

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

**IA (I.B.C) NO. 233 OF 2026 in
C.P. (IB) NO.922 OF 2024**

Under Section 66 of the Insolvency and Bankruptcy Code, 2016;

In the matter of;

Mr. CA Kshitiz Gupta Applicant

Versus

Chaitanya Rajnish Savant & Ors. Respondents

In the main matter of;

Mr. Sahil Deepak Surve Financial Creditor

Versus

Viztar International Private Limited Corporate Debtor

Order pronounced on 12.10.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicants : None Present

For Respondents Nos. 1& 3 : Adv. Shakun Jain

ORDER**Brief background**

1. The Interlocutory Application No. 233 of 2026 in CP (IB) No. 922 of 2024 was filed by Mr. CA Kshitiz Gupta (“Applicant/erstwhile RP”), the erstwhile Resolution Professional of Viztar International Private Limited (“Corporate Debtor”), seeking following reliefs in terms of Section 66 of the Insolvency and Bankruptcy Code, 2016 (“Code”):
 - a. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No 1 as a fraudulent transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 1,52,68,631/- (Rupees One Crore Fifty-Two Lakh Sixty-Eight Thousand Six Hundred Thirty-One Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
 - b. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 2 as a fraudulent transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 2,85,03,339/- (Rupees Two Crore Eighty-Five Lakh Three Thousand Three Hundred Thirty-Nine Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
 - c. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 3 as a fraudulent transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 2,80,39,808/- (Rupees Two Crore Eighty Lakh Thirty-Nine Thousand Eight Hundred and Eight only) to the*

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- assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
- d. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 4 as a preferential transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 52,28,000/- (Rupees Fifty-Two Lakhs Twenty-Eight Thousand Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
- e. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 5 as a preferential transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Ps. 15,24,765/- (Rupees Fifteen Lakhs Twenty-Four Thousand Seven Hundred Sixty-Five Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
- f. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 6 as a fraudulent transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 2,48,83,376/- (Rupees Two Crore Forty-Eight Lakh Eighty-Three Thousand Three Hundred Seventy-Six Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
- g. *That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 7 as a fraudulent transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 54,40,000/- (Rupees Fifty-Four Lakhs*

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- Forty Thousand Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order; and*
- h. That this Hon'ble Tribunal be graciously pleased to hold and declare the Impugned Transaction No. 8 as a fraudulent transaction within the meaning of section 66 of the Insolvency and Bankruptcy Code, 2016, and direct the Respondents to, jointly and severally, contribute Rs. 10,00,000/- (Rupees Ten Lakh Only) to the assets of the Corporate Debtor, within thirty (30) days from the date of the order.*
- i. Such other orders be passed and directions be made as the Hon'ble Court may deem fit in the interest of justice, equity and good conscience.*
2. The Applicant submits that Respondent No. 1, 3 and 4 who are, Mr. Chaitanya Savant, Mr. Ranajeet Chauhan and Vibha Tiwari, respectively, were Directors of the Corporate Debtor as on the CIRP Commencement date, Respondent No. 2 acted as a Whole Time Director of the Corporate Debtor from 18.02.2012 to 15.01.2024, exercising control over and managing the day-to-day affairs of the Corporate Debtor.
3. Viztar International Private Limited (Corporate Debtor) was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 20.02.2025 passed in Petition C.P. (IB) 922 of 2024 under section 7 of the Code filed by Mr. Sahil Deepak Surve (on 27.8.2024). By and under this Insolvency Commencement Order, Mr. Indrajit Mukherjee was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. The Corporate Debtor was involved in the business of BPO, Call Centre, Drone Cinematics and Event Management and had availed significant credit facilities from the applicant.
4. In the 1st meeting of the CoC held on 24.03.2025, Mr. CA Kshitiz Gupta, the Applicant herein, was appointed as the Resolution Professional (RP) of the Corporate Debtor by the CoC, subsequently confirmed by this Tribunal vide order dated 05.05.2025. In the 4th meeting of the CoC of the

Corporate Debtor held on 17.07.2025, the CoC passed a resolution approving the fees for the appointment of a transactional auditor for the purpose of identifying and evaluating any avoidance transactions under Sections 43, 45, 49, 50 and 66 of the Code of the Corporate Debtor. Accordingly, the RP issued an appointment letter dated 18.09.2025 to appoint Pradeep Patankar & Co., Chartered Accountants as the Transaction Auditor.

5. It is stated that the Transactional Auditor afforded due opportunity to the erstwhile board of directors of the Corporate Debtor to explain the transactions and to furnish supporting and corroborative documents. Upon considering the material available and the explanations and justifications provided by the *erstwhile* board, the transactional auditor issued a final transactional audit report dated 07.01.2026. The RP proceeded to identify such transactions as avoidance transactions and filed the present application.
6. Subsequent to the filing of the present Application, the Corporate Debtor was admitted in liquidation process pursuant to the order dated 05.03.2026 passed in IA(IBC)(Liq.)/18(MB)2026, whereby Mr. Sanjay Vijay Jeswani was appointed as the Liquidator of the Corporate Debtor. Thereafter, the Liquidator, vide IA(I.B.C.)/1533(MB)2026, sought discharge from his duties as the Liquidator, while the Financial Creditor, vide IA(I.B.C.)/1641(MB)2026, sought his replacement. Accordingly, vide order dated 29.04.2026, this Tribunal appointed Mr. Prabhat Jain as the new Liquidator of the Corporate Debtor.
7. The following transactions have been impugned in the present application:
 - a. *Fraudulent Transaction 1 – The Corporate Debtor during the Financial Year 2023-24, wrote off trade receivables/debts aggregating to Rs. 1,52,68,631/-*
 - b. *Fraudulent Transaction 2 – During FY 2023-24, receivables aggregating to Rs. 2,85,03,339/- under the heads “TDS” and “Salary Payable (BPO Agents)” were duly reflected in the books of*

the Corporate Debtor, the said receivables were unilaterally knocked off in entirety, by adjustment against alleged salary payables.

- c. Fraudulent Transaction 3 – Corporate Debtor maintained a bank account with HDFC Bank, however this account was not properly disclosed in the books of the corporate debtor and its transactions were suppressed from the books during the FY 2022-23 & FY 2023-24. It was renamed as “Other Bank A/c”. Closing Balances reflected in Bank Statement of said account did not reconcile with the balances recorded in the books of the Corporate Debtor.*
- d. Fraudulent Transaction 4- Payments aggregating to approximately Rs. 52,28,000/- were made by the Corporate Debtor to Viztar Business Solutions Private Limited [VBSPL], a subsidiary of the Corporate Debtor and related party during FY 2023-24.*
- e. Fraudulent Transaction 5 - The Corporate Debtor, during October 2023 to April 2024, made following payments to sundry creditors without reasonable justification:*

Sr.	Name	Amount	Period
1	Netcore Solutions Private Limited	80,535/-	Feb-April 2024
2	Tirth Infotech	99,470/-	FY 2023-24
3	Vsquare Networks	1,94,700/-	FY 2023-24
4	Dun & Bradstreet	2,10,000/-	FY 2023-24
5	Smarttouch Worldwide LLP	8,70,000/-	FY 2023-24
6	Sunil Maka	50,000/-	FY 2023-24
7	Sunrise Consultancy Services	20,060/-	October 2023
Total		Rs. 15,24,765/-	

- f. Fraudulent Transaction 6 - Corporate Debtor deliberately misclassified legitimate sundry debtors, including BWW Global and other sundry debtors, under the misleading ledger nomenclature “Opening Balance Difference”. This*

misclassification concealed genuine and recoverable receivables and portrayed the same as accounting discrepancies, suppressing the true asset position of the Corporate Debtor.

- g. Fraudulent Transaction 7 - Amount of Rs. 54,40,000/- was transferred to the related entities and none of these transfers were recorded in the books of accounts of the Corporate Debtor. Following transfers from the HDFC Bank A/c to the Related Parties, which were not recorded in the books of Accounts are reproduced below:*

Sr.	Date	Name	Amount
1	10.10.2022	Tejaswini Sachin Adhikari	25,00,000/-
2	10.10.2022	Monishka Sachin Adhikari	10,00,000/-
3	10.10.2022	Sachin Adhikari	16,80,000/-
4	15.02.2025	Viztar Business Solutions Private Limited	2,60,000/-
Total		54,40,000/-	

- h. Fraudulent Transaction 8 - The Corporate Debtor in its books of accounts as on 31.03.2024 recorded a sum of Rs. 10,00,000/- as “Cash in Hand”. However, the Resolution Professional was not handed over any corresponding cash balance at the time of taking custody and control of the assets of the Corporate Debtor.*

8. Respondent Nos. 1 and 3 have filed their replies. Ld. Counsel for Respondent No. 1 submits that the impleadment of Respondent No. 1 is misconceived, as he was appointed as an Additional Director of the Corporate Debtor on 08.06.2021, and in the absence of confirmation on the next Annual General Meeting, he ceased to be a Director of the Corporate Debtor on the last date by which Annual General Meeting was to be held. Further, he did not have any role in the management, control, or conduct of the affairs of the Corporate Debtor during the period to which the impugned transactions relate. Therefore, no liability can be attributed

to him in respect of the affairs of the Corporate Debtor beyond the period of his association with the Company.

9. It is further submitted that Respondent No. 1, *vide* email dated 24.05.2022, tendered his resignation from the services of the Corporate Debtor with effect from 31.05.2022. Accordingly, it is contended that Respondent No. 1 had ceased to be associated with the Corporate Debtor when the transactions in question were undertaken. On this basis, it is submitted that Respondent No. 1 cannot be held responsible for the impugned transactions or for any alleged fraudulent conduct arising therefrom.
10. It is further submitted that, for invoking Section 66 of the Code against an individual, there must be specific pleadings and material to show that such person was knowingly involved in the conduct of the business of the Corporate Debtor with an intention to defraud the creditors or for any fraudulent purpose. It is contended that no such material has been placed on record against Respondent No. 1.
11. Learned Counsel for the Respondent No. 3 has raised the issues in relation to substantial delay in filing this application and absence of cogent evidences demonstrating his involvement in the fraud, if any alleged to have been perpetrated.
12. We heard the learned counsel and perused the material on record.
13. The suspended Board members have challenged the Application on the grounds of non-compliance of Regulation 35A of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. We find that the time period under Regulation 35(A) of the CIRP regulations is not mandatory but only directory in character as held by the Hon'ble NCLAT in **Aditya Kumar Tibrewal (RP) v. Om Prakash Pandey and Ors., (2022) ibclaw.in 278 NCLAT** held that *“The Law laid down by the Hon'ble Supreme Court in the above judgment which deals with the interpretation of provisions of the Code itself are applicable to interpretation of Regulation 35A of CIRP Regulations and following the above judgment we hold that timeline prescribed in*

Regulation 35A of CIRP Regulations is directory and not mandatory.”.

Accordingly, the present application is maintainable and has to be adjudicated on merits.

14. The applicant has impugned all the Transactions in terms of Section 66 of the Code, which reads as follow:

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.”

15. In case of **Renuka Devi Rangaswamy vs Mr. Madhusudan Khemka (NCLAT Chennai), (2023) ibclaw.in 384 NCLAT**, the necessary ingredients for impugning a transaction in terms of Section 66 of the Code were laid down. The relevant part of said decision reads as follows :

“33. To be noted that, the expression ‘Party to the carrying on business’, indicates ‘taking positive steps’, in carrying on ‘company’s business’, in a ‘fraudulent manner’. The intent to ‘defraud’, is to be judged, by its ‘effect’ on a ‘Person’, who is the ‘object of conduct’, in question.

34. A ‘preponderance of probability suffices’, but the degree of probability must be such that the ‘Tribunal’, is satisfied and further that under Section 66 of the I & B Code, 2016, it is not essential to attract that there ought to be a ‘Debtor’ and a ‘Creditor’ relationship.

xxx xxx xxx

38. The Appellant has a ‘duty’, to establish to the satisfaction of this ‘Tribunal’, that a ‘person’, is knowingly carrying on the business with the ‘Corporate Debtor’, with an ‘dishonest intention’, to ‘defraud’, the ‘Creditors’. For a ‘Fraudulent Trading’ / ‘Wrongful Trading’, necessary materials are to be pleaded by a ‘Litigant’ / ‘Stakeholder’, by furnishing ‘Requisite Facts’, so as to come within the purview of the ingredients of Section 66 of the I & B Code, 2016. Suffice it, for this ‘Tribunal’, to pertinently point out that the ingredients of Section 66 (1) and 66 (2) of the I & B Code, 2016, operate in a different arena.”

16. The Applicant has made determination that the impugned transactions falls u/s 66. Indubitably, such determination is to be tested by this Tribunal on basis of pleadings on record. Per contra, the Respondents have

substantiated that these transactions are made in the ordinary course of business.

17. Fraudulent Transaction No. 1 – Bad Debts Written Off

- 17.1. The Applicant alleged that bad debts amounting to Rs. 1,52,68,631/- were written off, of the Corporate Debtor during the FY 2023-2024, without taking adequate recovery measures, further, no documents were produced before the transactional auditor to prove any follow-up was taken up by the management. The Respondents have submitted that the decision to write off bad debts was a commercial decision taken in the ordinary course of business and the bad commercial decision does not by itself establish fraud or intent to defraud creditors.
- 17.2. The Transaction Audit Report does not provide any additional reasoning why the write off is fraudulent or wrongful under Section 66 of IBC, 2016, except that no documentary evidence of recovery attempts has been provided by the management and write offs were recorded immediately preceding Insolvency Commencement Date.
- 17.3. Indubitably, the write off is merely an internal accounting procedure adopted by the Company to report the fair value of its assets on its estimate as the company are required to provide for any loss, anticipated to arise, on realisation thereof, however, such write off does not take away right of the creditor to enforce recovery thereof against the debtor.
- 17.4. On perusal of the journal entry in relation to such write off reproduced in the forensic audit report, it is noted that, out of written off amounts, sums of Rs. 81.97 lacs, Rs. 12.36 lacs, and 6.41 lacs were receivable from the government authorities. Besides this, the amounts were receivable from some large/established corporate(s), namely Bajaj Allianz General Insurance co. Ltd., Xanadu Reality Private Limited, Adani Estates Pvt. Ltd., Nahar Builders Ltd. and Crompton Greaves Consumer Electricals Limited. No adverse inference in relation to write off of these balances can be drawn. It is noted that no inquiry was made either by the

Transaction Auditor or the Resolution Professional from the debtors, most of whom are corporate bodies, in relation to status of amounts recoverable as per their books of accounts. In our considered view, mere write off can not be presumed as fraudulent unless the transaction per-se giving rise to such receivable is found to be fraudulent or the receivable itself is found to have been recovered in some other manner to keep the same away from books of corporate debtor.

17.5. In view of the findings made above, we are of the view that write off of the bad debts does not necessarily indicate the abandonment of efforts to recover the debts. The issue at hand is not the prudence of the write-offs but whether the write off was made with an intent to deceive the creditors or without exercise of due diligence to minimise loss to creditors. Hence, the ingredients of fraudulent or wrongful trading have not been made out.

18. Fraudulent Transaction No. 2 – Adjustment Entries to reduce the Income Tax Receivables

18.1. The Applicant alleges that receivables amounting to Rs. 2,85,03,339/- were reflected in the books of the Corporate Debtor under the heads “TDS”. It is alleged that during FY 2023-24, these receivables were unilaterally adjusted in their entirety against salary payables, resulting in depletion of the assets of the Corporate Debtor. The Applicant has further alleged that no documents were produced to establish that the salary payables represented genuine, subsisting and crystallised liabilities of the Corporate Debtor.

18.2. In response, the Management submitted that the Tally data initially provided was an unfinalised working copy and did not contain all the rectifications and adjustments made during the process of finalisation of the accounts. It was submitted that the final Tally data shared with the Transactional Auditor reflected the correct accounting treatment of the relevant write-offs and adjustments.

- 18.3. Respondent No. 3, in its reply, submitted that the Corporate Debtor is a service-oriented entity and engages manpower largely on a need and project basis. Therefore, payments towards such manpower are dependent upon the execution of specific projects and are not necessarily governed by formal, long-term employment contracts. It was further submitted that salary and manpower-related expenses are variable in nature and that the adjustment of receivables against outstanding salary and other expenditure heads was a bona fide accounting adjustment made in the ordinary course of business. The said adjustments were duly reflected and reconciled in the finalised books of account.
- 18.4. It is noted that the Management has submitted that the entries appearing in the initial Tally data were subsequently reconciled and corrected in the finalised accounts. Further, the Applicant has not placed any material on record to establish that the salary liabilities were fictitious or that the adjustment was made with an intention to defraud the creditors or to cause wrongful loss to the Corporate Debtor.
- 18.5. It is also relevant to note that the liabilities are alleged to be set off against the TDS recoverable in the books of account, however, such set off does not extinguish the right of the corporate debtor to claim refund against such TDS amounts from the Income Tax Department by following appropriate procedure. The applicant has not examined whether these TDS amounts were claimed as refund in the tax returns, and if yes, what is status thereof. Further, if such TDS amounts were not recoverable as refund from the Income Tax Department, the write off thereof was necessitated otherwise also as such balances had no intrinsic value. In the present case, the liability no longer payable has been written back by a consolidated entry with assets no longer recoverable, which in our considered view, can not held to be fraudulent.
- 18.6. In the absence of any material showing diversion or siphoning of the assets of the Corporate Debtor, or any fraudulent intent behind the accounting adjustments, we are unable to hold that the said transactions constitute

fraudulent or wrongful trading under Section 66 of the Code. Accordingly, the allegation is not established.

19. Fraudulent Transaction No. 3 – HDFC Bank Account not incorporated in the books of Accounts

- 19.1. The Applicant alleges that the Corporate Debtor maintained a bank account with HDFC Bank, but the said account was not properly disclosed and the transactions carried out through the account were not fully reflected in the books of the Corporate Debtor during FY 2022-23 and FY 2023-24. It is further alleged that the closing balances appearing in the HDFC Bank statements did not reconcile with the balances recorded in the books of the Corporate Debtor and that there were differences in the debit and credit entries between the bank statement and the books. The Applicant has also alleged that the books for FY 2023-24 described the HDFC Bank account as “Other Bank A/c”, thereby making the account difficult to identify.
- 19.2. In response to the queries of the Transactional Auditor, the *erstwhile* Management submitted that the difference between the closing balance as per the bank statements and the books of account arose due to pending bank reconciliation and timing differences in the receipt and recording of bank-related information. With regard to the description of the HDFC Bank account as “Other Bank A/c”, the Management explained that the change was made during FY 2023-24 as part of the restructuring of the chart of accounts in connection with migration to an Enterprise Resource Planning system. It was submitted that the change was only for standardisation of the account nomenclature and was not intended to conceal or prevent identification of the bank account. The Management further submitted that the transactions relating to the HDFC Bank account from FY 2023-24 onwards were incorporated in the books of the Corporate Debtor.

- 19.3. Respondent No. 3, in its reply, submitted that the HDFC Bank account did not record any operational or revenue-generating activity during the relevant period. No sales were effected and no income was generated through the said account. Further, the Tally data initially provided was provisional and was shared in view of the urgency expressed by the Resolution Professional, before completion of the reconciliation and finalisation process. This position was also communicated by email dated 02.12.2025, wherein the data was stated to be provisional. It was further submitted that Respondent No. 3 had informed the Resolution Professional about the existence of the HDFC Bank account and requested him to obtain the bank statements directly from the bank.
- 19.4. Upon consideration of the submissions, we find that the differences between the bank statements and the books of account, even if not explained, could have been accounted for by the Resolution Professional as those transactions are discernible from the bank statement itself. Further, the Resolution Professional ought to have accounted for all pending reconciliation entries in the books of corporate debtor and analysed the same if any of such payment falls within scope of avoidance or fraudulent transactions. Merely because, the transactions were not recorded in the books of account delivered to the Resolution Professional cannot lead to an adverse inference of fraud in respect of those transactions. The mere fact that the transactions were not immediately reflected in the provisional accounting data, or that the account was described under a different nomenclature, cannot by itself establish that the account or its transactions were deliberately concealed. No allegation has been made that the unrecorded paid amounts from HDFC bank account were in fact resulted into siphoning or diversion of the funds of the Corporate Debtor, or that any amount was withdrawn for the personal benefit of the Management. We therefore find that the discrepancies pointed out in respect of the HDFC Bank account appear to be related to

accounting and reconciliation issues, which, at best, only leads to a conclusion that the Respondents may have failed to maintain regular books of accounts of corporate debtor in accordance with Companies Act, however, such failure cannot substantiate the allegation of fraudulent or wrongful conduct under Section 66 of the Code.

20. Fraudulent Transaction No. 4 – Amounts transferred to Viztar Business Solutions Private Limited

- 20.1. The Applicant alleges that payments aggregating to approximately Rs. 52,28,000/- were made by the Corporate Debtor to Viztar Business Solutions Private Limited (“VBSPL”), a subsidiary of the Corporate Debtor. It is further alleged that the outstanding balance in the account of VBSPL has consistently remained a debit balance.
- 20.2. In response, the erstwhile Management, in its reply to the queries raised by the Transactional Auditor, submitted that the payments were made in the ordinary course of business, as VBSPL was functioning as a shared service centre for various group companies and was incurring expenses on behalf of the Corporate Debtor. It was explained that the debit balance continued to appear in the books because VBSPL incurred the expenditure initially and sought reimbursement from the respective group companies thereafter.
- 20.3. Respondent No. 3 has further submitted that the Management had already produced the Lease and Licence Agreement executed in the name of VBSPL, which shows that the premises were being used as a shared business facility by the group entities since 2020. It was also submitted that the monthly rental liability itself was approximately Rs. 4,50,000/-, apart from other operational and infrastructure expenses incurred in relation to the shared facility.
- 20.4. Though, the respondent has produced only Lease and Licence Agreement and no further document has been placed to show that VBSPL functioned as a shared service centre for multiple group companies, however, it is

relevant to note that a lumpsum amount has been credited to the account of VBSPL towards such costs every year i.e. Rs. 98.00 lacs on 31.3.2023 and Rs. 98.56 lacs on 31.3.2024, besides there being transaction of receipt and payment routinely between corporate debtor and VBSPL. The Applicant has not found these debits as fraudulent or ingenuine, which corroborates with the explanation of Respondents that the payments were being made for funding operational costs. Merely because the net amount recoverable from VBSPL increased substantially in FY 2023-24 can not lead to an adverse inference that the funds have been siphoned off when such funds were paid to own subsidiary company. The applicant has not explained if the expenses booked annually earlier were required to be contributed by the corporate debtor in FY 2024-25 also and if further additional payments were made to subsidiary company in that year.

- 20.5. We are of the view that mere fact that the account of VBSPL reflected a debit balance, or that the Management did not produce supporting documents for each individual expenditure, by itself, does not establish that the transactions were entered into with an intent to defraud the creditors or for any fraudulent purpose. Neither the applicant nor the Transaction Auditor has examined if such costs contribution was done only to fund the group operations, not connected with the corporate debtor's business. Therefore, the allegation made in this respect does not meet the test of section 66 of IBC.

21. Fraudulent Transaction No. 5 – Advances made without reasonable justification

- 21.1. The Applicant highlights the following transactions as being made to the said entity in preference to the other creditors.

Sr.	Name	Amount	Period
1	Netcore Solutions Private Limited	80,535/-	Feb-April 2024
2	Tirth Infotech	99,470/-	FY 2023-24
3	Vsquare Networks	1,94,700/-	FY 2023-24

4	Dun & Bradstreet	2,10,000/-	FY 2023-24
5	Smarttouch Worldwide LLP	8,70,000/-	FY 2023-24
6	Sunil Maka	50,000/-	FY 2023-24
7	Sunrise Consultancy Services	20,060/-	October 2023
Total		Rs. 15,24,765/-	

21.2. The Management, in its reply to the queries raised by the Transactional Auditor, submitted that the payment of Rs. 80,535/- to Netcore Solutions Pvt. Ltd. was against Invoice No. 221212693 dated 29.03.2023, which had not been recorded earlier and was subsequently accounted for as a prior-period expense. After the liability was recognised in the books of account, the payment was made in the normal course.

21.3. With regard to the payment made to Tirth Infotech, it was submitted that the payment was made after the vendor invoice and statement of account were updated in Tally and the corresponding liability was reflected in the books. The payment was thereafter processed in the ordinary course. The payment to Vsquare Networks was stated to have been made in accordance with the contractual payment terms. Invoice No. VN/SALE/134 dated 20.10.2023 had already been recorded in the books and had become due for payment. Similarly, the payment to Dun & Bradstreet Information Services India Pvt. Ltd. was made in the ordinary course against Bill No. CI-00138815 dated 30.03.2023, which had been duly recorded and accounted for as a prior-period expense. The Management further submitted that the payment to Smarttouch Worldwide LLP was made as an advance towards revival of software, with the objective of restoring its functionality and ensuring continuity of the Corporate Debtor's operations and revenue-generating activities. The payment made to Mr. Sunil Moka was towards professional fees for legal services rendered in connection with the McMillan dispute. It was submitted that the professional fee was settled after the expense had been duly recorded in the books. The payment to Sunrise Consultancy Services was also stated to have been made in the

ordinary course of business after Invoice No. 14668 dated 09.10.2023 was recorded in the books.

- 21.4. Respondent No. 3, in his reply, has also supported the aforesaid explanation and submitted that all the payments were made through regular banking channels, duly reflected in the books of account of the Corporate Debtor, and were supported by the corresponding invoices and service arrangements.
- 21.5. Upon consideration of the material placed on record, we find that there is no material to establish that the payments were made with an intention to defraud the creditors or to defeat their legitimate claims. Neither the applicant nor the Transaction Auditor have made any inquiry from the recipient of these amounts to ascertain if the payments with these persons were, in fact, related to genuine business activities of the corporate debtor, as pleaded by the Respondents. The objection raised by the Applicant and the Transaction Auditor is primarily based on the alleged failure of the Management to produce sufficient supporting documents regarding the underlying arrangements, however, they have also not carried out basic inquiry in relation to these payments to counter the explanation that these payments were made in relation to services obtained in earlier years. In our view, mere absence or insufficiency of supporting documentation, without any other material indicating fraudulent intent or wrongful conduct, cannot by itself establish a case under Section 66 of the Code. Therefore, the allegation in respect of these transactions is not established.

22. **Fraudulent Transaction No. 6 – Difference in Opening Balance**

- 22.1. The Applicant alleges that Corporate Debtor deliberately misclassified legitimate sundry debtors, including BWW Global and other sundry debtors, under the misleading ledger nomenclature “Opening Balance Difference”. This misclassification concealed genuine and recoverable receivables under the ledger nomenclature “Opening Balance Difference” and portrayed the same

as accounting discrepancies, suppressing the true asset position of the Corporate Debtor.

- 22.2. In response to the query raised by the Transactional Auditor, the Management submitted that the observation was based on unfinalised Tally data which had been shared while the accounts were still under reconciliation. It was explained that the ledger “Opening Balance Difference” did not represent any error in the brought-forward balances. The amount in question actually related to a Sundry Debtor, namely BWG Global, but was inadvertently classified under the said ledger in the unfinalised working file. The Management further submitted that the classification was subsequently corrected in the finalised accounting records. Respondent No. 3, in its reply, has also submitted that the position stands clarified in the corrected Tally data.
- 22.3. It is noted that the applicant as well as Transaction Auditor has failed to appreciate that the amount reflected as “Opening Balance Difference” is a credit balance of Rs. 276.42 lacs as on 01.04.2023 and a credit balance of Rs. 248.83 lacs as on 31.03.2024. The credit balances in the books of accounts represent amounts payable i.e. liability and not the amount recoverable, hence, the conclusion that the amount was deliberately shown under a misleading head with an intention to conceal the genuine and recoverable receivables true is incorrect and not supported by the factual matrix. Hence, the allegation is not established.

23. **Fraudulent Transaction No. 7 – Amounts transferred to Tejaswini Adhikari, Moniksha Adhikari, Sachin Adhikari and Viztar Business Solutions Private Limited**

- 23.1. The Petition highlights the following transactions which are reflected in the bank statements, however the entries are absent from the books of the corporate debtor. The entries are as follows:

Sr.	Date	Name	Amount
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1.	10.10.2022	Tejaswini Sachin Adhikari	25,00,000/-
2.	10.10.2022	Monishka Sachin Adhikari	10,00,000/-
3.	10.10.2022	Sachin Adhikari	16,80,000/-
4.	15.02.2025	Viztar Business Solutions Private Limited	2,60,000/-
Total		54,40,000/-	

23.2. The Management submitted that the impugned transfers were made in connection with the business of the Corporate Debtor. The amounts transferred to Mrs. Tejaswini Adhikari were towards reimbursement of business expenses incurred on behalf of the Corporate Debtor, including salary-related disbursements and other operational expenses. The amount transferred to Ms. Monisksha Adhikari was towards management consultancy services rendered to the Corporate Debtor. The amount transferred to Mr. Sachin Adhikari was towards reimbursement of business travel and meeting-related expenses incurred by him on behalf of the Corporate Debtor. With regard to the non-recording of these transactions in the books of the Corporate Debtor, the Management submitted that the relevant HDFC Bank statements were not available at the time of finalisation of the books for FY 2022-23.

23.3. It is noted that the impugned transactions pertain to the year 2022. However, the financial position of the Corporate Debtor had started deteriorating from September 2021, when the Financial Creditor, Mr. Sahil Deepak Surve, issued a demand notice calling upon the Corporate Debtor to repay the outstanding loan amount. Owing to disruption of business operations and lack of revenue, the Corporate Debtor failed to make the payment and the account was classified as a default on 31.10.2021. Thereafter, the Financial Creditor initiated proceedings under Section 7 of the Code, which were admitted by this Tribunal *vide* order dated 20.02.2025.

23.4. It is further noted that, as on the commencement of the CIRP, the persons to whom the impugned payments were made were not directors of the

Corporate Debtor. Mr. Sachin Adhikari was the *erstwhile* Director and shareholder holding 99.99% shareholding in the Corporate Debtor.

- 23.5. The *erstwhile* Management, in its response to the queries of the Transactional Auditor, and Respondent No. 3 in its reply, have not placed on record any documentary evidence, such as invoices, bills, vouchers, consultancy agreements, travel records, or other relevant documents, to establish that the payments were actually incurred for the business purposes stated by them.
- 23.6. In view of the aforesaid facts, it is evident that, at the time when the impugned transactions were undertaken in October 2022, the financial position of the Corporate Debtor had deteriorated. The *erstwhile* Management was aware of the outstanding financial obligations of the Corporate Debtor. In such circumstances, the persons responsible for the conduct of the affairs of the Corporate Debtor were required to exercise due diligence and take reasonable steps to minimise the potential loss to the creditors.
- 23.7. Although the Respondents have sought to justify the payments made to Mrs. Tejaswini Adhikari, Ms. Monisksha Adhikari and Mr. Sachin Adhikari as reimbursements towards business and operational expenses, management consultancy charges, and business travel and meeting expenses, respectively, no documentary evidence has been placed on record, either before the Transactional Auditor or before this Tribunal, to substantiate the nature and purpose of the said payments.
- 23.8. The mere assertion that the payments were made for business purposes, in the absence of supporting documentary evidence, is not sufficient to establish that the transactions were undertaken in the ordinary course of business or that they were incurred for the benefit of the Corporate Debtor. Further, the payments were made to persons related to the *erstwhile* Management. In these circumstances, and particularly in the absence of supporting records, it cannot be said that the *erstwhile* Management has satisfactorily explained the necessity and business purpose of the

impugned payments or demonstrated that due diligence was exercised to minimise the potential loss to the creditors of the Corporate Debtor.

24. Fraudulent Transaction No. 8 – Cash Balance not handed over

- 24.1. The Applicant alleges that, although a closing cash balance of Rs. 10,00,000/- was reflected in the books of the Corporate Debtor as on 31.03.2024 under the head “Cash in Hand”, no such cash was handed over to the Resolution Professional at the time of taking custody and control of the assets of the Corporate Debtor.
- 24.2. In response to the allegation raised by the Transactional Auditor, the Management submitted that the cash balance reflected in the books was not the actual physical cash available with the Corporate Debtor at the time of handover to the Resolution Professional. The amount appeared in the unfinalised Tally working because the recurring monthly cash expenses incurred by the Corporate Debtor from FY 2022-23 onwards had not been recorded at that stage. The Corporate Debtor incurred regular operational cash expenses ranging between Rs. 80,000/- and Rs. 1,50,000/- per month, which were maintained through internal expense sheets and were generally consolidated and accounted for at the end of the month. Upon finalisation of the accounts, these expenses were recorded, resulting in the cash balance of Rs. 10,00,000/- no longer appearing in the books.
- 24.3. Respondent No. 3, in its reply, has further submitted that the Corporate Debtor had withdrawn Rs. 10,00,000/- during the COVID-19 period in the year 2020 for business continuity and employee welfare. The corresponding accounting entries relating to the said withdrawal had not been recorded in the books of the Corporate Debtor at the relevant time.
- 24.4. Upon consideration of the cash book placed on record by Respondent No. 3, we find that the CIRP of the Corporate Debtor commenced on 25.02.2025, further the cash balance as on 31.03.2025 was only Rs. 30,558/-. Thus, the cash book does not support the allegation that an

amount of Rs. 10,00,000/- was available as physical cash with the Corporate Debtor. Hence, the allegation is not substantiated.

25. Upon consideration of the pleadings, documents placed on record, Transactional Audit Report, and the submissions of the parties, we have examined the transactions individually in the light of Section 66 of the Insolvency and Bankruptcy Code, 2016. In respect of Transaction Nos. 1, 2, 3, 5, 6 and 8 we find that the Applicant has failed to establish the essential ingredients of fraudulent or wrongful trading under Section 66 of the Code. The discrepancies pointed out in these transactions primarily relate to accounting and recording of entries. Such accounting discrepancies, in the absence of material showing fraudulent intent or diversion of the assets of the Corporate Debtor, are not sufficient to attract Section 66 of the Code.
26. In respect of Transaction No. 4, it is not in dispute that funds were transferred to Viztar Business Solutions Private Limited (VBSPL), a subsidiary of the Corporate Debtor. However, the Management has explained that the payments were made in the ordinary course of business towards expenses incurred by VBSPL as a shared service centre for the group entities.
27. In respect of Transaction No. 7, it is noted that Respondent No. 1 had ceased to be director prior to October, 2022, and Respondent No. 3 & 4 were appointed as director after October, 2022. Accordingly, in relation to the payments made to Mrs. Tejaswini Adhikari, Ms. Monisksha Adhikari and Mr. Sachin Adhikari, an order for contribution can be passed only against Respondent No. 2. Since, we have found the payments made to these persons falling within section 66(2) of IBC, Respondent No. 2 is directed to contribute a sum of Rs. 51,80,000/- to the corporate debtor within 30 days, failing which the amount shall be recoverable along with

an interest @ 12% p.a. on the balance remaining unpaid. It is clarified that the part payments shall first be appropriated towards the interest accrued on the outstanding payment on date of such payment.

28. Hence, **IA (IB) No. 233 of 2026 in CP (IB) No. 922 of 2024** is **partly allowed and disposed of.**

Sd/-

Prabhat Kumar

Member (Technical)

AJ

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)