NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 86 of 2025

(Arising out of order dated 19.12.2024 passed by the National Company Law Tribunal, Mumbai Bench, Court-II in I.A. No. 3653 of 2024 in CP (IB) No. 368 (MB)/2023)

In the matter of:

Ammeet Kumar Agarwal
Residing at 901, Bikaner Bhawan,
Opp Jain Temple, J.B. Nagar,
Andheri (East), Mumbai 400059.

...Appellant

Vs.

Ssarvi Resolution Services LLP
Resolution Professional of Supreme Transport
Organisation Private Limited
through its Partner and Authorised Signatory
Mr. Prashant Jain
Having his address at
A-501, Shanti Heights Plot No 2, 3, 9b/10,
Sector 11, Koparkharine,
Navi Mumbai 400707

...Respondent

Present:

For Appellant:	**Mr. Krishna Sharma, Advocate.**
For Respondents:	**Ms. Shloka Dixit, Advocate for RP.**
	Mr. Rishi Sood and Mr. Prafful Singh Chandel, Advocates for Interveners.

J U D G M E N T

(3rd August, 2026)

INDEVAR PANDEY, MEMBER (T)

INTRODUCTORY BACKGROUND

This appeal has been preferred by **Mr. Ammeet Kumar Agarwal**, the **Suspended Director of Supreme Transport Organisation Private Limited (Corporate Debtor)**, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as (**'Code'**), assailing the order dated **19.12.2024** passed by the National Company Law Tribunal, Mumbai Bench, Court-II **(Adjudicating Authority)** in **I.A. No. 3653 of 2024** arising out of **CP (IB) No. 368/MB/C-II/2023**. The impugned order was passed on an application instituted by **Ssarvi Resolution Services LLP**, acting through its Partner and Authorised Signatory **Mr. Prashant Jain**, in its capacity as the **Resolution Professional of the Corporate Debtor**, under Sections 66, 74 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 213 of the Companies Act, 2013.

2. By the aforesaid order, the Adjudicating Authority directed the Appellant and other respondents therein to jointly and severally contribute a sum of **Rs.8,05,11,748/-** to the account of the Corporate Debtor within thirty days and further directed the **Insolvency and Bankruptcy Board of India (IBBI)** and the **Ministry of Corporate Affairs (MCA)** to initiate prosecution against the Appellant under Section 74 of the Code. Aggrieved by the findings

and directions contained in the impugned order, the Appellant has preferred the present appeal.

FACTS OF THE CASE

3. Brief facts of the case necessary to decide this Appeal are as under:

i. The Corporate Debtor had availed credit facilities from Axis Bank Ltd. and over a period of time had defaulted in repayment to the financial creditor. Consequent to the default by the corporate debtor Axis Bank under Section 7 of the Code against the Corporate Debtor. The Adjudicating Authority, vide its order dated 08.09.2023, admitted CP (IB) No. 368/MB/C-II/2023, initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Consequent upon the admission of the petition, Mr. Prashant Jain was appointed as the Resolution Professional of the Corporate Debtor.

ii. The Appellant, in his capacity as the Suspended Director of the Corporate Debtor, preferred Company Appeal (AT) (Insolvency) No. 1216 of 2023 before this Appellate Tribunal challenging the admission order dated 08.09.2023.

iii. This Appellate Tribunal, by an interim order dated 15.09.2023, stayed the constitution of the Committee of Creditors subject to the Appellant depositing a sum of Rs.10,49,26,262/- in the form of a Fixed Deposit in the name of the Registrar, NCLAT, New Delhi within thirty days. The interim protection granted by the Appellate Tribunal was thus made conditional upon securing the admitted dues by way of deposit.

iv. The Appellant was unable to comply with the condition relating to deposit of the fixed amount. Accordingly, this Appellate Tribunal, by its order dated 16.10.2023, granted a further extension of thirty days for furnishing the Fixed Deposit. However, by the same order, the Tribunal declined the Appellant's request made through I.A. No. 4871 of 2023 seeking permission to sell two other unencumbered properties of the Corporate Debtor, which the Appellant intended to utilise for arranging the requisite deposit. This Appellate Tribunal rejected the IA No. 4871 of 2023 on the ground that the prayers to sell unencumbered properties cannot be accepted as the CIRP has commenced.

v. The erstwhile management of the corporate debtor initially did not co-operate with the RP and did not handover the custody of the corporate debtor’s office and assets and did not provide relevant information and details of the corporate debtor as required by IRP under Section 19 of the Code. At the same time the suspended directors continued to operate the business, utilising funds from the bank accounts of the corporate debtor and also proceeded to sale the assets of corporate debtor in the teeth of the moratorium under Section 14 of the Code.

vi. The sale proceeds of the asset sold by corporate debtor to M/s Golden Gate Developers during the moratorium was received in the bank account of corporate debtor maintained with Bank of Baroda. Thereafter, the appellant made a fixed deposit of Rs. 7,59,26,262/- in the name of Registrar, NCLAT and by a new application sought additional time to deposit the remaining sum of Rs. 2.90 crores by December 3, 2023.

vii. Since the condition relating to the Fixed Deposit was ultimately not fulfilled, this Appellate Tribunal, by its order dated 06.12.2023, vacated the interim protection granted on 15.09.2023, thereby permitting the CIRP to proceed in accordance with law. In a subsequent order on 09.04.2024 this Tribunal further directed the Resolution Professional to maintain the sale proceeds received from the Panvel Property in an interest-bearing account with a nationalised bank.

viii. The Appellant claims to have fully cooperated with the Resolution Professional by furnishing all relevant records, documents and information concerning the Corporate Debtor. The Appellant relies upon various email communications exchanged between 11.11.2023 and 18.12.2023 to demonstrate that possession of the Corporate Debtor's office was duly facilitated and all information sought by the Resolution Professional was supplied from time to time.

ix. Meanwhile, the Resolution Professional instituted I.A. No. 3653 of 2024 before the Adjudicating Authority under Sections 66, 74 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 213 of the Companies Act, 2013. Through the said application, it was alleged that an aggregate sum of Rs.8,05,11,748/- had been wrongfully withdrawn from the account of the Corporate Debtor during the moratorium period, and directions were sought for investigation into the alleged transactions as well as for directing the Appellant and other concerned persons to restore the said amount to the Corporate Debtor.

x. After hearing the parties in I.A. No. 3653 of 2024, the Adjudicating Authority pronounced the impugned order dated 19.12.2024, holding the Appellant and other respondents jointly and severally liable to contribute Rs.8,05,11,748/- to the account of the Corporate Debtor within thirty days. The Adjudicating Authority further directed the IBBI and the Ministry of Corporate Affairs to initiate prosecution against the Appellant under Section 74 of the Code.

xi. Aggrieved by the findings recorded, the directions issued, and the legal consequences flowing from the impugned order dated 19.12.2024, the Appellant instituted the present appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016, contending that the Adjudicating Authority exceeded its jurisdiction, erroneously invoked the provisions relating to offences under Section 74 of the Code, and wrongly attributed liability for alleged misappropriation despite the factual position regarding the sale proceeds and other payments.

Submissions of the Appellant

4. The Ld.Counsel submits that the present Appeal has been preferred by Mr. Ammeet Kumar Agarwal, the Suspended Director of Supreme Transport Organization Private Limited, assailing the Impugned Order dated 19.12.2024 passed by the Ld.National Company Law Tribunal, Mumbai Bench in I.A. No. 3653 of 2024. The said application was filed by the Resolution Professional under Sections 66, 74 and 60(5) of the Insolvency and Bankruptcy Code, 2016 alleging fraudulent transactions. However, despite the application being founded on Section 66 of the Code, the Ld.NCLT proceeded to pass directions

on the basis of an alleged breach of the moratorium under Section 14 of the Code, without adjudicating whether the statutory ingredients of Section 66 were satisfied. It is submitted that the Impugned Order is contrary to the provisions of the Code and is therefore liable to be set aside.

5. He submits that during August and September 2023, while functioning as a Director of the Corporate Debtor, the Appellant issued several cheques towards payment of outstanding dues of creditors and salaries of employees in the ordinary course of business. Subsequently, on 08.09.2023, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process under Section 7 of the Code and the moratorium under Section 14 came into effect. Thereafter, on 10.05.2024, the Respondent-Resolution Professional filed an application under Sections 66, 74 and 60(5) of the Code alleging that an amount of Rs.8,05,11,748 had been withdrawn from the bank account of the Corporate Debtor during the CIRP period.

6. It is submitted that the Appellant filed a detailed reply on 08.10.2024 specifically denying the allegations and clearly stated that the transactions referred to by the Resolution Professional were payments made through cheques which had been drawn prior to the insolvency commencement date. Despite this categorical defence, the Ld.NCLT, by the Impugned Order dated 19.12.2024, held the Appellant liable for breach of the moratorium under Section 14 without examining the defence or deciding the application under Section 66, which was the very basis of the proceedings.

7. The Ld. Counsel submits that the Respondent consciously invoked Section 66 of the Code and alleged that the Appellant had fraudulently

withdrawn funds from the Corporate Debtor. By invoking Section 66 itself, the Respondent accepted that the transactions in question related to acts attributable to the Appellant prior to the insolvency commencement date, since Section 66 deals with fraudulent or wrongful trading undertaken before commencement of CIRP. The entire application was therefore required to be examined strictly within the parameters of Section 66.

8. He submitted that the Ld. Adjudicating Authority, while passing the Impugned Order, expressly observed that it was not necessary to determine whether the ingredients of Section 66 were made out. Having recorded such a finding, the Ld. Adjudicating Authority nevertheless proceeded to direct the Appellant to make contribution on the premise of breach of the moratorium under Section 14. Such an approach is wholly impermissible in law, as relief under a different provision could not have been granted when the very foundation of the application under Section 66 remained unadjudicated.

9. The Ld. Counsel submits that the issue is no longer res integra. This Hon'ble Appellate Tribunal, in ***"Sudhir Dinanath Chaturvedi v. True IPE LLP, Liquidator of Adya Oils & Chemicals Ltd. & Ors., Company Appeal (AT) (Ins.) No. 540 of 2025"***, has categorically held that where the ingredients of Section 66 are found not to be established, the application cannot nevertheless be allowed by resorting to Section 60(5) or any other provision of the Code. The Tribunal held that once the statutory requirements under Section 66 are not satisfied, the application itself cannot survive and any order granting relief therein is unsustainable.

10. In the present case, the Ld. Adjudicating Authority adopted precisely the course which has been disapproved by this Appellate Tribunal. Without determining whether the alleged transactions were fraudulent within the meaning of Section 66, it proceeded to hold the Appellant liable under Section 14. Such a finding travels beyond the scope of the pleadings, changes the very nature of the proceedings and deprives the Appellant of the opportunity to defend the case on the statutory ingredients actually pleaded. Consequently, the Impugned Order suffers from a fundamental jurisdictional error and deserves to be set aside.

11. The Ld. Counsel respectfully submits that the entire case of the Resolution Professional proceeds on an erroneous assumption that the transactions in question were carried out during the CIRP period. In fact, the payments referred to in Paragraph 5.21 of the application were made through cheques that had been issued by the Appellant prior to the commencement of the Corporate Insolvency Resolution Process. These cheques were issued towards discharge of legitimate liabilities of the Corporate Debtor, including payment of salaries to employees and outstanding dues of creditors, in the ordinary course of business. The Appellant had specifically raised this defence in the reply filed before the Ld. Adjudicating Authority, yet the same was not considered while passing the Impugned Order.

12. It is submitted that the Respondent itself invoked Section 66 of the Code, which necessarily relates to transactions undertaken prior to the insolvency commencement date. The statutory ingredients of Section 66 clearly contemplate acts committed before the commencement of CIRP, where

the business of the Corporate Debtor has been carried on with an intent to defraud creditors or for a fraudulent purpose, and where the directors knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP and nevertheless failed to exercise due diligence in minimizing losses to creditors. Thus, the very invocation of Section 66 demonstrates that the alleged transactions were treated by the Respondent as pre-CIRP transactions.

13. Ld. Counsel further submits that this Appellate Tribunal, in ***"Mr. Nalinesh Kumar Paurush & Ors. v. Mr. Arvind Mittal, Resolution Professional of Temple Leasing and Finance Limited & Ors., Company Appeal (AT) (Ins.) No. 346 of 2024"***, has authoritatively explained the essential ingredients required for invoking Section 66. The Tribunal held that it must be established that the business of the Corporate Debtor was carried on with an intent to defraud creditors or for a fraudulent purpose, that before the insolvency commencement date the directors knew or ought to have known that CIRP was unavoidable, and that they failed to exercise due diligence in minimizing potential losses to creditors. The same principle has also been reiterated by this Appellate Tribunal in ***"Suniel Dhhandhania & Anr. v. Dr. Vichitra Narayan Pathak & Ors., Company Appeal (AT) (Ins.) No. 841 of 2024".***

14. It is submitted that none of these statutory requirements have been established in the present case. There is no finding that the Appellant acted with any fraudulent intent or that the payments were made for any purpose other than meeting genuine business liabilities. The payments were made in

the ordinary course of business and were intended to discharge legitimate dues of employees and creditors. In the absence of any material demonstrating fraudulent conduct or lack of due diligence, the Ld. NCLT could not have held the Appellant liable merely because the cheques were encashed after the commencement of CIRP. By overlooking these crucial facts and statutory requirements, the Ld. NCLT erroneously proceeded to hold the Appellant responsible for breach of the moratorium under Section 14 instead of adjudicating the application on the touchstone of Section 66. The Impugned Order, therefore, cannot be sustained in law.

15. Ld. Counsel submits that the Impugned Order has caused serious prejudice to the Appellant. The proceedings were initiated under Section 66 of the Code alleging fraudulent trading, whereas the Ld. NCLT ultimately imposed liability under Section 14 of the Code without first determining whether the ingredients of Section 66 were satisfied. The Appellant was thus denied an opportunity to defend the case on the basis on which liability has eventually been fastened.

16. The Ld. Counsel places reliance upon the judgment of the Hon'ble Delhi High Court in ***Sh. Rajeev Shukla v. Sh. Gopal Krishna Shukla, CM (M) No. 2342 of 2024***, wherein; it was held that mentioning an incorrect provision of law is not fatal unless it causes prejudice to the opposite party or the Court. In the present case, the prejudice is manifest, as the Respondent invoked Section 66 but the Ld. NCLT granted relief under Section 14 without adjudicating the case under Section 66.

17. It is further submitted that the Ld. NCLT wrongly shifted the burden of proof upon the Appellant. Under Section 66, the burden lies upon the Resolution Professional to establish fraudulent trading through cogent and tangible evidence. This Appellate Tribunal, in **"*Regen Powertech Private Limited v. M/s Wind Construction Private Limited & Ors., Company Appeal (AT) (CH) (Ins.) No. 349 of 2022*"**, held that allegations of fraudulent trading require a high degree of proof and must be supported by specific material placed on record. Instead of requiring the Respondent to discharge this burden, the Ld. NCLT drew an adverse inference against the Appellant for not proving that the cheques had been drawn prior to commencement of CIRP.

18. Ld. Counsel lastly submits that the Ld. NCLT failed to appreciate that, after commencement of CIRP, the Appellant ceased to have possession or control over the records of the Corporate Debtor, as the management stood vested in the Resolution Professional under Section 17 of the Code. Despite recording this position, the Ld. NCLT faulted the Appellant for not producing documents which were admittedly no longer in his custody. The findings are therefore legally unsustainable and the Impugned Order deserves to be set aside.

Submissions of Respondent

19. Ld. Counsel submitted that the Appellant's contention during oral arguments that the Respondent's application before the Adjudicating Authority was filed solely under Section 66 of the Insolvency and Bankruptcy Code, 2016 is wholly misconceived and contrary to the record. The said

submission is not only factually incorrect but is also inconsistent with the Appellant's own pleadings before this Hon'ble Tribunal.

20. He submitted that the cause title of I.A. No. 3653 of 2024 itself unequivocally records that the application was filed under **Sections 66, 74 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016**. There is, therefore, no ambiguity that the Respondent had invoked multiple provisions of the Code, and not Section 66 alone, as is now sought to be contended by the Appellant.

21. It is further submitted that the same position is reaffirmed in the impugned order itself, wherein the Adjudicating Authority has expressly recorded that the Interlocutory Application was filed under Sections 66, 74 and 60(5) of the Code seeking reimbursement of the amount withdrawn from the Corporate Debtor's bank account during the subsistence of the moratorium. Thus, both the application and the impugned order clearly establish the statutory basis on which the proceedings were instituted.

22. It was further submitted that the Appellant's own Memorandum of Appeal completely demolishes the argument now sought to be advanced. In the List of Dates, the Appellant himself has specifically pleaded that the Respondent filed I.A. No. 3653 of 2024 under Sections 66, 74 and 60(5) of the Code read with Section 213 of the Companies Act, 2013. The Synopsis accompanying the Appeal reiterates the very same position. Having made such categorical averments on affidavit, the Appellant cannot now be permitted to contend that the application was confined only to Section 66 of the Code.

23. The Ld. counsel submitted that it is a settled principle of law that a litigant is bound by his own pleadings and cannot be allowed to take a stand contrary thereto during oral submissions. Since the Appellant's own Appeal acknowledges that the Respondent's application was filed under Sections 66, 74 and 60(5) of the Code, the contrary submission advanced during the hearing deserves to be rejected outright as being contrary to the record.

24. Ld. Counsel submitted that the Appellant has erroneously contended that the Ld. Adjudicating Authority exceeded its jurisdiction by directing prosecution under Section 74 of the Code. A plain reading of the operative portion of the impugned order demonstrates that no such direction has been issued. The Ld. Adjudicating Authority has merely directed that a copy of the order be forwarded to the Insolvency and Bankruptcy Board of India (IBBI) and the Ministry of Corporate Affairs (MCA) for taking appropriate steps under Section 74 of the Code.

25. He submitted that such a reference is fully consistent with the law laid down by this Appellate Tribunal in ***"Almas Global Opportunity Fund SPC v. CA Kannan Triuvengadam & Anr., Company Appeal (AT) (Ins.) No. 683 of 2022"***, wherein it was held that the Adjudicating Authority can, at best, draw the attention of the IBBI or the Central Government to the facts of a case for considering whether it is appropriate to initiate proceedings under Section 236 of the Code. The Tribunal further clarified that such a direction is merely a reference for consideration and cannot be construed as an order directing prosecution.

26. He therefore, submitted that the impugned order does nothing more than make a permissible reference to the IBBI and the MCA for taking such action as may be considered appropriate in accordance with law. Consequently, the Appellant's contention that the Ld. Adjudicating Authority usurped the jurisdiction of the Special Court is wholly misconceived and deserves to be rejected.

27. Ld. Counsel submitted that the Appellant's challenge proceeds on an erroneous assumption that the direction to contribute Rs.8,05,11,748/- was issued under Section 66 of the Code. A plain reading of the impugned order, however, makes it abundantly clear that the Ld. Adjudicating Authority consciously refrained from adjudicating upon the allegations of fraudulent transactions under Section 66 of the Code. Instead, it expressly held that the controversy before it pertained to the unauthorized withdrawal of funds from the Corporate Debtor's bank account during the subsistence of the moratorium and that it was unnecessary to determine whether the transactions fell within the ambit of Section 66.

28. He submitted that the Ld. Adjudicating Authority specifically confined its findings to the admitted violation of the moratorium under Section 14 of the Code and, on that basis, directed the Appellant and the other suspended directors to contribute the withdrawn amount to the account of the Corporate Debtor by exercising its jurisdiction under Section 14 read with Section 60(5) of the Code. The direction for contribution, therefore, is founded entirely on the breach of the statutory moratorium and not on any finding of fraudulent trading under Section 66.

29. It is submitted that since the impugned direction is based upon the violation of Section 14 and the residuary jurisdiction vested in the Adjudicating Authority under Section 60(5) of the Code, the Appellant's challenge premised on the applicability of Section 66 is wholly misplaced and deserves to be rejected.

30. Ld. Counsel submitted that the violation of the moratorium under Section 14 of the Code stands conclusively established on admitted and undisputed facts. It is not disputed that the Appellant sold the Panvel Property, which was mortgaged to Axis Bank, on 2 November 2023, i.e., after the commencement of the CIRP and during the subsistence of the moratorium. The sale was effected despite the order dated 16 October 2023 passed by this Appellate Tribunal specifically declining permission to sell any property of the Corporate Debtor. The Appellant, therefore, acted in complete disregard of both the statutory moratorium and the orders passed by this Appellate Tribunal.

31. He submitted that upon commencement of the CIRP, Section 17 of the Code suspended the powers of the Board of Directors, and the management and affairs of the Corporate Debtor vested exclusively in the Interim Resolution Professional/Resolution Professional. Consequently, the Appellant had no authority whatsoever to deal with the assets of the Corporate Debtor or to operate its bank accounts. The sale of the mortgaged property and the subsequent withdrawal and utilization of the sale proceeds were, therefore, patently unauthorized and in clear violation of the provisions of the Code.

32. Ld. Counsel further submitted that the Appellant's defence that the withdrawn amounts were utilized towards payment of salaries and operational dues through cheques allegedly issued prior to the insolvency commencement date remained wholly unsubstantiated. No cheques, bank instructions, contemporaneous records or any other documentary evidence were produced before the Ld. Adjudicating Authority to support this plea. In these circumstances, the Ld. Adjudicating Authority rightly drew an adverse inference against the Appellant and held that the unauthorized withdrawals during the moratorium stood established.

ANALYSIS AND FINDINGS

33. We have heard the Ld. Counsels for the parties and gone through records of the case including the written submission of the parties.

34. The present Appeal arises from the Impugned Order dated 19.12.2024 passed in I.A. No. 3653 of 2024. By the said order, the Adjudicating Authority directed the Appellant and the other suspended directors to contribute a sum of Rs.8,05,11,748/- to the account of the Corporate Debtor on the ground that the said amount had been withdrawn or dealt with during the subsistence of the moratorium under Section 14 of the Code. The Adjudicating Authority also directed that a copy of the order be forwarded to the Insolvency and Bankruptcy Board of India ("IBBI") and the Ministry of Corporate Affairs ("MCA") for taking such action as may be considered appropriate under Section 74 of the Code.

35. The challenge of the Appellant proceeds on the basis that the Resolution Professional had invoked Sections 66, 74 and 60(5) of the Code before the

Adjudicating Authority, but the ultimate direction requiring contribution of the aforesaid amount was founded upon violation of the moratorium under Section 14 of the Code without recording any finding on the ingredients of Section 66. It has been contended that once the Adjudicating Authority observed that it was not necessary to determine, whether the transactions constituted fraudulent or wrongful trading within the meaning of Section 66, it could not thereafter grant substantive relief by invoking Section 14 of the Code. The Appellant has also questioned the direction forwarding the matter to the IBBI and the MCA by contending that such a direction travels beyond the jurisdiction vested in the Adjudicating Authority.

36. The Respondent has contradicted the above submissions by contending that the application before the Adjudicating Authority was never confined to Section 66 of the Code but was expressly instituted under Sections 66, 74 and 60(5) of the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016. According to the Resolution Professional, the application sought multiple reliefs arising from the conduct of the suspended management after commencement of the Corporate Insolvency Resolution Process, including reimbursement of the amounts withdrawn from the bank account of the Corporate Debtor during the subsistence of the moratorium. It has further been contended that the Adjudicating Authority consciously confined its adjudication to the issue of violation of the moratorium and exercised its jurisdiction under Section 14 read with Section 60(5) of the Code, while the direction under Section 74 is only a reference to the competent authorities for consideration in accordance with law.

37. The principal contention of the Appellant is that the application filed by the Resolution Professional was one under Section 66 of the Insolvency and Bankruptcy Code, 2016 ("the Code") and, therefore, once the Adjudicating Authority observed that it was unnecessary to examine the allegations of fraudulent or wrongful trading, no further relief could have been granted. The submission necessitates an examination of the nature of the proceedings before the Adjudicating Authority.

38. We now take a look at the I.A. No. 3653 of 2024 filed by the RP. Relevant extracts of the same are extracted below:

> ***"IA No. 3653 of 2024***
>
> *APPLICATION UNDER SECTION 66, 74, AND 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 SECTION 213 OF THE COMPANIES ACT, 2013 AND READ WITH RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 SEEKING NECESSARY DIRECTIONS IN RESPECT OF CORPORATE INSOLVENCY RESOLUTION PROCESS OF SUPREME TRANSPORT ORGANIZATION PRIVATE LIMITED*
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> ***DETAILS OF APPLICATION***
>
> *1. The present application ("Application") is filed by Ssarvi Resolution Services LLP, Resolution Professional through its Partner and Authorised Signatory, Prashant Jain ("Applicant"/ "IRP") of Supreme Transport Organization Private Limited ("Corporate Debtor"/ "STOPL"), under Section 213 of the Companies Act 2013 read with Section 74 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") seeking reimbursement of the amount withdrawn from the bank account of the Corporate Debtor during the subsistence of the moratorium."*

39. It is seen from the records that I.A. No. 3653 of 2024 was instituted under Sections 66, 74 and 60(5) of the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016, and not exclusively under Section 66 of the Code. In the initial title portion of the IA, the sections 66,74 and 60(5) of the Code are clearly mentioned along with Rule 11 of the NCLT Rules. Paragraph 1 of the IA also records the main prayer of the RP seeking reimbursement of the amount withdrawn from the bank account of the Corporate Debtor during the subsistence of the moratorium. Impugned order has also duly noted the same statutory provisions under which the application was preferred.

40. The pleadings before this Appellate Tribunal also proceed on the same basis. In the Memorandum of Appeal, the Appellant himself has described the Impugned Order as one arising out of an application filed under Sections 66, 74 and 60(5) of the Code. The record, therefore, leaves little room for doubt that the proceedings before the Adjudicating Authority were not confined to Section 66 alone. The mere fact that Section 66 formed one of the statutory provisions invoked in the application does not, by itself, determine the source of every relief that could ultimately be granted by the Adjudicating Authority.

41. The question which, therefore, arises is whether the relief granted in the present case necessarily depended upon a determination under Section 66. The Appellant's submission proceeds on the assumption that unless the ingredients of Section 66 stood established, the Adjudicating Authority was denuded of jurisdiction to pass any substantive order.

42. We note that Section 66 empowers the Adjudicating Authority to pass appropriate orders where the business of the Corporate Debtor has been carried on with intent to defraud creditors or for any fraudulent purpose, or where the persons responsible for the management of the Corporate Debtor have failed to exercise due diligence before the commencement of the insolvency proceedings. The jurisdiction under the said provision is, therefore, directed towards examining the conduct of the persons in management and the consequences flowing therefrom.

43. Sections 14 and 17, on the other hand, operate in a different field. Upon commencement of the Corporate Insolvency Resolution Process, the moratorium under Section 14 comes into force and the management of the affairs of the Corporate Debtor vests in the Resolution Professional. The object of these provisions is to preserve the assets of the Corporate Debtor during the resolution process and ensure that the insolvency estate remains available for resolution in accordance with the provisions of the Code. Their operation is independent of a prior finding of fraud or wrongful trading.

44. It is, therefore, evident that while the same set of facts may give rise to issues under more than one provision of the Code, the jurisdiction exercised under one provision is not necessarily dependent upon the exercise of jurisdiction under another. Whether the relief granted by the Adjudicating Authority in the present case is relatable to Section 66 or to its jurisdiction under Sections 14 and 60(5) has to be gathered from the grounds of the prayer and the relief sought therein.

45. The grounds for the prayer in IA No. 3653 of 2024 are given in para 6 of application which is extracted below:

> *6. The Application is necessitated because of the following reasons:*
>
> *6.1 Section 14(b) clearly states that any transfer of property/assets of the Corporate Debtor is prohibited after the commencement of the moratorium. The rationale behind implementing such prohibitions as laid down in Section 14 during the moratorium is to maintain the sanctity of the CIRP and to ensure the avoidance of frivolous and fraudulent transactions that will leave the Corporate Debtor in a devastated state by further sabotaging the CIRP process. It is submitted that the whole purpose of the moratorium would be defeated if members of the previous management of the Corporate Debtor are left free to transfer the funds of the Corporate Debtor.*
>
> *6.2 Further in Sandeep Khaiwn v. JSVM Plywood Industries Ltd, it was stated that the impact of the moratorium includes prohibition of transferring, encumbering, alienating or disposing of by the Corporate Debtor of any of its assets.*
>
> *6.3 - - -*
>
> *6.4 - - -*
>
> *6.5 As previously mentioned, the transaction involving the sale of the encumbered assets of the Corporate Debtor, was consciously done despite having full knowledge of the Admission Order, and the intentional usage of monies in the bank account of the Corporate Debtor's assets, displays the mala fide intention of Respondent Nos. l to 3, that warrants serious action and contravenes the moratorium in place. This contravention impedes the Applicant from effectively executing their responsibilities in accordance with the provisions outlined in the Code.*
>
> *6.6 In light of the above submissions, withdrawal of money from the Bank of Baroda account, is hit by the moratorium imposed under Section 14 in the course of CIRP which is punishable under Section 74 of the Code, making the Respondents liable for the same.*
>
> *6.7 Since strict timelines and value maximization of the Corporate Debtor (by way of a time-bound resolution process) are the essence of the Code, the Applicant is compelled to file the present Application for the Applicant to continue discharging his functions as the IRP. It is humbly reiterated that such directions are necessary for effectively conducting the CIRP of the Corporate Debtor in the best interests of all its stakeholders, including creditors and workmen/ employees.*

6. 8 - - -

6.9 It is humbly submitted that this Hon'ble Adjudicating Authority has the necessary power and jurisdiction to grant the reliefs as prayed for in this Application. No harm or prejudice will be caused to any person if the present Application is allowed. On the contrary, grave prejudice and irretrievable loss shall be caused to the Corporate Debtor and its numerous stakeholders (including its creditors and workmen/ employees) if the reliefs prayed for in this Application are not granted and the Corporate Debtor is consequently pushed into liquidation.

46. It is seen from the above that the very first ground for filing the application was that the assets of the corporate debtor were transferred by the erstwhile management in express violation of moratorium under section 14 during the CIRP period.

47. The RP in the aforesaid application made the following prayers:

"PRAYER

8. In view of the above facts and circumstances and submissions made, the Applicant most humbly prays that this Hon'ble Adjudicating Authority may be pleased to:

(a) Pass a direction to Secretary or Joint Secretary Ministry of Corporate Affairs or other such person to investigate the affairs more specifically the appropriation of INR 8,05,11,748/- (Eight Crores Five Lakhs Eleven Thousand Seven Hundred Forty-Eight only) amount by the Respondents in violation of Moratorium under section 14 of the Code;

(b) Pass an order reversing the appropriation of the amount of INR 8,05,11,748/- (Eight Crores Five Lakhs Eleven Thousand Seven Hundred Forty-Eight only) by the Respondents and further direct the Respondents to contribute the above sum to the Corporate Debtor's bank account;

(c) Pass an order directing the Respondents to provide details regarding the disbursal of INR 8,05,11,748/ - (Eight Crores Five Lakhs Eleven Thousand Seven Hundred Forty-Eight only) amount that was withdrawn from the bank account;

(d) Pass an order for costs; and

(e) Pass such further order(s) and/ or direction(s) as this Hon'ble Adjudicating Authority may deem fit and proper."

48. We note from the prayer 8(b) above that the RP had specifically prayed for reversal of the transaction of Rs.8,05,11,748/- and payment of the same by the respondents in the account of CD.

49. It comes out very clearly from the grounds of appeal as well as the prayers in the application that this relief has been sought on the ground of violation of moratorium under section 14 read with section 60(5) of the Code and Rule 11 of NCLT Rules.

50. We further note that the Ld. Adjudicating Authority, while discussing the issue in paragraphs 9 to 12 of impugned order, consciously refrained from adjudicating the allegations of fraudulent or wrongful trading under Section 66. Instead, it proceeded to examine whether the funds of the Corporate Debtor had been dealt with during the subsistence of the moratorium and whether the amount withdrawn was liable to be restored to the account of the Corporate Debtor. The reasoning adopted by the Adjudicating Authority thus shows that the relief ultimately granted was not founded upon Section 66 but upon the consequences flowing from the violation of the statutory moratorium.

51. We now take notice of section 60(5) of the Code and Rule 11 of NCLT Rules 2016 which are extracted below:

> ***Section 60: Adjudicating Authority for Corporate Persons***
>
> *(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*
> *(a) any application or proceeding by or against the corporate debtor or corporate person;*
> *(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

Rule 11 of NCLT Rules,2016
Inherent Powers- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

52. The jurisdiction exercised by the Adjudicating Authority must be tested with reference to the source of the relief granted. Section 60(5) of the Code confers wide jurisdiction upon the Adjudicating Authority to entertain or dispose of any question of law or fact arising out of or in relation to the insolvency resolution process. Preservation of the assets of the Corporate Debtor is one of the fundamental objectives of the Code. Where the Adjudicating Authority finds that the assets or funds of the Corporate Debtor have been dealt with in breach of the statutory framework governing the CIRP, it is not powerless to issue consequential directions for protecting or restoring the insolvency estate.

53. The Appellant's interpretation would lead to the consequence that merely because an application refers to Section 66, every other relief claimed therein would automatically become dependent upon the satisfaction of the ingredients of that provision. Such an interpretation neither flows from the language of the Code nor advances the object sought to be achieved by it. The scope of the jurisdiction exercised by the Adjudicating Authority has to be determined with reference to the nature of the relief granted and not merely by reference to the provisions cited in the application.

54. The next contention advanced by the Appellant is that the direction requiring the Appellant and the other suspended directors to contribute a sum of Rs.8,05,11,748/- to the account of the Corporate Debtor is, in substance, an order under Section 66 of the Code and, therefore, could not have been passed in the absence of a finding satisfying the requirements of that provision. The submission requires an examination of the true nature of the relief granted by the Adjudicating Authority.

55. In this regard, we note that the Appellant sold the Panvel Property, which was mortgaged to Axis Bank, on 02.11.2023, i.e., after the commencement of the CIRP and during the subsistence of the moratorium. The sale was effected despite the order dated 16.10.2023 passed by this Appellate Tribunal vide which permission was specifically declined to sell any property of the Corporate Debtor. The Appellant, therefore, acted in complete disregard of both the statutory moratorium and the orders passed by this Appellate Tribunal.

56. A reading of the operative part of the Impugned Order, together with the discussion preceding it, shows that the Adjudicating Authority did not determine the civil liability of the Appellant on account of fraudulent or wrongful trading. Instead, it directed restoration of the amount which, according to the material placed before it, had been withdrawn or dealt with during the subsistence of the moratorium. The emphasis of the Adjudicating Authority was on the effect of the transactions on the assets of the Corporate Debtor during the CIRP and not on adjudicating the personal liability of the Appellant under Section 66.

57. The distinction is not merely one of form but of substance. A direction requiring restoration of funds to the account of the Corporate Debtor is intended to protect and preserve the insolvency estate so that the resolution process is conducted on the basis of the assets legally available to the Corporate Debtor. Such a direction is qualitatively different from a finding that a person has carried on the business of the Corporate Debtor with fraudulent intent or has incurred liability for wrongful trading. The latter requires an adjudication on the ingredients of Section 66, whereas the former is concerned with safeguarding the assets of the Corporate Debtor during the CIRP.

58. The Appellant has sought to explain the withdrawals by contending that they represented payments towards salaries, statutory liabilities and other business expenses, and that some of the corresponding cheques had been issued prior to the commencement of the CIRP. The Adjudicating Authority considered this defence but was not persuaded to accept it in the absence of satisfactory material substantiating the explanation. Apart from making a general assertion regarding the nature of the payments, no relevant record was produced to establish that the withdrawals were authorised or otherwise permissible despite the operation of the moratorium. The finding recorded by the Adjudicating Authority is essentially one based on appreciation of the material placed before it, and no perversity in such appreciation has been demonstrated before us warranting interference in the exercise of appellate jurisdiction.

59. The Appellant has also not pointed out any specific error in the quantification of the amount directed to be restored. The challenge is principally founded on the jurisdiction of the Adjudicating Authority to pass such a direction and not on the computation itself. Once the jurisdictional challenge is considered in the light of the statutory scheme discussed above, the validity of the consequential direction has to be examined on the basis of the findings actually recorded by the Adjudicating Authority and the material available on record.

60. The appellant has placed reliance on the judgment of this Appellate Tribunal in ***Sudhir Dinanath Chaturvedi v. True IPE LLP, Liquidator of Adya Oils & Chemicals Ltd. & Ors.*, Company Appeal (AT) (Ins.) No. 540 of 2025**. In the said case, the application before the Adjudicating Authority was essentially founded on Section 66 of the Code and the relief granted was directly relatable to the allegations of fraudulent trading. After holding that the ingredients of Section 66 were not established, the Adjudicating Authority nevertheless granted the very relief sought under that provision by invoking Section 60(5), which was found to be impermissible by this Appellate Tribunal. The present case stands on a different footing. As noticed earlier, I.A. No. 3653 of 2024 was instituted under Sections 66, 74 and 60(5) of the Code and sought multiple reliefs. The Adjudicating Authority consciously refrained from adjudicating the allegations under Section 66 and examined the issue of violation of the moratorium independently, directing restoration of the amount to the account of the Corporate Debtor in exercise of its jurisdiction under Sections 14 and 60(5) of the Code. The impugned direction

was, therefore, not founded upon Section 66, and the ratio of *Sudhir Dinanath Chaturvedi* does not govern the controversy involved in the present Appeal.

61. Reliance has also been placed on the decision of the Hon'ble Delhi High Court in ***Rajeev Shukla v. Gopal Krishna Shukla*, CM(M) No. 2342 of 2024.** The said decision lays down the settled principle that mere mention of an incorrect provision of law would not be fatal unless it causes prejudice to the opposite party or affects the jurisdiction of the Court. In the present case, there is neither any dispute regarding the provisions invoked in the application nor any case of misdescription of the statutory source of jurisdiction. The application was expressly filed under Sections 66, 74 and 60(5) of the Code, and the Appellant contested the proceedings on merits with full knowledge of the reliefs claimed therein. The controversy before us is not one of an incorrect or omitted statutory provision, but whether the Adjudicating Authority was justified in granting relief independently under Sections 14 and 60(5) after declining to adjudicate Section 66. The principle laid down in *Rajeev Shukla*, therefore, has no application to the issue arising in the present Appeal.

62. Appellant has also relied on the decision of the Chennai Bench of this Appellate Tribunal in ***Regen Powertech Private Limited v. Wind Construction* Private Limited & Ors., Company Appeal (AT) (CH) (Ins.) No. 349 of 2022**. The observations relied upon therein relate to the degree of proof required for establishing fraudulent or wrongful trading under Section 66 of the Code and the obligation of the Resolution Professional to plead and prove such allegations by placing cogent and tangible material on record.

There can be no disagreement with the said proposition. However, the Adjudicating Authority in the present case has consciously refrained from returning any finding under Section 66 and has not imposed liability upon the Appellant on the basis of fraudulent or wrongful trading. The impugned direction is founded upon the consequences of the alleged violation of the moratorium and the restoration of the assets of the Corporate Debtor during the CIRP. Since the present Appeal does not involve adjudication of the ingredients of Section 66, the principles governing the standard of proof under that provision, as explained in Regen Powertech, are not determinative of the issues arising for consideration herein.

63. The Appellant has also assailed paragraph 12(ii) of the Impugned Order whereby the Adjudicating Authority directed that a copy of the order be forwarded to the Insolvency and Bankruptcy Board of India ("IBBI") and the Ministry of Corporate Affairs ("MCA") for taking appropriate action under Section 74 of the Code. According to the Appellant, once the Adjudicating Authority declined to return any finding under Section 66 and did not adjudicate the issue of fraudulent conduct, it could not have issued any direction referable to Section 74.

64. We note that section 74 of the Code has been omitted vide The Insolvency and Bankruptcy Code (Amendment) Act, 2026 which has come into effect from 26 May 2026. As the aforesaid section is not part of the statute anymore, the directions contained in the impugned order relating to the said section have become infructuous.

65. In view of the findings above, we are of the view that the Adjudicating Authority has examined the issues which arose for determination before it; consciously confined its adjudication to the consequences flowing from the violation of the moratorium and passed consequential directions which, in the facts of the case, are well within the jurisdiction conferred by the Code.

66. We, therefore, find no merit in the Appeal. The Appeal is accordingly dismissed. All pending IA's, if any, also stand disposed of. There shall be no order as to costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen/
Pragya (LRA)