



INSOLVENCY & BANKRUPTCY

NCLT Kochi On Section 66 IBC: Accountability For Fraudulent Trading In Thesaurus Projects Pvt. Ltd.

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Introduction

This article examines the judgment of the National Company Law Tribunal, Kochi Bench, in IA(IBC)/303/KOB/2024 in CP(IBC)/57/KOB/2022, arising in the matter of M/s. Thesaurus Projects Private Limited. The application was instituted under Section 66 of the Insolvency and Bankruptcy Code, 2016, seeking to fix personal liability on the suspended directors for fraudulent trading. The decision elucidates the contours of Section 66 affirms the Tribunal's commitment to creditor protection and corporate probity during insolvency and liquidation.

Table of contents

- [Introduction](#)
- [Factual Background](#)
- [Parties and Proceedings](#)
- [Issues for Determination](#)
- [Relevant Legal Framework](#)
- [Tribunal's Analysis](#)
- [Decision and Directions](#)
- [Conclusion](#)

Factual Background

The Corporate Insolvency Resolution Process of M/s. Thesaurus Projects Private Limited commenced on an application filed by the financial creditor, Small Industries Development Bank of India (SIDBI), under Section 7 of the IBC. The company petition was admitted on 16 March 2023, and a Resolution Professional was appointed. Resolution efforts did not succeed, and the Tribunal ordered liquidation on 5 July 2023.

In the course of liquidation, a forensic audit was commissioned and carried out by M/s. Grad & Company. The audit recorded material irregularities, including diversion and misappropriation of funds, and the non-maintenance of essential financial records for significant periods. These findings prompted the Liquidator to move an application under Section 66 IBC, asserting that the business of the corporate debtor had been conducted with intent to defraud its creditors.

Parties and Proceedings

The applicant was the Liquidator of M/s. Thesaurus Projects Private Limited. The respondents were the suspended directors, namely, Mr. Mukeshbhavan Mukesh Karthikeyan and Mr. Mukeshbhavan Suresh Karthikeyan. The Liquidator alleged that the respondents engaged in unauthorized withdrawals, failed to maintain financial records post-2017, and permitted opacity in the company's affairs, resulting in dissipation of assets and detriment to creditors.

The application sought a direction that the suspended directors contribute ₹11,95,24,411.39 to the assets of the corporate debtor. Despite due service, the respondents did not enter appearance, file replies, or otherwise contest the application, leading to the matter proceeding ex parte.

Issues for Determination

The Tribunal addressed two principal questions. First, whether the conduct identified in the forensic audit constituted fraudulent or wrongful trading within the meaning of Section 66 of the IBC. Second, whether the respondents acted with the requisite intent to defraud the creditors of the corporate debtor.

Relevant Legal Framework

Section 66 of the IBC empowers the Adjudicating Authority to make directors personally liable to contribute to the assets of the corporate debtor if they carried on its business with intent to defraud creditors or for any fraudulent purpose, or if they engaged in wrongful trading. The provision is remedial and restitutionary, aimed at restoring value lost through misconduct. The National Company Law Appellate Tribunal, in *Thomas George v. K. Easwara Pillai and Others*, has clarified that fraudulent transactions

under Section 66 are not constrained by a specific retrospective limitation period, enabling the Tribunal to consider the full spectrum of relevant conduct.

Tribunal's Analysis

The Tribunal accorded significant weight to the forensic audit by M/s. Grad & Company. The audit documented substantial unauthorized withdrawals during periods when the company failed to maintain proper financial records, including the absence of books after 2017. It also recorded the disappearance and non-traceability of assets that could otherwise have been realized for creditor benefit.

In the absence of any rebuttal or explanation from the respondents, the Tribunal drew an adverse inference and accepted the Liquidator's narrative in material particulars. The non-maintenance of statutory financial records, coupled with unexplained withdrawals and asset dissipation, was treated as strong indicia of a fraudulent mindset and intent to defeat the claims of creditors. The Tribunal reiterated that such conduct falls squarely within Section 66, justifying personal contribution orders.

Decision and Directions

Allowing the application under Section 66, the Tribunal held the suspended directors jointly and severally liable to contribute ₹11,95,24,411.39 to the assets of M/s. Thesaurus Projects Private Limited. The Liquidator was authorized to initiate appropriate proceedings and take all necessary steps under law to recover the aforesaid amount.

The Tribunal further clarified that the pendency of an application for dissolution does not curtail its jurisdiction to adjudicate Section 66 claims. Proceedings under Section 66 are fundamentally restorative and are intended to remedy the consequences of fraudulent trading for the benefit of creditors.

Conclusion

This ruling is a measured application of Section 66 IBC, reinforcing accountability for directors who conduct corporate affairs in a manner detrimental to creditors. By relying on a detailed forensic audit and drawing appropriate inferences from the respondents' non-cooperation, the Tribunal ensured that value lost through fraudulent trading is recoverable for the estate. The decision highlights the remedial purpose of Section 66, affirms the absence of a rigid look-back constraint for fraudulent conduct, and is a caution to directors that failures in record-keeping and transparency can ground personal liability in insolvency and liquidation.

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