

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT NEW DELHI**  
**(APPELLATE JURISDICTION)**  
**Company Appeal (AT) (Insolvency) No. 137/2021**

**(Arising out of the Impugned Order dated 07.01.2021 in CP**  
**(IB) No.2556/MB/2019, passed by the National Company Law**  
**Tribunal, Mumbai Bench, Mumbai)**

**In the matter of:**

**Royal India Corporation Limited**

62, 6<sup>th</sup> Floor, C-Wing, Mittal Tower,  
210, Nariman Point, Mumbai- 400 021.

...Appellant

**Versus**

**1. Mr. Nandkishor Vishnupant Deshpande,**

(Resolution Professional for Royal Refinery Pvt. Ltd.),  
IBBI Registration No.  
IBBI/IPA-001/IP-P01399/2018-2019/12181,  
Having Office at Headway Resolution and  
Insolvency Services Pvt. Ltd. 708,  
Raheja Centre, 7<sup>th</sup> Floor, Nariman Point,  
Mumbai- 400 021.

...Respondent No.1

**2. Mr. Vishal Choudhary,**

No. 82, 83 & 84, 4<sup>th</sup> Floor Building,  
143/D, Khemka Bhavan, Fanaswadi,  
Opp. Sitaram Poddar School,  
Chira Bazar, Mumbai- 400 002.

...Respondent No.2

**3. Mr. Gaurav Panwar,**

S/o Dilipraj Panwar, Makan No. 171/ 172  
Anjani Dham, Barbar Road,  
Ratlam – 457001 (M.P.)

...Respondent No.3

**4. Mr. Manish Panwar,**

401, Lotus Business Park,  
Behind H.P. Petrol Pump,  
S.V. Road, Malad West,  
Mumbai- 400 064.

...Respondent No.4

**Present :**

For Appellant : Mr. Sanchar Anand, Ms. Deeksha Gaur and Mr. Arjun, Advocates.  
For Respondents : Mr. Kaustav Som, Mr. Arpit Lahoti, Advocates for R1.  
Mr. Saurabh Ajay Gupta, Mr. Nishant Bishnoi, Ms. Srishti Prabhakar, Advocate for R-2 & 3.

**J U D G M E N T**

**(Hybrid Mode)**

**[Per: Ajai Das Mehrotra, Member (Technical)]**

1. The present appeal has been filed assailing the order dated 07.1.2021 passed by National Company Law Tribunal, Mumbai Bench in IA No. 1266 of 2020 in CP (IB) No. 2556/MB/2019.

2. On an application filed under Section 9 of Insolvency & Bankruptcy Act, 2016 by Raksha Bullion, the Corporate Debtor, Royal Refineries Private Limited (hereinafter referred as RRPL) was admitted in Corporate Insolvency Resolution Process (hereinafter called as CIRP) by order dated 13.11.2019 and Mr. Nandkishore Deshpande was appointed as Interim Resolution Professional (IRP). IRP was later confirmed as RP. It is stated that corporate debtor RRPL was engaged in the business of Trading in Bullion i.e. importing Gold and then exporting the same after performing manufacturing activity over the imported gold. The Corporate Debtor also engaged in sale/ purchase of gold in the local market.

3. In May 2019, RRPL and its associated concerns and persons were searched by the Department of Revenue Intelligence (hereinafter referred as DRI). It is stated that the business operations of the corporate debtor had

virtually stopped since May 2019. After search by DRI, following findings were recorded by the Joint Commissioner of Customs in his order dated 04.02.2021:-

*“I find from the investigation conducted by DRI and the statements of the Directors and employees of RRPL., that RRPL was a front company run by Shri Manoj kumar Babulal Punamiya. Shri Manoj kumar Babulal Punmaiya appears to have arranged finances for the company and recruited directors like Shri Vishal Harish Choudhary and Shri Gaurav Dilipraj Panwar. Both the directors acted under his instructions on front end and he was behind the curtain. Under the directions of Shri Manoj kumar Babulal Punamiya both the above directors had planned to import duty-free gold bars under Advance Authorisation and divert the same to domestic market and further planned to fulfil export obligation by showing export of Non-Gold jewellery of alloys of Copper and Nickel, as gold jewellery.”*

**4.1** In the application (IA No. 1266 of 2020) filed by the Resolution Professional under Section 66 read with Section 26 of Insolvency Bankruptcy Code, 2016 (hereinafter called as IBC, 2016) before NCLT, Mumbai, it was submitted that the transaction of Rs. 1,58,07,56,469/- between the corporate debtor and the appellant, Royal India Corporation Limited (hereinafter referred as RICL) are covered under the provisions of Section 66 of IBC, 2016 and the Adjudicating Authority was requested to pass necessary directions to respondents to make good potential loss suffered by the other creditors of Rs. 1,58,07,56,469/. The Adjudicating Authority gave a finding and directions requiring the appellant herein (RICL) to return to the corporate debtor's accounts the sum of Rs. 1,19,08,05,762/- vide impugned order dated 07.1.2021.

**4.2** The Adjudicating Authority (AA) noted that as per the documents seized by DRI there was a balance of Rs. 1,58,07,56,469/- which was due from RIPL (the appellant herein) to the corporate debtor (RRPL).

**4.3** It was noted by the AA that as per the documents seized by DRI there were three ledger accounts of RICL as reflected in the Books of Accounts of the Corporate Debtor. These accounts were up to May, 2019, that is till the date of search of DRI.

**4.4** The AA also noted that maintaining 3 different types of ledger accounts for RICL was not normal, as also the substantial credit shown in these accounts, as per the prevailing business practices.

**4.5** The AA noted that subsequent to the search by DRI, as per ledger account filed by RICL, it had become net seller of gold to the refinery RRPL. As per the ledger account of RICL reproduced on page 19 and 20 of the order there is opening balance of Rs.1,34,03,40,448.46 and thereafter they are purchases from 1.4.2019 till 4.5.2019. However, thereafter, there are only sales from RICL to RRPL from 27.7.2019 to 27.8.2019 and the balance payable to RRPL has been brought down to Rs. 31,01,83,022/-.

**4.6** The AA noted that refinery generally sells gold to the jewellers after refining them and rarely purchases gold from jewellers.

**4.7** The AA noted that fraudulent entries of sale by RICL to RRPL are made only subsequent to the DRI raids in May 2019 onwards.

**4.8** The AA held that as per the provisions of Section 66 “*recovery can be made from any person who had participated in the fraudulent transaction and had benefitted from it*”.

**5.** The appellant had filed an I.A. No. 2802 of 2021 seeking permission to file additional documents. The appellant was allowed to file the additional affidavit vide this Tribunal order dated 8.5.2023.

**6.1** In its oral and written submissions, the appellant had submitted that the proceedings under Section 66 of IBC, 2016 are not maintainable against the appellant as the Resolution Professional has not given clear opinion or determination or finding as required under Regulation 35 A. It was submitted that the RP has not brought out any supporting documentary evidence to show that the transaction between the appellant and the corporate debtor are fraudulent in nature. It was further submitted that no men-rea was established in the application in question. It was submitted that Resolution Professional’s case was based only on unaudited accounts statements seized by the DRI Authorities in a raid conducted only upon the corporate debtor.

**6.2** The learned counsel for the appellant relied upon the judgment of Hon’ble Supreme Court in *Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors.* 2023 SCC OnLine SC 1187, to support its contention that the remedy against third party is not available under Section 66 of IBC. It was submitted that the case of the RP that transaction is between related parties is not correct as it is not covered in the definition of ‘Related Party’ given in Section 5 (24) (m) (3) of IBC, 2016 as the key managerial person of the

appellant for the period from 10.8.2018 to 9.1.2019 was not simultaneously associated with the corporate debtor. It was submitted that concept of related party arises only when a person is associated with corporate debtor and other such person at the same time.

**6.3** It was also submitted that the appellant in the past had also sold jewellery to the corporate debtor and as per established marked practice the refinery purchases old jewellery/ gold from jewellers, melts it and converts into gold bars. The appellant submitted that the transactions between the appellant and the corporate debtor were genuine and the same took place in the ordinary course of business between the parties. It was averred that the NCLT has erred in not taking into consideration the updated ledgers produced by the appellant which indicated that only an amount of Rs. 31,01,83,022/- was due to the corporate debtor.

**7.1** In its reply, oral arguments and written submissions, Respondent No. 1 (Resolution Professional or 'RP') submitted that the business of the Corporate Debtor is trading in gold bullion; that the Appellant is also engaged in the business of gold bullion and had entered into several transactions with Corporate Debtor between 01.04.2018 to 20.05.2019; that as per the three ledger accounts maintained by the Corporate Debtor, an outstanding amount or Rs. 1,58,07,56,469/- was due from the Appellant; that as per general practice of the Corporate Debtor, the Corporate Debtor was not offering any credit to the purchaser of gold items whereas appellants' dues had remained outstanding for more than two years; that pursuant to certain bogus and

sham transactions detected, raids were conducted by the Department of Revenue Intelligence (DRI) and that the operation of the Corporate Debtor ceased from May 2019 onwards. It was further submitted that the Appellant does not dispute that the total liability owed to the Corporate Debtor was Rs. 1,58,07,56,469/- as on 20.05.2019 but it is the Appellant's case that transaction with Corporate Debtor after May, 2019 till the commencement of CIRP has reduced the outstanding amount to Rs. 31,01,83,022/-. It was submitted by the RP that entries made in the books of accounts were clearly fraudulent and the amount due to Corporate Debtor was brought down through these entries from Rs. 158 crores to Rs. 31 Crores.

**7.2** The Resolution Professional further submitted that no stock of gold bullion had been found in the premises of Corporate Debtor in May, 2019 during raids by DRI and that no physical inventory was found in the premises of Corporate Debtor on taking over by Resolution Professional in November, 2019. It was submitted by Resolution Professional that sudden change in nature of transaction between the Corporate Debtor and Appellant was for the purpose of reducing the total outstanding dues owed to the Corporate Debtor.

**7.3** It was further submitted by Resolution Professional that according to the penalty order issued by the Customs Department, Corporate Debtor was front Company of one Mr. Manoj Punamia, who is one of the promoters of the Appellant Company. The Resolution Professional further submitted that there is no requirement of '*dishonest intent*' or "*mens-rea*" as long as it is found that the purpose of fraudulent or wrongful trading transaction was to defraud the

creditors of the Corporate Debtor and the provisions of Section 66 of IBC will be applicable.

**7.4** The Resolution Professional further submitted as under :-

*“The fact that both the CD and the Appellant were related parties is further borne out in the common Show Cause Notice issued by the Department of Revenue Intelligence (“DRI”) under Section 124 of the Customs Act, 1962 dated 21.11.2019 (Ref. No.: F. No. DIR/MZU/D/ INT/95/ 2019/7687) to the CD and several other persons, including the Respondent Nos. 2 and 3, and a promoter of the Appellant. Shri Manoj Kumar Babulal Punamia (“**DRI Show Cause Notice**”). It is important to note that Mr. Punamiya has been significant shareholder of the Appellant, and continues to have 18.35% shareholder in the Appellant for the financial year 2019-2020. Mr. Punamiya and his wife together have a shareholding of over 30% in the Appellant”.*

**7.5** The Resolution Professional further submitted that the ledger account of the Appellant for the period 01.04.2018 to 31.03.2019 does not show any sales to the Corporate Debtor though after the search by DRI, substantial sales have been shown to reduce the outstanding amount but no corresponding noting in the books of the Corporate Debtor and no enhancement of physical inventory is recorded. The Resolution Professional submitted that by no stretch of imagination, the transactions shown by the Appellant to reduce its liability can be considered as genuine and these journal entries are mere smoke screens.



**7.6** In its Reply, Resolution Professional had enclosed the order of Joint Commissioner of Customs wherein there is mention of statement of Shri Ketan Madhusudan Shroff, earlier Director of RRPL recorded on 24.05.2019 where it is stated that he joined RRPL on the request of Shri Manoj Punamia and at that point of time, Shri Manoj Punamia had companies like M/s Balaji Bullion & Commodities Pvt. Ltd., M/s Balaji Lifestyle Pvt. Ltd. and M/s Royal India Corporation Ltd. (previously known as M/s Natraj Financial Limited). In his statement recorded by DRI, which he later retracted, Mr. Manoj Punamia had stated that M/s Royal India Corporation Ltd. (Appellant herein) had three Directors, namely Shri Sharad Budhakaran Sharma, Ms. Madhusa Inda and Shri Nitin Gujral and he is and his wife were shareholder of 18.3% and 12.66% of RICL. He admitted that Directors of RICL work as per his instructions.

**7.7** It was further submitted by Respondent No. 1 that the Resolution Professional complied with all the requirements of Regulation 35-A of the CIRP Regulation and in the first CoC meeting he had informed the CoC that the business of Corporate Debtor is not supported from the available physical inventory. The Resolution Professional had sent several e-mails to the Appellant asking for details regarding transactions and obtained the seized records of Corporate Debtor from DRI, on analysis of which he made clear determination regarding fraudulent activities and decided to initiate proceeding under Section 66 of IBC against the Appellant.

**7.8** The Resolution Professional further submitted that remedy under Section 66 of IBC is also available against third parties and cited the decisions

in the case of *Tridhaatu Kirti Developers LLP vs. Arihant Nenawati Liquidator of Royal Refinery Pvt. Ltd.*, 2023 SCC OnLine NCLAT 1583 in his support.

**7.9** The Resolution Professional further submitted that the appellant's reliance on judgment in the case of *Glukrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.* 2023 SCC OnLine SC 1187, Para 10, is misplaced as the observations made therein are in the nature of ***obiter dictum*** and not ***ratio decidendi***. The facts of the said case were different and it was decided on the issue of validity of extension of transit anticipatory bail. It was submitted that there is a direct judgment on this issue by NCLAT in *Tridhaatu Kirti Developers LLP vs. Arihant Nenawati Liquidator of Royal Refinery Pvt. Ltd.*, which was upheld by the Hon'ble Supreme Court by judgment dated 20.02.2023 in Civil Appeal No. 914/2022 and that the said judgment will be applicable to the facts of this case.

**8.1** Respondent Nos. 2 and 3, being suspended Directors of RRPL (Corporate Debtor), have supported the case of the Appellant.

**8.2** Respondent no.4 who was internal/ statutory auditor stated that he had no role in the management. In para 15 of his reply, he has stated as under:

*"It is pertinent to point out that Respondent no.4 had never issued any statutory audit report since he was not given any access to the books of accounts of the Corporate Debtor."*

**9.** In its Rejoinder, the Appellant had reiterated its submissions and stated that the outstanding amount due to the Appellant as on date of commencement of CIRP is only Rs. 31,01,83,022/-.

**10.1** We have carefully considered the submissions made by the Appellant and the Respondents and perused the records. The Application under Section 66 of IBC was filed by the Resolution Professional before the Adjudicating Authority after perusing the records seized by Department of Revenue Intelligence ('DRI') in their search action on the Corporate Debtor in May, 2019. No Books of Account or documents for the period from May, 2019, the time of DRI search till initiation of CIRP on 13.11.2019 were found by the Resolution Professional. The Resolution Professional had informed the CoC that there are no matching assets/inventory with the Corporate Debtor. Only thereafter, Application under Section 66 IBC was filed thereby showing that the Resolution Profession had complied with the Regulation 35A of IBBI (Resolution Process for Corporate Persons), Regulation 2016.

**10.2** We now examine the Appellants objection that proceedings under Section 66 of IBC, 2016 cannot be taken against the third parties. Before proceeding any further, it will be relevant to refer to the provisions of Section 66(1) of IBC, 2016 which is reproduced below:-

**66.** *(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.*

As per provisions of sub-section (1), the Adjudicating Authority can pass an order directing “any person”, who was party to carrying on the business of Corporate Debtor in such manner as to defraud creditors of the Corporate Debtor, or for any fraudulent purpose, to make him liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. A plain reading clearly shows that action can be taken against ‘any person’ for recovery of amount involved in the fraudulent transaction.

**10.3** The Appellant had relied on the judgment of the Hon’ble Supreme Court in the matter of *Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.- 2023 SCC OnLine SC 1187* and in the case *Usha Ananthasubramanian vs. Union of India- (2020) 4 SCC 132*. On perusal of the judgment of the Hon’ble Supreme Court in the case of *Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.- 2023 SCC OnLine SC 1187* quoted by the Appellant it is seen that the application seeking clarification of Judgment and order dated 24.02.2023 passed by the Hon’ble Supreme Court in SLP (Crl.), diary no. 6723/23, filed by Applicant was dismissed and the said judgment related to transit anticipatory bail in a criminal case.

**10.4** The judgment of the Hon’ble Supreme Court, relied upon by the Appellant in the case *Usha Ananthasubramanian vs. Union of India; (2020) 4 SCC 132* the facts were entirely different. The said appeal was filed by Usha Ananthasubramanian, former MD & CEO, Punjab National Bank wherein the judgment of NCLT and NCLAT was set aside. In this case, the allegation was that the Appellant had failed to take preventive steps to prevent fraud

perpetuated by Mr. Nirav Modi and thereby committed mischief and conspiracy with the other accused person. While deciding the said case, Hon'ble Supreme Court has held as under:-

...

6) *Under Section 241(2), the Central Government, if it is of the opinion that the affairs of the Company are being conducted in a manner prejudicial to public interest, may apply itself to the Tribunal for orders under this Chapter, which is headed "prevention of oppression and mismanagement". Apart from the vast powers that are given to the Tribunal under Section 242, powers under Section 337 and 339 are also given in aid of this power, which will apply mutatis mutandis.*

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

8) *This being the case, it is clear that powers under the sections cannot possibly be utilized in order that a person who may be the head of some other organization be roped in, and his or her assets be attached. This being the case, we set aside the impugned order passed by the NCLAT as well as the NCLT. The appeal is allowed in the aforesaid terms."*

**10.5** The facts of the present case are different and distinguishable from the cases cited by the Appellant. In the present case, there is a finding that Manoj Punamia was running several companies in its business of gold refinery. The finding of the Customs Department was that both the Appellant Company (RICL) and Corporate Debtor (RRPL) were being managed by Mr. Manoj Punamia. Mr. Manoj Punamia and his wife were said to be shareholders of the

Appellant Company. In these circumstances, the appellant cannot be said to be a third party, as both RICL and RRPL are under the control of same person. During, the search action by DRI, documents/accounts were found which reflected that the Appellant owed Rs. 1,58,07,56,469/- to the Corporate Debtor. We have also noted that the corporate debtor was virtually closed since May, 2019. The Appellant has not challenged the outstanding shown as on 20.05.2019 of Rs. 158,07,56,469/-. However, through entries, showing sale of gold to the Corporate Debtor, the outstanding amount was brought down to Rs. 31,01,83,022/-. We note that no books of accounts were made available to the Resolution Professional by Corporate Debtor for this period. We also note that Statutory Auditor has also stated that Books of Accounts were not made available to him to conduct statutory audit. We also note that Resolution Professional has reported to the Committee of Creditors (CoC) that no inventory, corresponding to transaction shown by the Appellant was found by Resolution Professional. This is a case where the outstanding of Appx. Rs. 158 Cr. was brought down to Rs. 31 Cr. by alleged entries so as to reduce the amount due to the Corporate Debtor thereby reducing likelihood of recovery, causing loss to the creditors of the Corporate Debtor.

**10.6** On similar facts, in the case of *Shri Baiju Trading and Investment Private Limited vs. Mr. Arihant Nenawati (Liquidator for Royal Refinery Private Limited), & Ors.* the order of NCLT under Section 66 of IBC, 2016 was upheld by this Tribunal, vide order dated 29.03.2023. Similarly, in the case of *Tridhaatu Kirti Developers LLP (2023 SCC OnLine NCLAT 1583)* against the same respondents, who are also Respondents in the present appeal, the order of NCLT under

Section 66 IBC was upheld by this Tribunal. This order was subsequently upheld by the Hon'ble Supreme Court vide order in Civil Appeal No. 914 of 2023 as under:-

...

*“Heard learned Counsel for the appellant. We find no merit in this appeal. Admission is refused and the civil appeal is, accordingly dismissed.”*

**10.7** Section 66 of IBC, 2016 empowers the Adjudicating Authority to pass an order for recovery from such fraudulent transactions as contribution to the assets of the Corporate Debtor. Such action has also been upheld by Hon'ble Supreme Court in the case of *Phoenix Arc (P) Ltd. vs. Spade Financial Services Ltd.*- (2021) 3 SCC 475.

**10.8** On perusal of the facts of this case and judgments cited above, it is apparent that entries were made in its accounts by the Appellant to reduce its liability towards the Corporate Debtor.

**10.9** In view of the above stated facts and circumstances, we find no reason to interfere with the order of the Adjudicating Authority. The Appeal is accordingly dismissed. All pending Interlocutory Applications, if any, are closed. No order as to costs.

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Ajai Das Mehrotra]  
Member (Technical)**

06.05.2024  
Harleen