

2ND RRC ON INSOLVENCY AND BANKRUPTCY CODE

PUFE UNDER IBC 2016

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- **Situation that lead us to PUFÉ**
- **Relevance of Forensic Audit**
 - **Fate of PUFÉ so far**
 - **Behaviour of promoters**
 - **Case studies**



PREAMBLE OF THE CODE

- An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals
- **in a time bound manner**
- **for maximization of value of assets of such persons,**
- to promote entrepreneurship, availability of credit
- **and balance the interests of all the stakeholders**
- including alteration in the order of priority of payment of Government dues



WHAT IS PUFEE ?? WHY PUFEE ??

- **P**referential / **U**ndervalued / **F**raudulent / **E**xtortionate transactions
- PUFEE is an important part of the process under IBC
- The assets are transferred to the benefit of various persons before admission for CIRP;
- These transfers affect the interest of Stakeholders under IBC;
- The left over assets are negligible / insufficient to meet the claims of stakeholders;
- To maximise the assets of CD, we need to unearth and bring back wealth involved in PUFEE





S-43. PREFERENTIAL TRANSACTIONS

(2) A corporate debtor shall be deemed to have given a preference, if–

- (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
- (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers–

- (a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- (b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –
 - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property;

(4) A preference shall be deemed to be given at a relevant time, if –

- (a) It is given to a related party, during the period of two years preceding the insolvency commencement date; or
- (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.



IMPOTANT INGREDIENTS OF OF PUF E TRANSACTIONS

- **S-43. preferential transactions –**
- Transfer of property or interest of Corporate Debtor;
- Transfer for the **benefit of a creditor or a surety or a guarantor and puts him in a beneficial position against S 53** ;
- **WHO is benefited ; Intention not relevant;**
- Look back period : Related party - during 2 years / Other creditors – 1 year;
- **Not in the ordinary course of business** of the business or financial affairs of the corporate debtor **or** the transferee;



SUPREME COURT IN JP INFRA TECH CASE

ORDINARY COURSE OF BUSINESS OR FINANCIAL AFFAIRS OF THE CORPORATE DEBTOR OR TRANSFEREE S 43(3)

- **Ordinary course of business : the Transactions fall under “ undistinguished common flow of business done” ; and is not arising out of ‘any special or particular situation’ .**
- **The ordinary course of business or financial affairs of the corporate debtor JIL cannot be taken to be that of providing mortgages to secure the loans and facilities obtained by its holding company and that too at the cost of its own financial health.**
- **JIL was already reeling under debts with its accounts with some of the lenders having been declared NPA; and it was also under heavy pressure to honour its commitment to the home buyers. In the given circumstances, we have no hesitation in concluding that the transfers in questions were not made in ordinary course of business or financial affairs of the corporate debtor JIL.**
- ***Only by way of such reading of “or” as “and”, it could be ensured that the principal focus of the enquiry on dealings and affairs of the corporate debtor is not distracted and remains on its trajectory, so as to reach to the final answer of the core question as to whether corporate debtor has done anything which falls foul of its corporate responsibilities.”***



UNDERVALUED TRANSACTION – S 45

- (2) A transaction shall be considered undervalued where the corporate debtor–
 - (a) makes a gift to a person; or
 - (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of **which is significantly less than the value of the consideration provided by the corporate debtor,**
- and such transaction has not taken place in the ordinary course of business of the corporate debtor.



IMPOTANT INGREDIENTS OF OF PUFE TRANSACTIONS .. CONTD..

S45- Undervalued transactions:

- Gift / Transfer value significantly less than the consideration provided by CD; and
- such transaction has not taken place in the ordinary course of business of the corporate debtor.

Look back period - Related party 2 years /Unrelated party -1 year

HOW MUCH – IS IMPORTANT

S-49 - Transactions defrauding creditors:

- Undervalued Transaction
- Transactions for keeping assets of the corporate debtor **beyond the reach of creditors; or adversely affect the interests of such a person** in relation to the claim;
- **INTENT IS IMPORTANT**



IMPOTANT INGREDIENTS OF OF PUFE TRANSACTIONS .. CONTD..

§ 50-extortionate transactions

- Extortionate Transactions involving the receipt of financial or operational debt during the **period of 2 years**
- **MARKET PRACTICE IS IMPORTANT**
- **Exclusion: Debt by a Financial services provider in compliance with any law**



S 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 the **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.



IMPOTANT INGREDIENTS OF OF PUFE TRANSACTIONS .. CONTD..

- **S 66- Questionable conduct (wrongful trading and fraudulent trading)**
- **Fraudulent trading u/s 66(1)** - any business of the corporate debtor has been carried on **with intent** to defraud creditors of the corporate debtor or for any fraudulent purpose ;
- 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 ;
- **Wrongful trading u/s 66(2)** -**such director or partner** did not exercise due diligence in **minimising the potential loss to the creditors of the corporate debtor** ;
- **Intent can be proved by covering u/s 66(2)**



HOW DO YOU IDENTIFY PUFER TRANSACTIONS ??



HON'BLE SC- VOLUMETRIC AND GRAVIMETRIC ANALYSIS OF THE TRANSACTIONS CIRP W.R.T. S 43

Sifting the entire cargo of transactions of CD backwards upto the preceding two years.

Put them in 2 buckets - 'Related party' and another of the remaining persons;

Unrelated party – trim transactions for 1 year only

Transaction is of transfer of property or an interest of the CD
/ Beneficiary - creditor or surety or guarantor qua the CD

Transfer made for or on account of an antecedent
debt owed by the CD

Transfer puts such person in a beneficial
position u/s 53

NOT Ordinary business
transaction / NOT Creating new
value

RP to quantify and
make application to
AA

AA to decide
appropriate
orders



HON'BLE SC ON PREFERENTIAL APPLICATIONS

- Once transactions are held as preferential, aspects such as undervalued and fraudulent **are not to be examined.**
- Combined application under section 43, 45 and 66 should not be filed as the degree of examination in preferential and undervalued & fraudulent are different;
- In preferential transaction, the **intent is not involved** by virute of legal fiction of deeming provision;



SC ON UNDERVALUED AND FRAUDULENT TRANSACTIONS

- For undervalued transaction requires a different enquiry under section 45 and 46;
- AA to examine **the intent** if such undervalued transactions was to **defraud** the creditors;
- **Specific material facts are required to be pleaded** if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66;
- The AA would have examined the aspect of preferential , undervalued and fraudulent **separately and distinctively**;



- **MANDATORY DUTY OF THE RP / LIQUIDATOR**
- **Relevance of Transaction Audit / Forensic Audit**



DUTIES OF RP / LIQUIDATOR – IBC PROVISIONS

- **§ 18. Duties of interim resolution professional**

- a) Collect all information relating to the assets, finances and operations of the CD for determining the financial position of the corporate debtor for the previous 2 years;

- d) Monitor the assets of CD and manage its operations;

- c) Take control of assets, tangible, intangible;

- h) **filing application for avoidance of transactions in accordance with Chapter III, if any ;**

- **U/s 35. Powers and duties of liquidator :Liquidator to investigate the affairs of the corporate debtor to determine avoidable transactions.**



RP / LIQUIDATOR'S DUTY ON PUFE TRANSACTIONS

- **To maximise the value of assets of CD;**
- RP or Liquidator to the Adjudicating Authority
- **RP / Liquidator Shall file applications with the Adjudicating Authority (AA) for avoidance of such transactions – Mandatory duty**
- **Section 47 of the Code:** AA shall require the Insolvency and Bankruptcy Board of India (Board) to **initiate a disciplinary action against the RP or the Liquidator, as the case may be, where he has not reported undervalued transactions to the AA.**



TIMELINE FOR RP/LIQUIDATOR - REGULATION 35A (CIRP REGULATIONS) 2016

- RP to **form an opinion on** any avoidance transaction **on or before the 75th day** of the insolvency commencement date (ICD);
- RP shall **make a determination, on or before the 115th day of the ICD;**
- RP shall **apply to the AA for appropriate relief on or before the 135th day** of the ICD.
- Objective - to **claw back the value lost through avoidance transactions, in sync with objective of maximisation of value of the assets of the CD.**



SITUATIONS LEADING FURTHER AUDIT

- Debtors / creditors explaining the issues – why the business failed
- Non-cooperation of the statutory auditor / Management
- Promoter not providing all the documents required by the RP
- Frequent resignation of the Directors / inducting dummy directors
- Transaction with several related Companies
- Sale of assets / transfer of assets to related parties



SITUATIONS LEADING FURTHER AUDIT .. CONTD..

- Very high valued debtors, without balance confirmation
- Vanishing assets year-on- year
- Withdrawal of huge funds by related parties,
- payment to certain creditors in the previous 2 years
- Diversion of loan funds received from banks / other creditors
- Funds coming from other banks to liquidate the outstanding loan amount unless in normal course;
- Opening of recent bank accounts, closure of previous bank accounts;
- Reversal of sale in the beginning of the following financial year



TRANSACTION OR FORENSIC AUDIT A MUST ??

- **Code does not mandate** Transaction or Forensic audit by an external agency;
- Audit can be done by the IRP / RP / Liquidator, for filing application with AA;
- In some transactions, there may not be a requirement for transaction audit
- **Transaction Audit** : For PUFEE transactions within the **look back period** ;
- **Forensic audit** : When there several entities / huge transactions involved, showing assets striping/ funds diversions / Round tripping and fraud observed;
- **Forensic Audit** – runs beyond 2 years



RESPONSIBILITY OF RP/ LIQUIDATOR TOWARDS AUDIT:

- RP/Liquidator shall **make his judgement on the need for audit / type of audit**
- **Provide scope of audit and timeline in the appointment order;**
- **Providing assistance and information** to Auditor required for conducting audit;
- RP to identify the **respondents to be made party in the application;**
- Approval of CoC shall be taken by the RP regarding the fees.
- In some cases, where CoC is not cooperative, the resolution professionals shall **record all the deliberations** in the minutes.
- RP / Liquidator is responsible for identifying the PUFEE transactions. He cannot outsource the same;



RESPONSIBILITY OF AUDITOR:

- **Analysing the Books and financials statements of CD as per scope of work defined in appointment letter;**
- **Maintaining the confidentiality of the information collated during the audit;**
- **Transaction Auditor to record in his report the basis of classifying the transaction as avoidance;**
- **The report should be conclusive;**
- **Words like (Potentially, looks to be , may be , could be) – such words are to be avoided;
Some of the Disclaimers can make the report redundant.**
- **Transaction Auditor may be called in CoC Meeting or by AA for seeking any clarification on his/her report.**



CHALLENGES IN PUFEE AUDIT / TRANSACTIONS



DEALING WITH THE PROMOTERS OF CD

- Non-Cooperation / derailing by the the Promoters;
- Promoters, backed by Lawyers, CAs to structure the avoidance transactions;
- Non-Cooperation of the Statutory Auditors, colluding with Management of CD ;
- Non-Cooperation of some FCs, by colluding with Management of CD ;
- Taking control of assets , business records ;
- Promoters Threat / Complaints to AA , IBBI, etc.



CHALLENGES IN DEALING WITH SOME COC FOR PUFÉ

- **RP dutybound to file application for avoidance transactions** with Adjudicating Authority.
- Findings of the transaction audit may be discussed in the CoC meeting but it **should not be a voting agenda**;
- The RP is required to only **inform the CoC about filing of such transactions** with the AA.
- Sometimes CoC resolves or decides not file an application;
- RP/Liquidator may accordingly **record the decision of CoC** and also record that as per the provisions of IBC, he/she shall be filing appropriate application;



OTHER CHALLENGES IN PUFEE TRANSACTIONS

- Time Management by the RPs – While Resolution Plan is the focus;
- Time required to complete the Audit;
- Availability of Documents and records for audit / to prove the transactions; Many times, only bank statement is available;
- Proving to AA beyond doubt ;
- Hearing / Adjudication timeline by AA;
- On orders by AA, recovery of dues as per order;
- AA / NCLAT acting on Contempt petition;
- Remarks by AA in orders on the RPs – Appeal to expunge the remarks



FATE OF PUFES

CASE STUDIES



PUFE APPLICATIONS- JOURNEY SO FAR..

- IBC cases got admitted from June 2017;
- December 2017 onwards we started filing PUFE;
- Our early applications were forwarded to SFIO;
- Appeals were filed on the **jurisdiction of NCLT** to pass orders on fraud;
- Few orders were then modified for MCA investigation by NCLAT;
- Supreme court order in JP infra was a good guidance to the AA's to pass orders;
- Now, there are good enough orders on PUFE transactions;
- There are also clarificatory orders on various aspects, guiding RPs and Liquidators;



TEJKAMAL PHARMACEUTICALS PVT. LTD.

- CD sold the entire factory 2 years prior to enactment of IBC;
- Structuring: Piecemeal asset sale;
- All the inventory was written off / sold , no assets were left out; there was not even a Registered office;
- Operational creditor had filed petition for winding up in High court, which was transferred to NCLT, after IBC was enacted;
- CD was admitted for CIRP. CoC consisted of 18 operational creditors including PF dept, IT department
- Application filed by RP u/s Section 66 as fraudulent sale of assets to defraud creditors;
- AA passed order for investigation by SFIO;
- RP went on appeal, as there was no relief for the creditors;
- While NCLAT was adjudicating the case, the parties settled 100% dues of the creditors u/s 12 A;



ZED FABS INDIA PRIVATE LTD.

- This is a subcontract arm, serving group companies;
- There were related party transactions with various companies;
- The dues to the bank and departments were not paid;
- Audited financials noted violation of Section 185 of the Companies Act with respect to inter-corporate transactions;
- No separate Transaction audit was required as the Audited financials and ledger transactions showed the funds diverted;
- RP filed application for recovery of dues u/s 66 of Rs.4 crs diverted to the group;
- **AA passed orders for SFIO investigation.**
- **Now, with intervention of IBBI, MCA Investigation is initiated;**



BHUVANA INFRA PROJECTS PVT. LTD.

- CD is a subcontract arm (subsidiary Company) executing the real estate projects of the Holding Company and other group companies;
- All the plant and machinery, inventory were lying in the project sites and could not be taken over by RP;
- Using group company credentials, availed loan in the name of CD;
- When they started getting demand notices from the Government departments for the dues, the group companies stopped payment to CD;
- The invoices were raised on the group Companies;
- Receivables mounted; All Directors resigned; Dummy shareholder, dummy directors were brought in;
- Through another Group Company, Promoters applied for CIRP, with intention to liquidate the CD;
- RP filed application u/s 66 for recovery of Rs. 46 crs, being receivables, inventory and P & M diverted;
- **AA ordered directed Central Government to initiate investigation by SFIO;**
- **Now MCA investigation on, based on NCLAT orders, modifying order of AA**



SFIO VS. MAHARASHTRA TOURISM DEVELOPMENT CORPORATION - NCLAT

- **Whether AA can straightaway direct SFIO to conduct investigation ?**
- After the investigation by the Inspector (MCA), if case is made out for further investigation requires investigation;
- it is open to the Central Government to decide whether in such case the matter may be referred to the 'Serious Fraud Investigation Office' or not .
- This will depend on the gravity of charges as may be found during the investigation by the Inspector.
- **Adjudicating Authority was not competent to straight away direct any investigation to be conducted by the 'Serious Fraud Investigation Office'.**



M/S EMBASSY PROPERTY DEVELOPMENTS PVT. LTD VS. STATE OF KARNATAKA – SUPREME COURT

- *Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the Code, 2016.*
- NCLT and NCLAT would have jurisdiction to enquire into questions of fraud;
- NCLT / NCLAT do not have jurisdiction to adjudicate upon disputes such as those arising under **MMDR Act, 1957 and the rules issued thereunder, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities,** which can be corrected only by way of judicial review of administrative action. Hence to be dealt with by High Court.



Landmark Judgement of Hon'ble Supreme court of India

JP INFRATECH case

- Preferential / Undervalued / Fraudulent ?
 - Why preferential?
 - How RP can prove a preferential Transaction?
-
- Creditor of Borrower Company is Financial Creditor of security provider?



JP INFRATECH LTD. (JIL) CASE (SUPREME COURT RULING)

- Around 850 acres of land belonging to CD JIL was given as collateral to the bankers (ICICI and Axis Bank) of the holding Company JAL towards the loans of JAL.
- The corporate debtor had mortgaged its properties as collateral securities for the loans and advances made by the lender banks and financial institutions to Jaiprakash Associates Limited (JAL), the holding company of JIL.
- RP filed Application with AA, as being preferential, undervalued and fraudulent, in terms of Sections 43, 45 and 66 of the Insolvency and Bankruptcy Code, 20167.
- AA allowed the Application.
- NCLAT set aside the order of AA.

The issues in front of SC were:

- **Whether the transaction is a Preferential transaction?**
- **Whether the Creditors of JAL are the FC of JIL?**



WHETHER IMPUGNED TRANSACTIONS ARE PREFERENTIAL, FALLING WITHIN SECTION 43(2)

- There had **not** been any creditor-debtor relationship between the lender banks and corporate debtor JIL but **that will not be decisive of the question of the ultimate beneficiary of these transactions.**
- The mortgage deeds in question, entered by the CD JIL to secure the debts of JAL, obviously, **amount to creation of security interest to the benefit of JAL.**
- The impugned transactions had been of transfers for the **benefit of JAL, who is a related party of the corporate debtor JIL and is its creditor and surety by virtue of antecedent operational debts as also other facilities extended by it; and**
- The impugned transactions have the effect of putting JAL in a beneficial position than it would have been in the event of distribution of assets being made in accordance with **Section 53 of the Code.**
- Thus, the corporate debtor JIL has given a preference in the manner laid down in **sub-section (2) of Section 43 of the Code.**



LENDERS OF JAL COULD BE CATEGORISED AS FCS OF JIL ??

- If a corporate debtor has given its property in mortgage to secure the debts of a third party, it may lead to a **mortgage debt** and, therefore, it may fall within the definition of **'debt' under Section 3(10)** of the Code;
- Such lenders of JAL, on the strength of the mortgages in question, may fall in the category of **secured creditors**,
- But **such mortgages being neither towards any loan, facility or advance to the corporate debtor nor towards protecting any facility or security of the corporate debtor, it cannot be said that the corporate debtor owes them any 'financial debt' within the meaning of Section 5(8) of the Code;**
- **Such lenders of JAL do not fall in the category of the 'financial creditors' of the corporate debtor JIL.**



RIGHT ENGINEERS & EQUIPMENTS PVT. LTD. – S 43

- RP files application u/s 43 to declare Rs.49.83 Lakhs as Preferential Transaction;
- AA observed that the Transaction audit report showing above figures were supported by bank statements;
- The Respondents could not prove that the Transaction audit report is wrong;
- AA declared this as Preferential Transaction and ordered to restore the amount to the CD within 30 days of the order;
- **We understand from the RP that, eventhough the order is dated 2/2/2022, the Respondents are yet to remit the same to CD;**
- **RP has filed Application for contempt of court;**



EDELWEISS ARC VS. NET 4 INDIA LIMITED - ORDER DT 7.5.21 NCLT PRINCIPAL BENCH NEW DELHI NCLT - S- 66

- **The point for determination:** whether or not this transfer of shareholding, transfers of the business of the CD through Master Reseller Agreement and assignment of trademark to R1 have taken place in the ordinary course of business or to defraud the creditors of the CD.
- **RP filed application u/s. 43 (Preferential transactions), 45 (Avoidance of undervalued transactions), 49 (Transactions defrauding creditors), 66 (Fraudulent trading or wrongful trading) of the Code**



**EDELWEISS ARC VS. NET 4 INDIA LIMITED - ORDER DT 7.5.21 NCLT PRINCIPAL
BENCH NEW DELHI NCLT - S- 66 ...CONTD**

RELIEF:

On having discussed various transactions, it is evident that:

- **the directors fraudulently transferred the shareholding of the Corporate Debtor in their subsidiary companies to Trak Online;**
- **to take out the holding of the corporate debtor over Net4 Network so that the corporate debtor will not have any right over the business of the corporate debtor subsequently transferred to Net4 Network, that the Corporate Debtor entered into undervalued and fraudulent transactions such as execution of Assignment Agreement of trade marks in favor of its director (R1) and execution of Master Reseller Agreement in favor of Net4 Network (R2) for keeping the assets of the Corporate Debtor beyond the reach of the Creditors so as to defraud the Creditors.**



EDELWEISS ARC VS. NET 4 INDIA LIMITED - ORDER DT 7.5.21 NCLT PRINCIPAL BENCH NEW DELHI NCLT - S- 66 ... CONTD..

AA declares:

- Assignment of trademarks in the name of R1 is null and void
- Execution of Master Reseller Agreement in favor of Net4 Network is invalid,
- Direct R1 to restore the trade name “Net4” to the Corporate Debtor and R2 to restore the business of the corporate debtor it has taken through Master Reseller agreement from the Corporate Debtor with immediate effect.
- Likewise, we hereby declare the Share Transfer Agreements reflecting transfer of Pipetel shares held by CD to Trak Online and transfer of Net4 Network shares to Trak Online as null and void.
- **Auditor was appointed to assess the loss to be paid back by the Director and direction to the Director to remit the same;**



ROYAL REFINERY PVT. LTD.- S 66 APPLICATION

- **Fact of the case: Application was filed for diversion of Rs. 15.63 crs in the form of receivables. Complete ledger extract was submitted to the Bench:**

The Respondents' contention was that:

- **the transaction was in the ordinary course of business;**
- **these transactions do not fall under section 66 of the Code as these are the honest and official in nature.**
- **the allegations raised by the Applicant are based on assumption and presumption only.**

Ruling:

This bench is of considered view that **monies were transferred to the Respondent No.1 and it remained payable by them in the ledger accounts as admitted by the Respondent No.1 in his reply.**

The Tribunal orders as follows:

The Respondent No.1 is directed to refund Rs. 15,63,34,077/- immediately forthwith.



MUMBAI BENCH ORDER DT DEC 7, 2021— RTIL LTD. — S 66 APPLICATION

- **'Bad commercial business decision'** may have led to a loss for the company, but it cannot be considered fraudulent on that account.
- The AA dismissed a plea filed by the Resolution Professional of RTIL to declare **business transactions to the tune of ₹1019.48 crore 'fraudulent'**.



MR.RAM RATAN KANOONGO VS.MR.SUNIL KATHURIA- S43

- RP filed application for Liquidation of CD;
- RP also sought for recovery of Rs.135 Lakhs being **preferential transaction with one of the respondents;**
- **NCLT Mumbai** observed that this **transaction was not done in the ordinary course of business of CD, as stock has been transferred and no payment has been made for the same;**
- **The transaction is satisfying the criteria of Section 43 of the Code and is to be labelled as Preferential transaction and the prayers of the Applicant are allowed.**
- AA also ruled that the treatment of avoidance or preferential or undervalued transaction is **applicable even at the stage of liquidation.**



WHETHER FC CAN BE MADE RESPONDENT IN S 66 APPLICATION

LIQUIDATOR , BS LIMITED VS. 45 OTHERS INCL FINANCIAL CREDITORS – NCLT HYDERABAD

- **Liquidator wanted to add the FCs to the Respondents in S 66 application;**
- **Logic: Creditors of CD helped CD to commit fraud and hence they are also liable to make contribution to the assets of CD;**

AA held:

- The provisions of S 66 are for directions to the suspended management of CD and related beneficiary parties to make contribution to the assets of CD on the allegation that the business of CD was conducted in a fraudulent manner with intent to defraud its creditors;
- We failed to understand by any stretch of imagination, how it can be said that the FCs giving loans / credit facilities had in fact helped the suspended management of CD to commit fraud.
- The Provisions of S 66 is to be used for the benefit of the Creditors of CD.
- The application is not maintainable in the eyes of law;
- **The Liquidator wanted to implead Ex-managers / officers of CD.** They appear to have discharged their duties. They cannot be made parties as **they are not beneficiaries** of the so called fraudulent transaction and hence the application is not maintainable.



