

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins.) No. 350 of 2021
&
IA No.727/2021

[Arising out of Order dated 13.07.2021 passed by the Adjudicating Authority/National Company Law Tribunal, Chennai Bench in IA (IBC) 27/KOB/2021 in IBA/133/2019]

IN THE MATTER OF:

- 1. Mr. Shibu Job Cheeran,
Suspended Director of Corporate Debtor.**
Door No. 10/537 – 1 ADM Arcade,
Near LBS Computer Centre P.O.
Chiyyaram, Kooekkenchery,
Trissur – 680026. **...Appellant No. 1**

- 2. Mrs. Bency Shibu,
Suspended Director of Corporate Debtor,**
Near LBS Computer Centre P.O.
Chiyyaram, Kooekkenchery,
Trissur – 680026. **...Appellant No. 2**

- 3. Mr. Makkattukulam George Ittimathew,
Suspended Director of Corporate Debtor,**
Near LBS Computer Centre P.O.,
Chiyyaram, Kooekkenchery,
Trissur – 680026. **...Appellant No. 3**

Versus

- 1. Mr. Ashok Velamur Seshadri,
Liquidator of M/s. Archana Motors
Limited,**
2018/11541, No. A2, Dynamic Flats,
Parangusapuram Street,
Kodambakkam, Chennai – 600061. **...Respondent**

Present:

- For Appellants** : **Dr. K.S. Ravichandran, PCS**
Ms. S. Manjula Devi, Advocate
- For Respondent** : **Mr. S. Sathiyarayanan, Advocate**
Ms. D. Pavithra, Advocate

J U D G M E N T
(Virtual Mode)
(01.03.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

The Present Appeal is filed against the 'impugned order' dated 13.07.2021 passed in IA (IBC) 27/KOB/2021 in IBA/133/2019 by the 'Adjudicating Authority' (National Company Law Tribunal, Chennai Bench), whereby, the 'Adjudicating Authority' dismissed the Petition filed under the Insolvency & Bankruptcy Code, 2016 (in short '**I &B Code, 2016**).

Brief Facts:

2. A 'Corporate Insolvency Resolution Process' was initiated vide order dated 01.07.2019, by the 'Adjudicating Authority' in IBA/133/2019 on an application filed by an 'Operational Creditor' M/s Minsa Tech India Pvt. Ltd. under Section 9 of the I & B Code, 2016. Subsequently, Archana Motors Pvt. Ltd., the 'Corporate Debtor' was initiated for liquidation vide order dated 10.01.2020, by the 'Adjudicating Authority' in MA/38/KOB/2019.

3. The 1st Appellant was the Managing Director and Promoter of the 'Corporate Debtor' whereas the 2nd and 3rd Appellants were the Directors of the 'Corporate Debtor'.

4. An Interlocutory Application was filed vide IA (IBC)/27/KOB/ 2021 was filed under Section 66 of the I & B Code, 2016 by the 'Liquidator' of the 'Corporate Debtor', the Respondent herein with following prayers :-

“(a) Pass an order to declare that the entries of Rs. 21.37 crore made in the audited financial statement for the year 2018 described in Paragraphs 15 of the application are fraudulent transactions;

(b) pass an order to declare that the Respondent No. 1 to 3 are liable for the loss of Rs. 21.37 Crore suffered by the Corporate Debtor and direct the Respondent No. 1 to 3 to pay Rs. 21.37 crores to the account of the Liquidator for distribution under Section 53 of the Insolvency and Bankruptcy Code, 2016.”

5. The ‘Adjudicating Authority’ being satisfied of all facts and provisions of law, agreed to the prayers sought by the ‘Liquidator’ declaring the entries of Rs. 21.37 crores shown in the ‘Audited Financial Statement’ for the year 2018 as fraudulent transactions and the ‘Appellants’ herein were held liable to pay this amount to the ‘Liquidator’/ ‘Respondent’ herein for distribution under Section 53 of the I & B Code, 2016.

6. Aggrieved by the ‘impugned order’ dated 13.07.2021, the ‘Appellants’ have filed the present appeal before this ‘Appellate Tribunal’.

Appellants Submissions :-

7. Learned Counsel for the Appellants gave the background of the case and circumstances which led to the present appeal. Learned Counsel for the Appellants assailed the ‘impugned order’ as well as conduct of the ‘Respondent’ for initiating false IA(IBC) 27/KOB/2021 in IBA/133/2019 under Section 66 of the I & B Code, 2016. Learned Counsel for the

Appellants stated that the 'Respondent' filed above Interlocutory Application almost after one year of the 'impugned order' for liquidation of the 'Corporate Debtor'.

8. Learned Counsel for the Appellants stated that the 'impugned order' has been passed without any substantial finding and proving the basic requirements of Section 66 of the I & B Code, 2016.

9. Learned Counsel for the Appellants gave the details that they were authorised dealer of 'Tata Motors' and due to several reasons like 'ban on quarrying', 'closer of bars' etc., the turnover of the 'Corporate Debtor' fell drastically from Rs. 74.43 crores in 2016-17 to Rs. 4.21 crores in 2018-19. Learned Counsel for the Appellants stated that these facts were not considered while adjudicating the application under Section 66 of the I & B Code, 2016.

10. Learned Counsel for the Appellants mentioned that the devastating flood in August, 2018 was virtually the death nail on the 'Corporate Debtor' and all the assets and the records of the 'Corporate Debtor' were destroyed and the remains were unserviceable and useless including computer systems and data contained therein. Learned Counsel for the Appellants emphasised that they have taken all efforts to bring back the business on rails and had approached the 'South Indian Bank' for restructuring the loans and also tried to retrieve the lost data through an agency, however, they were not successful.

11. Learned Counsel for the Appellants criticised the conduct of the 'Respondent' who did not even bother to visit the site physically and has not taken into account the assets and liabilities position of the 'Corporate Debtor' over the number of years in analysing alleged fraudulent transactions and the 'Respondent' also failed to factor into the impact of the flood etc. Learned Counsel for the Appellants stated that the 'Respondent' wrongly concluded on the basis of the earlier turnovers and assets mentioned in the balance sheet of the 'Corporate Debtor'. Learned Counsel for the Appellants emphasised their genuine efforts to revive the company and settle the dues and made substantial payment from their own personal sources to creditors even after commencement of 'Corporate Insolvency Resolution Process'.

12. Learned Counsel for the Appellants gave the analysis based on the various balance sheets from the year 31.03.2014 to 31.03.2017 and concluded that during these four financial years their business was very good and the cumulative turnover was Rs. 413.21 crores, cumulative purchases worth Rs. 353.09 crores, inventory aggregated to Rs. 47.16 crores and all these clearly demonstrate the Corporate Debtor's ability to pay as well as desire to develop the business. Learned Counsel for the Appellants stated that at no stage any bank declared accounts of the 'Corporate Debtor' as NPA.

13. Learned Counsel for the Appellants took pains to explain that fixed assets did not show any major changes over years which indicates no

disposal or alienation of the properties of the 'Corporate Debtor' was made to defraud any 'Creditor'.

14. Learned Counsel for the Appellants described major floods in August, 2018 which ruined the business of the 'Corporate Debtor'. Learned Counsel for the Appellants further stated that the 'Respondent' failed to bring out any specific allegation and the findings were without any concrete evidence including any 'Forensic Audit Report'. Learned Counsel for the Appellants mentioned that mandatory ingredients of Section 66(1) of the I & B Code, 2016 is that persons knowingly should carry on of the business in a manner with an intent to defraud the creditors or for a fraudulent purpose and as per section 66(2), it is must be shown that there was no reasonable prospect of avoiding the commencement of 'Corporate Insolvency Resolution Process' and such directors failed to exercise due diligence in minimising the potential loss to the creditors of 'Corporate Debtor'. Learned Counsel for the Appellants stated that they had no intention to defraud any creditor and it is only due to '*force majeure*' by way of flood which affected the business drastically including destroying all the assets and the records of the 'Corporate Debtor'. Learned Counsel for the Appellants stated that by no stretch of imagination, the Directors of the 'Corporate Debtor' can be held responsible for mala-fide intentions in such cases.

15. Learned Counsel for the Appellants stated that it is the responsibility of the Liquidator, the 'Respondent' herein to prove all the allegations of fraud which he miserably failed to do so. Learned Counsel for the Appellants

mentioned that it is only the 1st Appellant who was involved in day to day business and 2nd & 3rd Appellants were not connected with day to day running of the 'Corporate Debtor', as such, the Liquidator i.e. Respondent herein as well as the 'Adjudicating Authority' did not differentiate between the person who was responsible and the person who were not connected with the business operations.

16. Learned Counsel for the Appellants stated that as regard loss of data and alleged failure of the 'Appellants' to retrieve the lost data, the 'Appellants' approached 'M/s Stellar Information Technology Pvt. Ltd.' who were the best data recovery service provider in India and despite all efforts of the agency to salvage the lost data, the agency informed the 'Corporate Debtor' that the agency could not retrieve 864 GB data. Learned Counsel for the Appellants stated that that only due to this reason, the 'Corporate Debtor' could not furnish the required data to the 'Respondent'. Learned Counsel for the Appellants further stated that the 'Respondent' could have checked this fact from the agency, which the 'Respondent' did not bother to do find actual facts.

17. Learned Counsel for the Appellants mentioned that they made detailed submissions before the 'Adjudicating Authority' about alleged frauds on the basis of Mitigation of the value of the assets worth Rs. 21.37 crores.

- Learned Counsel for the Appellants submitted that as regard fixed assets he had already furnished the pictures depicting impact of the floods on the fixed assets which were not taken into account by the 'Adjudicating Authority'.

- Learned Counsel for the Appellants submitted that the vehicles, were demo-vehicles and financed by M/s Sundaram Finance who had taken back due to non-payment by the 'Corporate Debtor'.
- As regard inventory, Learned Counsel for the Appellants refuted the allegations which could not be substantiated by the 'Respondent' and in any case their inventories dated back to 2013-14 and had no value.
- Learned Counsel for the Appellants also refuted the allegation regarding misuse of trade receivable of Rs. 6.91 crores. Learned Counsel for the Appellants stated that these receivables were to be directly connected by 'Tata Motors' and the 'Corporate Debtor' did not have any control.

18. Learned Counsel for the Appellants also strongly refuted the allegation regarding fraudulent dealing with M/s Sai Financial Services Ltd. and termed them as 'turnaround experts' and mentioned that the payment was made towards legitimate expenses like travel, stay, consultancy fee etc. of Sai Financial Service Ltd.

19. Learned Counsel for the Appellants also refuted the allegations regarding non-disclosure of bank account with 'City Union Bank' and mentioned that this account was operated only between 04.12.2017 to 08.05.2018 and there were no significant transactions from this account.

20. Learned Counsel for the Appellants also cited the case passed by the Hon'ble Supreme Court of India in **Anuj Jain, IRP for Jaypee Infratech Ltd. vs. Axis Bank Ltd. & Ors.** in Civil Appeals No. 8512 to 8527 of 2019

vide order dated 26.02.2020 where in it was held that specific material facts are required to be pleaded if a transactions are sought to be brought under the Sections 45/46/47 or Section 66 of the I & B Code, 2016 and it would be expected of any 'Resolution Professional' to keep such requirements in view while making a motion to the 'Adjudicating Authority'. Learned Counsel for the Appellants stated that the 'Liquidator'/ 'Respondent' failed to do this pious duty.

21. Learned Counsel for the Appellants concluded his arguments and urged this 'Appellate Tribunal' to allow the 'Appeal' and set aside the 'impugned order'.

Respondents Submissions :-

22. Learned Counsel for the Respondent opposed the 'Appeal' and stated that the 'impugned order' had taken care of all facts and provisions of law and therefore, no fault can be find in the 'impugned order'.

23. Learned Counsel for the Respondent stated that during verification of books of accounts and other record of the 'Corporate Debtor', he came to belief that the 'Appellants' have entered into fraudulent transactions against the interest of the 'Corporate Debtor' and other stakeholders with fraudulent intentions and therefore, he filed an Application under Section 66 of the I & B Code, 2016, bearing IA/27/KOB/2021 for declaring such wrongful transactions as fraudulent and recovering Rs. 21.37 crores from the 'Appellants'.

24. Learned Counsel for the Respondent stated that the ‘Appellants’ were neither able to provide the item wise details of fixed assets as indicated in the balance sheet of 2017-18 including its descriptions of items, their location, asset register, etc., which clearly established that the accounts were falsely made and fixed assets shown in the Balance Sheet were of fictitious nature and were done with an intend to defraud the creditors.

25. Learned Counsel for the Respondent further stated that in the balance sheet 2017-18, the vehicles were included whereas neither these vehicles were available for physical verifications nor any details available in the records to substantiate that these vehicles were sold and the amount received and in absence of the same these vehicles shown in the balance sheet have been proved to be in bogus/ fraudulent in nature.

26. Learned Counsel for the Respondent also elaborated fictitious nature of inventory shown at various branches of the ‘Corporate Debtor’ sheet of 2017-18 and further stated that the ‘Appellants’ could not furnish details regarding inventory including location, stock register and other details including physical verification. Learned Counsel for the Respondent also stated that the ‘Appellants’ could not produce any record to prove that these were lost in the flood or any claim has been filed before the ‘Civil Authorities’ monitoring the flood damage and claims. Learned Counsel for the Respondent further stated that during the physical visit to ‘Kannadi Branch’, he found out that this branch was not at all affected by any flood as confirmed by the ‘Village Officer’. Learned Counsel for the Respondent also

stated that similarly inventory including vehicles at HO Paliyiyakara, could not be found for inspection and apparently these vehicles were sold in cash and the money was misappropriated by the Appellants to defraud the Creditors.

27. Learned Counsel for the Respondent submitted that as per books of accounts for financial year 2017-18 and 2018-19, the trade receivable of the 'Corporate Debtor' were of Rs. 6.19 crores and the same included 4,000 customers but surprisingly not even single payment seemed to have been received from any of 4,000 customers which proved fraudulent methods of the Appellant to divert the funds for their personal benefits.

28. Learned Counsel for the Respondent submitted that during scrutiny of Financial Statements of 2017-18 and 2018-19, the outstanding loans and advances were depicted as Rs. 4.8 crores and Rs. 4.46 crores respectively, however, the 'Appellants' failed to provide any details of the person to whom such loans were given and purpose for which such loans were given. Learned Counsel for the Respondent cited few cases like Sai Financial Service Ltd., Abdul Azeez, CP Andrew ,who were not traceable at the address provided. Learned Counsel for the Respondent stated that he tried his best to verify such claims but could not do so as these were bogus and were only in book of accounts as entries created only to defraud the 'Corporate Debtor' and other 'Stakeholders'. Learned Counsel for the Respondent gave the list of major advances as under :-

Name	Amount in Rs. (Crores)	Remarks
<i>Sri Sai Financial Services Ltd.</i>	<i>1.37</i>	<i>Company struck off from MCA records</i>
<i>Abdul Azeez</i>	<i>0.72</i>	<i>Advance for land</i>
<i>CP Andrew</i>	<i>0.91</i>	<i>Advance for land</i>
<i>Edward</i>	<i>0.05</i>	<i>Advance for land</i>
<i>Archana Motors</i>	<i>0.20</i>	<i>A sister concern</i>
<i>MI George</i>	<i>0.19</i>	<i>A director</i>
<i>Dealers</i>	<i>0.86</i>	<i>Advance for use for vehicle purpose</i>

29. Learned Counsel for the Respondent submitted that while examining Financial Statement as on 31.03.2018 he to noticed that Rs. 2.35 crores reflected as value of ‘other current assets’, out of which receivable from buyers constituted Rs. 1.53 crores and no detail could be furnished by the ‘Appellants’ to establish this amount.

30. Learned Counsel for the Respondent submitted that he has given all the documentary evidence and details to the ‘Adjudicating Authority’, who after being satisfied regarding fraudulent nature of transactions in the Financial Statements, allowed the Application of ‘Respondent’ under Section 66 and gave order for recovery from the ‘Appellants’.

31. Learned Counsel for the Respondent emphasised that Tata Motors had cancelled Appellant’s dealership and therefore, the ‘Appellants’ were aware that there were no chances for further business and despite knowing

non-avoidance of 'Corporate Insolvency Resolution Process', failed to exercise diligence in minimising potential losses and even entered into fraudulent transactions as elaborated earlier to defraud the creditors.

32. Learned Counsel for the Respondent also denied statement of the 'Appellants' regarding restructuring by 'South Indian Bank' and stated this to be false.

33. Learned Counsel for the Respondent submitted that the non-disclosure of transactions in new bank account with 'City Union Bank' further led to the conclusion about fraudulent intent of the 'Appellant'.

34. Learned Counsel for the Respondent brought to the notice that Commercial Tax Department, Trissur, observed adversely regarding suppression of revenues of Rs. 2.90 crores which also indicate about wrongful intentions of the 'Appellants'.

35. Learned Counsel for the Respondent stated that the intent of the 'Appellants' were clear right from the beginning as they had chosen not to cooperate with the 'Respondent' and therefore, he had to file an Application (IA/52/KOB/2019) against the 1st Appellant as well Auditor seeking cooperation and submission of books and records.

36. Learned Counsel for the Respondent explained that the 'Corporate Debtor' were performing well financially till 2017 with turnover of Rs. 81 crores however, same were declined to Rs. 6.51 crore and their dealership were cancelled by Tata Motors. Learned Counsel for the Respondent stated

that the during verification of accounts and records, he came to know the fraudulent transactions conducted by the 'Appellants' to defraud creditors.

37. Learned Counsel for the Respondent stated that despite having assets of Rs. 24 crores out of which approximately Rs. 8 crores constituted as physical assets, the 'Corporate Debtor' has not insured any assets and has been taking plea of only flood which was not established.

38. Learned Counsel for the Respondent also stated that the case cited **Anuj Jain (Supra)** is different and not relevant here.

39. Learned Counsel for the Respondent concluding his pleadings urging this 'Appellate Tribunal' to dismiss the 'Appeal'.

Findings

40. Heard Learned Counsel for the 'Appellant' and the 'Respondents' and also perused record made available to us.

41. As regards, the basic ingredients of Section 66, this 'Appellate Tribunal' notes carefully the provision of Section 66 of the I & B Code, 2016, which is reproduced herein under :-

“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.”

42. It is seen from the above that Section 66 of the I & B Code, 2016, gives powers to the ‘Adjudicating Authority’ to pass suitable orders, if it is found that any person has carried on the business of the ‘Corporate Debtor’ with an intention to defraud its ‘Creditors’ or other ‘stakeholders’. Section 66 also

give powers to the 'Adjudicating Authority' to give directions for making contribution to the assets of the 'Corporate Debtor'. This also includes Directors of the 'Corporate Debtor', and their personal liability towards contribution, provided such Directors did not exercise due diligence or failed to take reasonable steps to minimize potential losses to the creditors when there was no possibility of avoiding the commencement of 'Corporate Insolvency Resolution Process'. However, a director can be deemed to have exercised due diligence, if such diligence was exercised as expected reasonably of a director carrying out a business in ordinary course of business.

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

44. This 'Appellate Tribunal', therefore, observes that the following elements need to be established for success of Section 66 Application, namely,

- (i) Business of the 'Corporate Debtor' has been carried out with an intent to defraud the creditors.
- (ii) Directors participated in carrying on business of the 'Corporate Debtor' despite knowing likely insolvency of the 'Corporate Debtor'.

45. This 'Appellate Tribunal' takes into consideration the plea of the 'Appellants' that it was only the 1st 'Appellant' who was involved in carrying out day-to-day business of the 'Corporate Debtor' and 2nd & 3rd Appellants were not responsible for day-to-day business. However, the word 'any person knowing parties to' may be wide enough to cover even those who could not be said to have carried out business directly but in somehow , directly or indirectly, participated in the fraudulent act of the 'Corporate Debtor'. In normal Corporate Structure, ultimately it is the role of the 'Board of Directors' to have control over the affairs of the 'Corporate Debtor' through the Board Meetings and therefore are accountable for the conduct of business and cannot escape their liability in case, the 'Adjudicating Authority' is satisfied regarding meeting ingredients of Section 66 of the I & B Code, 2016.

46. This 'Appellate Tribunal' also notes the fiduciary duties of the Directors of the 'Corporate Debtor' to preserve the assets of the company.

47. It is a case of the 'Appellants' that the entire business was affected by the floods in Kerala in August 2018 and the assets and the records of the 'Corporate Debtor' were destroyed. Per-contra, the 'Respondent' has brought out that the many branches of the 'Corporate Debtor' were not affected by flood at all, as confirmed by the concerned 'Village Officer' of the State. In the teeth of the same, it is therefore, difficult to believe the claims of the 'Appellants' that Rs. 21.36 crores were lost on account of the flood alone. The 'Liquidator', the 'Respondent' herein has taken pains in establishing

various items shown in the Financial Statement of the 'Corporate Debtor' for the Financial Year 2017-18 and 2018-19 to be fictitious in nature.

48. This 'Appellate Tribunal' also takes into account the points raised by the 'Respondent' that the 'Appellants' could not furnish any details as sought by them regarding various items of the relevant Balance Sheet and refuted averments of the 'Appellants' that every item perceived to be fraudulent has been explained with suitable details. In fact, this becomes the basis of 'impugned order' as well as the present 'Appeal' and therefore it would be desirable to look into the items which have been adjudicated by the 'Adjudicating Authority' and challenged by the 'Appellants' before this 'Appellate Tribunal'. These items can be tabulated as under :-

S.NO	DESCRIPTION	RS. IN CRORES
1.	<i>Fixed assets-building, plant and machinery</i>	4.74
2.	<i>Fixed Assets – Vehicles</i>	0.47
3.	<i>Inventory in Palliyekara, Trissur</i>	1.95
4.	<i>Inventory in Kannadi, Palakad</i>	0.97
5.	<i>Trade Debtor</i>	6.91
6.	<i>Short term loans and advances</i>	4.80
7.	<i>Other loans and advances</i>	1.53
8.	<i>Suppression of Sales</i>	2.90
	Total	21.37

49. The first major item of fraudulent transaction pertains to fixed assets which could not be found and verified by the 'Liquidator'/ 'Respondent'. It is the case of the 'Appellants' that all fixed assets as shown in the Balance

Sheet were audited by an independent statutory auditor having sufficient experience wherein the Auditor has not pointed out even a single-issue regarding non-existence of such assets or such assets being fictitious and fraudulent. The 'Appellants' further submitted that on the contrary these were examined and certified by the Auditors and therefore the claims of the 'Respondent' is baseless and the 'Adjudicating Authority' has failed to take into account this vital fact. The 'Appellants' submitted that the vehicles were taken back by Sundaram Finance who financed these demo-vehicles. Per contra, the 'Respondent' brought out that despite the 'Appellants' being asked to submit details, no details were made available. This 'Appellate Tribunal' also notes that the 'Adjudicating Authority' has clearly recorded that the 'Appellants' herein were unable to provide item wise details, location, assets register, invoices, etc. or offer the asset for physical verification. Similarly, the 'Adjudicating Authority' also recorded regarding non-availability of any vehicle in the Company or evidence of sale as reflected in the books of accounts. In absence of these, the 'Adjudicating Authority' held these entries in the books of accounts amounting to Rs. 5.33 crores which included Rs. 4.21 crores as buildings, Rs. 0.41 crores as plant and machinery and Rs. 0.47 crores as vehicles as fraudulent and fictitious.

To this 'Appellate Tribunal', it looks strange that the 'Appellants' could not furnish the details of the assets, locations and the copies of the assets register of fixed assets valuing to Rs. 5.33 crores which have been reflected in the consecutive Balance Sheets including 2018. Similarly, it is difficult to accept the proposition that the vehicles both old and new were not available

or were taken back by Sundaram Finance. The 'Appellants' has taken shelter of Sundaram Finance letter dated 12.06.2019 addressed to the 'Corporate Debtor'. However, on a closer look of the said letter by this 'Appellate Tribunal', it is observed that there was only one vehicle Registration No. KL-08-BD-1853 for a value of Rs. 1,00,790.66/- (against Rs. 47 lakhs as shown in Balance Sheet) and the Sundaram Finance letters talks about Arbitration in case of failure of such payment. The plea, therefore, taken by the 'Appellants' is not convincing.

This 'Appellate Tribunal' also notes that no insurance for the fixed assets was taken nor any claim was made before the State Authorities to seek any relief/claims arising of such floods as claimed by the 'Appellants'. In case of Section 66 Application, adequate opportunities were given by the 'Liquidator' as well as the 'Adjudicating Authority' and despite same the 'Appellants' could not give the details which leads to only conclusion that such assets were not available or rather they were available only in the books of the accounts. Therefore, this 'Appellate Tribunal' does not find any fault in the 'impugned order' on this account.

50. Taking next significant item of alleged frauds which pertains to inventory amounting to Rs. 3.11 crores for which no details could be found by the 'Liquidator'. It is the case of the 'Appellants' that loss of books of accounts, data, documents, ERP Software etc., prevented them from giving all information to the 'Respondent'. The 'Appellants' further brought to the notice of this 'Appellate Tribunal' that flood of August 2018 effected the

inventories. The 'Adjudicating Authority' however has held clearly that in the books of accounts for the Financial Year 2018 inventory was shown as Rs. 3.11 crores at various branches but no evidence could be given of its existence and therefore, came to conclusion that these were sold and money was misappropriated. This 'Appellate Tribunal' tends to agree with the 'Adjudicating Authority' and is not impressed with the arguments of the 'Appellants'. Therefore, on this count also, no error is found in the 'impugned order'.

51. This 'Appellate Tribunal' note that Rs. 4.8 crores have been shown in the Financial Statement for the year 2018 towards loans and advances. The 'Respondent' has given list of major advances (details at Para 28) which could not verified or found to be of related parties. It is a case of the 'Appellants' that all agreements entered into with parties have also been lost in the floods and as such could not be furnished to the 'Liquidator'. On the other hand, 'Liquidator' has clearly established that contact details of Sai Finance Service Ltd., Abdul Azeez and CP Andrews were not found in the addresses provided.

From the details of loans and advances given by the 'Respondent', prima-facie the 'Respondent' has succeeded in establishing that most of such parties did not exist nor such party were found. Similarly, few parties were found to be related parties. All such evidence, prima-facie points out towards wrongful intent of the 'Corporate Debtor'. Therefore, we do not find any error in the 'impugned order' on this ground.

52. Another major item pointed out by the 'Liquidator' pertains to trade debtor/receivables amounting to Rs. 6.91 crores from more than 4,000 customers. According to the 'Liquidator' ,the 'Appellants' could not give details about these trade receivables and also that no payment has been received from any of these customers. The case of the 'Appellants' is that trade receivable of Rs. 6.91 crores were accumulated trade receivables over the years and not of 2018 alone. The 'Appellants' further submitted that the 'Respondent' should have taken details from Tata Motors rather than blaming the 'Appellants'. On this point, the 'Respondent' submitted that enquiry was made by him with Tata Motors but he was informed that once sale is made and services provided, Tata Motors do not keep track of the same. According to the 'Liquidator' when this information was shared with the 'Appellants' with request for details, the 'Appellants' again came out with vague excuse of data lost in flood. The 'Adjudicating Authority' also came to the conclusion that the 'Appellants' are not in position to establish their claims of genuineness of such trade receivables. This 'Appellate Tribunal' after going through the averments of both the parties and the record made available with us, comes to the conclusion that onus was on the 'Appellants' and difficult to accept that details of large number of 4,000 customers were not available. Similarly, it also not convincing that no payment has been received from any of such customers. On face of it, the finding of the 'Adjudicating Authority' seems to be correct and no error is found in the 'impugned order' on this account.

53. This 'Appellate Tribunal', also notes that the 'Liquidator'/ 'Respondent', had to file an 'Application (IA/52/KOB/2019)', against the '1st Appellant' as well as 'Auditor' of the 'Corporate Debtor', to seek their cooperation and for submission of books and records which prima-facie, do not auger well regarding conduct of the 'Appellants'.

54. Therefore, this 'Appellate Tribunal', is of the considered opinion that the 'Appellants', have not turned out to be clean in their explanations and submissions, and therefore cannot avoid their responsibilities towards non-available / non-verifiable Assets of Rs. 21.37 crores, as shown in the 'Balance Sheet' for the Financial Year 2018. These 'Assets', have proved to be 'Fictitious' / 'Fraudulent', in nature and seems to have been created in the 'Books of Accounts', with an intent to 'Defraud' the 'Creditors'.

55. Therefore, 'no error', is noticed in the 'impugned order' dated 13.07.2021, passed by the 'Adjudicating Authority'. 'Appeal', is devoid of any merit(s), and the same is accordingly 'Dismissed'. No costs. The connected pending 'Interlocutory Applications', if any, are Closed.

[Justice M. Venugopal]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Simran