."

31. The Appellant has made a case that M/s. Ichhapore Textile Park Private Limited is an independent organization and is unrelated to the Corporate Debtor and for that reason Section 66 is not applicable on them.

32. The Respondent Resolution professional contests the argument relating to third-party liability under Section 66 of the Insolvency and Bankruptcy Code, claiming that the Appellant has wrongly argued that no third party can be made liable for fraudulent transactions under Section 66 of the IBC. Merely being a third party who is not the CD or its director, does not, by itself, absolve a person from liability under Section 66(1) of the IBC. Section 66(1) expressly applies to *"any persons who were knowingly parties"* to carrying on the business of the Corporate Debtor in a fraudulent manner. In **Shri Baiju Trading and Investment Pvt. Ltd. v. Nandkishor Vishnupant Deshpande, Company Appeal (AT) (Ins.) No. 699 of 2021**, the Hon'ble NCLAT upheld the finding of the NCLT that the expression "any person" includes a person who is a "knowing party" to fraudulent transactions. The Hon'ble NCLAT held that the Appellant being third party but sole beneficiary of the transaction and one where the Appellant could not show the transaction to be authentic, was liable

to make contribution under Section 66(1) of the Code. Similarly, in the present case, there was no record of the alleged sub lease deeds available with the Corporate debtor. The RP contacted the CD, the Appellant and the auditors of the Appellant too but no person came forward with any record. Even before the NCLT, the Appellant filed alleged sub lease deeds that are on its own letter head and not backed by any permission, information or signature of GIDC. More importantly, there is no explanation as to the part payment against the sub lease and then no further transaction having taken place and then no demand having been made by Appellant for balance money.

33. Additionally, in the matter of **Tridhaatu Kirti Developers LLP v. Nandkishore Vishnupant Deshpande, Company Appeal (AT) (Insolvency) No. 95 of 2021**, the Hon'ble NCLAT upheld the order directing the Appellant, though not a related party of the Corporate Debtor, to make contribution to the assets of the Corporate Debtor under Section 66(1). Similarly, in the present matter, the Appellant having failed to even prima facie establish any valid sub lease agreement is clearly beneficiary of having received Rs. 3.30 crores and is liable to return the same.

34. The respondent further brings to our notice that the reliance placed by the Appellant on matter of **Gluckrich Capital Pvt. Ltd. v. State of West Bengal, SLP (Crl.) Diary No. 6732/2023**, is completely misplaced. The matter relates to a criminal matter regarding bail and this Hon'ble NCLT has drawn various exceptions to the same since the passing of that order. For instance, in the matter of **Royal India Corporation Limited v. Nandkishore Vishnupant Deshpande, 2024 SCC OnLine NCLAT 640**, this Hon'ble NCLAT

distinguished the Gluckrich judgment to carve out an exception to entities with common management. Thus, the Gluckrich judgment has since been significantly watered down.

35. The Respondent, the resolution professional, concludes the written statement by stating that the Appellant has not made out any prima facie case for stay of the impugned order. Having received and benefitted from the sum of ₹ 3.30 crores fraudulently transferred by the CD, it is only correct that the Appellant be made to part with the said sum and contribute the same to the CD till the final disposal of the present appeal. It is also submitted that, in the alternative, the Appellant may be directed to deposit the said sum of ₹ 3.30 crores with this Hon'ble Appellate Tribunal in an interest-bearing FD till the final disposal of the present appeal.

36. We have considered the submissions of the Appellant and the findings recorded by the Adjudicating Authority.

37. We notice that the Transaction Audit Report found that investment of ₹3.30 cr has been made by the CD in the Appellant company by defrauding the creditors on the grounds that the Appellant is registered in a single flat office with no documents and no staff and paid-up capital of ₹ 1 lakh and also because there are no receipts of investment and no property papers were found (p. 289-290, APB). And basis the said Audit Report and the material available on record, the Resolution Professional preferred I.A. No. 709 of 2025 inter alia under Sec. 66 read with Section 25(2) (j) of the Code.

38. It is also brought to our notice by the respondent/RP that the Appellant in its reply before the Adjudicating Authority, the Appellant for the first time produced alleged sub lease deeds in Gujarati language, on the letter head of the Appellant and not having any permission or endorsement from Gujarat Industrial Development Corporation (lessor to Appellant). Pertinently, the Appellant did not even produce any authority from GIDC or any other relevant government document before the Adjudicating Authority.

39. At this stage, we are not inclined to finally adjudicate upon the applicability of the judgment of the Hon'ble Supreme Court in **Gluckrich (supra)** to the facts of the present case. The said judgment has been relied upon by the Appellant to contend that the remedy against a third party is not available under Section 66 of the Code and that the Resolution Professional may pursue such civil remedies as may be available in law.

40. At the same time, the material placed on record, including the manner in which the payment of ₹3.30 crore has been dealt with in the accounts of the Appellant, the timing of the payments, the nature of the Sub-Lease Agreement and the findings recorded by the Adjudicating Authority, require examination in the light of the ingredients of Section 66(1) of the Code. Prima facie, a case is made out requiring examination as to whether the twin requirements under Section 66(1), namely, the carrying on of the business of the Corporate Debtor with intent to defraud its creditors or for any fraudulent purpose and the Appellant being knowingly a party to the carrying on of the business in such manner, are satisfied.

41. However, at this stage, we are not expressing any final opinion on the merits of the Appeal. The question whether the Appellant is covered by the judgment of the Hon'ble Supreme Court in **Gluckrich (supra)** and the effect of the said judgment on the facts of the present case requires further examination. The distinction, if any, between the facts of the present case and the facts considered in **Gluckrich (supra)** can properly be examined only after the pleadings of the parties are complete.

42. We are, therefore, of the view that the Respondent is required to place its complete response to the grounds raised by the Appellant, including its response to the reliance placed on the judgment of the Hon'ble Supreme Court in **Gluckrich (supra)**. The Appellant shall thereafter have an opportunity to file rejoinder.

43. As regards the prayer for interim stay, having considered the material presently available on record and the prima facie findings recorded by the Adjudicating Authority with regard to the transaction of ₹3.30 crore, we as of now, are not satisfied that an interim stay should be granted at this stage. The request for interim stay is, accordingly, rejected.

44. Accordingly, the Respondent is directed to file its counter within two weeks. The Appellant may file its rejoinder within two weeks thereafter, if it so wishes.

45. The matter shall be listed thereafter on 18.11.2026.

46. It is made clear that the observations made herein are only prima facie observations for the purpose of considering the request at the present stage and shall not prejudice the final adjudication of the Appeal after completion of pleadings. The proceedings before the Adjudicating Authority may proceed in accordance with law. The question of the final relief in the Appeal is kept open.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
October 12, 2026.

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