

# DISPUTE RESOLUTION IN FORENSIC AUDIT

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Certified in FAFP



# Forensic Audit Report

Identifying Irregularities in Financial Transactions

# FORENSIC REPORT-CHALLENGES

- Generally, the observations made by forensic auditors is in-conclusive ,Auditors does not give any conclusive statement and in every observation the Forensic Auditor states the following naïve words :
  - a) Can be construed as Diversion of funds.
  - b) Which can be construed as Mis -Appropriation.
  - c)There may be a possibility of Fraud
  - d)There is a possibility of misstatements

# EXPECTATIONS FROM FORENSIC AUDITOR



# EXPECTATIONS FROM FORENSIC AUDITOR

- Identify or Confirm the fraud.
- Identify wrongdoer.
- Monetary Impact .
- Collect Evidences as admissible in legal proceedings.
- Fit the Transaction with in the legal frame work

A close-up photograph of a person's hands, wearing a dark suit jacket and a blue tie, holding two interlocking wooden puzzle pieces. The puzzle pieces are light-colored wood and are joined together to form a horizontal bar. The word "DISPUTE" is printed in red, uppercase letters on the left piece, and the word "RESOLUTION" is printed in red, uppercase letters on the right piece. The background is a solid blue color.

DISPUTE

RESOLUTION

**LEGAL COUNTERS**

# LEGAL COUNTERS

- ) Forensic Auditor expressing his views only without concluding his observation. Views should not be expressed in Forensic Audit.
- The Forensic Auditor should conclusively state his report along with evidence instead of his views.
- The Forensic Auditor has not submitted any Evidence under the Indian Evidence Act 1872 (Refer sec 61) either primary or secondary or at least the copies made from original to substantiate his views.

# LEGAL COUNTERS

- The Auditor not provided any Forensic Evidence to substantiate Mis- appropriation of Funds.
- Possibilities should not be incorporated in the Forensic Audit Report. The Forensic Auditor should conclusively express his report instead of possibility.
- The Auditor not Provided any Forensic Evidence to substantiate Mis- appropriation of Funds.



# LEGAL COUNTERS

- The true meaning of forensic is Submission of Evidence in court of law whereas No reasonable evidence is submitted by Forensic Auditor.
- The Forensic Auditor has mentioned in his report that he has verified ROC Records, subsidiary company record, Related party company records but the report does not contain Certified copies nor any document which authenticate that it is originated from the original record or any public document.

# BEST REPORTING PRACTICES

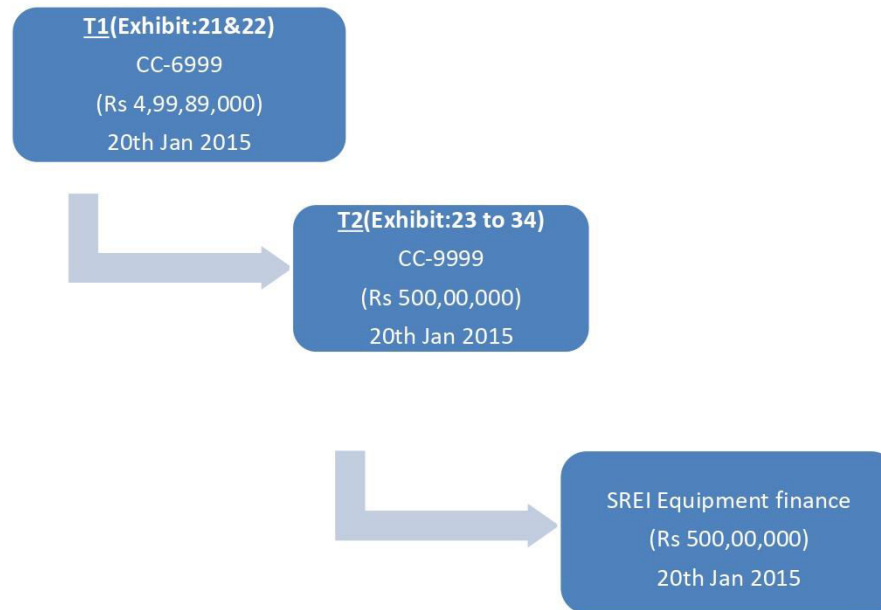


# K K M K & ASSOCIATES CHARTERED ACCOUNTANTS

## 6. FINDINGS

S.NO	CHAPTER	PARTICULARS	PAGE NO
<b>SECTION - I Plant Construction-Term loan</b>			
1	CHAPTER A	Margin Money not infused through Bank	14-16
2	CHAPTER B	Mismatch w.r.t Equity funds between Auditors certification vs financial statements	17-20
3	CHAPTER C	Term Loan Utilization	21-38
<b>SECTION - II Plant Operation-Cash Credit</b>			
1	CHAPTER A	Amounts Transferred to Company Current Account	39-41
2	CHAPTER B	Amount withdrawn as self cheques	42-53
3	CHAPTER C	Amount Transferred to Personal Accounts	54-58
4	CHAPTER D	Turnover not routed through bank	59-62
5	CHAPTER E	Cash Credit Utilization	63-95

**PICTURE DEPICTING FUND DIVERSION TO SREI EQUIPMENT FINANCE**



**T1-Transaction 1:** Amount of Rs.4,99,89,000 transferred from CC-6999 to CC-9999 on 20<sup>th</sup> January 2015

**T2-Transaction 2:** Amount of Rs.5,00,00,000 transferred from CC-9999 to SREI Equipment Finance Ltd on 20<sup>th</sup> January 2015.

**K K M K & ASSOCIATES  
CHARTERED ACCOUNTANTS  
CHAPTER: C - TERM LOAN UTILIZATION**

**Subject: Term Loan Usage**

**Account Number: 281000001**

**Time Period: 17.03.2010 to 05.07.2010**

**Date of Sanction: 17.03.2010**

List of payments towards construction of buildings and installation of plant and machinery are produced Below:

DATE	CHEQUE	PARTICULARS	NARRATION	AMOUNT IN RS.	EXHIB IT
24-02-2010	561405		BOILER	9,60,000	3B
03-03-2010	561406		IRON & STEEL	50,00,000	N/A
17-03-2010	561410		IRON & STEEL	24,00,000	N/A
20-03-2010	561408		IRON FABRICATION	6,00,000	N/A
20-03-2010	561418		JCB, TRACTOR, TIPPER HIRE CHARGES	51,50,000	N/A
20-03-2010	561414		CONSTRUCTION OF COMPOUND WALL	75,00,000	10
20-03-2010	561417		SAND, BRICKS & STONE	43,50,000	N/A
26-03-2010	561419		GO DOWN & CIVIL WORKS	62,00,000	9A & 9B
26-03-2010	561407		GO DOWN & CIVIL WORKS	5,00,000	9A & 9B
28-03-2010	561409			3,40,000	NA
07-04-2010	RTGS		PLANT MACHINERY SUPPLIER	3,00,00,000	5B
28-04-2010	561403		PLANT MACHINERY SUPPLIER	20,00,000	5B
30-04-2010	561422			1,50,000	N/A
12-05-2010	561423		GO DOWN & CIVIL WORKS	30,00,000	9A & 9B
28-06-2010	RTGS		PLANT MACHINERY SUPPLIER	4,00,00,000	5B
05-07-2010	RTGS		PLANT MACHINERY SUPPLIER	1,69,00,000	5B
		<b>GRAND TOTAL</b>		<b>12,50,50,000</b>	

**Findings: We have found that Term Loan sanctioned for construction of buildings, civil works & Plant and Machinery was utilized for creation of Plant and Machinery and other assets.**

**K K M K & ASSOCIATES  
CHARTERED ACCOUNTANTS**

**CHAPTER A: AMOUNTS TRANSFERRED TO COMPANY CURRENT ACCOUNT**

**Memorandum: I**

**Subject: Amount Transferred from Company Cash Credit to Company Current Account**

**Transferor Account No:** [REDACTED]

**Transferee Account No:** [REDACTED]

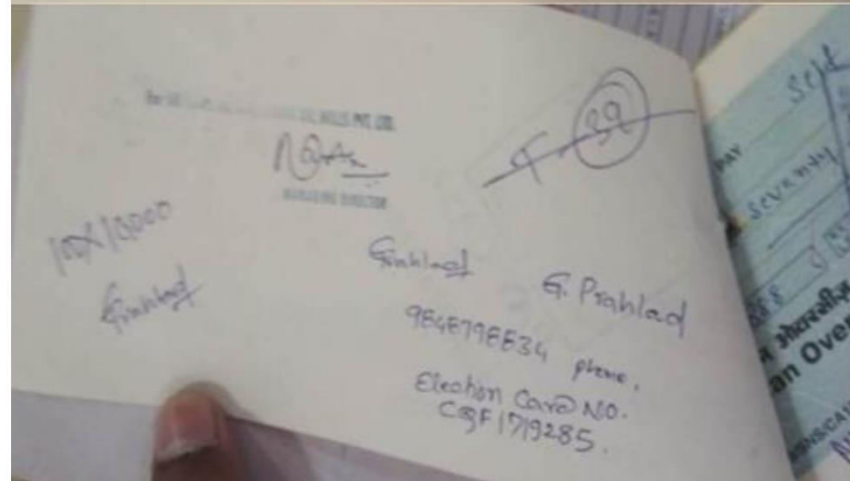
**Time period: 13.10.2010 to 07.10.2014**

DATE	PARTICULARS	DEBIT RS	CREDIT RS	NET RS
13-10-2010	BY-888		8,00,000	
14-10-2010	569/CC-888		2,00,000	
21-10-2010	569CA888 TFR	2,50,00,000		
21-10-2010	569/CA-888 TFR	2,45,00,000		
22-10-2010	JAGTIAL CD888 TFR		13,00,000	
23-11-2010	TO TRF CBS-569 A/ TFR	2,65,00,000		
30-11-2010	CD 888 BR 569 TFR		1,75,000	
07-12-2010	TO TRF /CDCC/888 TFR	2,70,00,000		
16-03-2011	TO LAKSHMI NARSHI TFR	45,00,000		
21-03-2011	569CA888 TFR	9,00,000		
12-04-2011	JAGTIAL-CD888 TFR		22,00,000	
15-04-2011	CD-888 TFR		30,00,000	
22-09-2011	TR CDCC.888 TFR		40,00,000	
28-11-2011	TO AMT TRCC884/28 TFR	19,50,000		
21-11-2013	BY UTRNO: IOBAH133 TFR		80,00,000	
26-12-2013	BY UTRNO: IOBAH133 TFR		3,16,000	
02-01-2014	BY UTRNO: IOBAH140 TFR		3,00,000	
02-01-2014	BY UTRNO: IOBAH140 TFR		10,00,000	
28-02-2014	BY UTRNO: IOBAH140 TFR		22,63,329	
05-03-2014	CDCC3085 JRB TFR		6,08,582	
13-03-2014	CDCC3085 TFR		3,79,313	
16-04-2014	CDCC 3085 TFR		7,37,875	
08-07-2014	BY UTRNO: IOBAR520 TFR		24,00,000	
25-08-2014	BY UTRNO: IOBAR520 TFR		2,00,000	
03-09-2014	BY UTRNO: IOBAR520 TFR		5,00,000	
07-10-2014	BY UTRNO: IOBAR520 TFR		5,00,000	
07-10-2014	BY UTRNO: IOBAR520 TFR		5,00,000	
	<b>TOTAL</b>	<b>11,03,50,000</b>	<b>2,93,80,099</b>	<b>8,09,69,901</b>

**Borrower Reply:** On questioning the borrower about operation of two accounts, it was explained to us that it is to facilitate the smooth operation of the transactions as it would be convenient to transact with nearest Branch form the plant i.e. IOB Jagtial.

# K K M K & ASSOCIATES CHARTERED ACCOUNTANTS

Exhibit-1:







## CHAPTER B: TRADE RECEIVABLES

### No Realization of Debtors:

We have verified the receivable statements submitted to the banker and found that there is no movement in debtors in Dec 2021 and subsequent months as well. We have requested the borrower the reason and supportings from borrower, but no response was received from the Borrower. (Debtors details from Sept21, Oct21, & Nov 21 were not on record)

We have sent an email dated 09<sup>th</sup> November 2023 to the borrower requesting clarification regarding non-realisation of receivables whereas no response was received.

**Refer Annexure-2: Require clarity on Borrower Receivables As on 31.05.2022 for Rs Rs.5,75,50,021/- mail enclosure.**

### **Conclusion:**

It appears that the trade receivables as declared by the borrower for an amount of Rs 58,564,821/- was not realized.

As per Para 2.1 of clause (c) of RBI -Master Circular on Willful Defaulters the Borrower has defaulted in meeting its payment / repayment obligations to the lender and the receivables (Primary security of bank) is not realizable. which amounts to willful default.

# FORENSIC AUDITS- LEGAL ASPECTS



# FRAUD-LEGAL FRAMEWORK

- Understanding of Fraud as defined under various laws.
- Applicable laws to an entity under forensic audit and fraud detection.
- Fix the Fraudulent transaction, and frame it within applicable laws.

# RELEVANT ACT

LAW INSIDER



**INDIAN EVIDENCE ACT**

# RELEVANT EXTRACTS FROM INDIAN EVIDENCE ACT, 1872

- Evidence" – "Evidence" means and includes
  - (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
  - (2) [all document including electronic records produced for the inspection of the Court], such statements are called documentary evidence;

# RELEVANT EXTRACTS FROM INDIAN EVIDENCE ACT, 1872

- Documents" – "Documents" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

# RELEVANT EXTRACTS FROM INDIAN EVIDENCE ACT, 1872

- **Section 45-** Opinions of experts
- **Section 47A-** Opinion as to digital signature where relevant

# RELEVANT EXTRACTS FROM INDIAN EVIDENCE ACT, 1872

## ➤ Section 76- Certified copies of public documents

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees thereof, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be,



# RELEVANT EXTRACTS FROM INDIAN EVIDENCE ACT, 1872

Section 76: and such certificate shall be dated and subscribed by such officer with his name and his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies

# RELEVANT PROVISIONS FROM VARIOUS LAWS

- **Section 17-** The Indian Contract Act, 1872 Definition of Fraud
  
- **Companies Act, 2013**
  1. **Section 143 (12)-** Powers and Duties of Auditors in Fraud Reporting
  2. **Section 447-** Punishment for Fraud
  3. **Section 448-** Punishment for false statement.

# RELEVANT PROVISIONS FROM VARIOUS LAWS

Section 420 of the Indian Penal Code,



# RELEVANT EXTRACTS FROM INDIAN PENAL CODE

- **Section 415- Cheating** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

# RELEVANT EXTRACTS FROM INDIAN PENAL CODE

- **Section 420-** Cheating and dishonestly inducing delivery of property
- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

# RELEVANT EXTRACTS FROM INDIAN PENAL CODE

- **Section 421- Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors :** Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfer or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

# RELEVANT EXTRACTS FROM INDIAN PENAL CODE

- **Section 406-** Punishment for criminal breach of trust
- **Section 409-** Criminal breach of trust by public servant, or by banker, merchant or agent
- **Section 467-** Forgery of valuable security, will, etc
- **Section 469-** Forgery for purpose of harming reputation
- **Section 471-** Using as genuine any document which he knows it as forged document
- **Section 477A-** Falsification of accounts



भारतीय रिज़र्व बैंक

**RESERVE BANK OF INDIA**

[www.rbi.org.in](http://www.rbi.org.in)

RBI/2015-16/100

DBR.No.CID.BC.22/20.16.003/2015-16

July 1, 2015

- i) All Scheduled Commercial Banks (excluding RRBs ) and
- ii) All India Notified Financial Institutions

Dear Sir / Madam

**Master Circular on Wilful Defaulters**



# MASTER CIRCULAR ON WILLFUL DEFAULTERS

- **Willful Default:** A 'willful default' would be deemed to have occurred if any of the following events is noted:
  - (a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honor the said obligations.
  - (b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

# MASTER CIRCULAR ON WILLFUL DEFAULTERS

(c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

# MASTER CIRCULAR ON WILLFUL DEFAULTERS

(d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

➤ The identification of the willful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions / incidents. The default to be categorized as willful must be intentional, deliberate and calculated.

# MASTER CIRCULAR ON WILLFUL DEFAULTERS

- **Siphoning off funds** : Siphoning off funds on the part of the borrower would be construed to occur if any funds borrowed from the bank are utilized for purposes unrelated to the operations of the borrower, detrimental to the financial health of the entity and/or the bank.

# MASTER CIRCULAR ON WILLFUL DEFAULTERS

**Diversion of funds** : Diversion of funds on the part of borrower / borrowing entity under any of the ( but not limited to) undernoted occurrences

(I) Utilization of short -term working capital funds for long term purposes not in conformity with the terms of sanction.

(II) Deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned i.e., disbursement vs. asset creation and equity infusion.

A decorative graphic on the left side of the slide, consisting of a grid of overlapping diamond shapes. Each diamond is outlined in black and contains a different view: a blue sky with white clouds, a view of a building's roof with solar panels, and a view of a building's facade. The background of the slide is dark with a subtle grid pattern.

# THANK YOU

**KKMK & ASSOCIATES**

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# DISPUTE RESOLUTION IN TRANSACTION AUDIT

CA .KRANTHI KUMAR KEDARI-FCA .DISA(ICAI)

Certified in FAFP

CA KRANTHIKUMAR -K K M K &  
ASSOCIATES

# TRANSACTION AUDIT





# DUTIES OF THE RESOLUTION PROFESSIONAL- REGULATION 35A

## FORM

- RP to form an opinion on preferential and other transactions
- Within 75 days of commencement of CIRP

## DETERMINE

- RP to make a determination on preferential and other transactions
- Within 115 days of commencement of CIRP

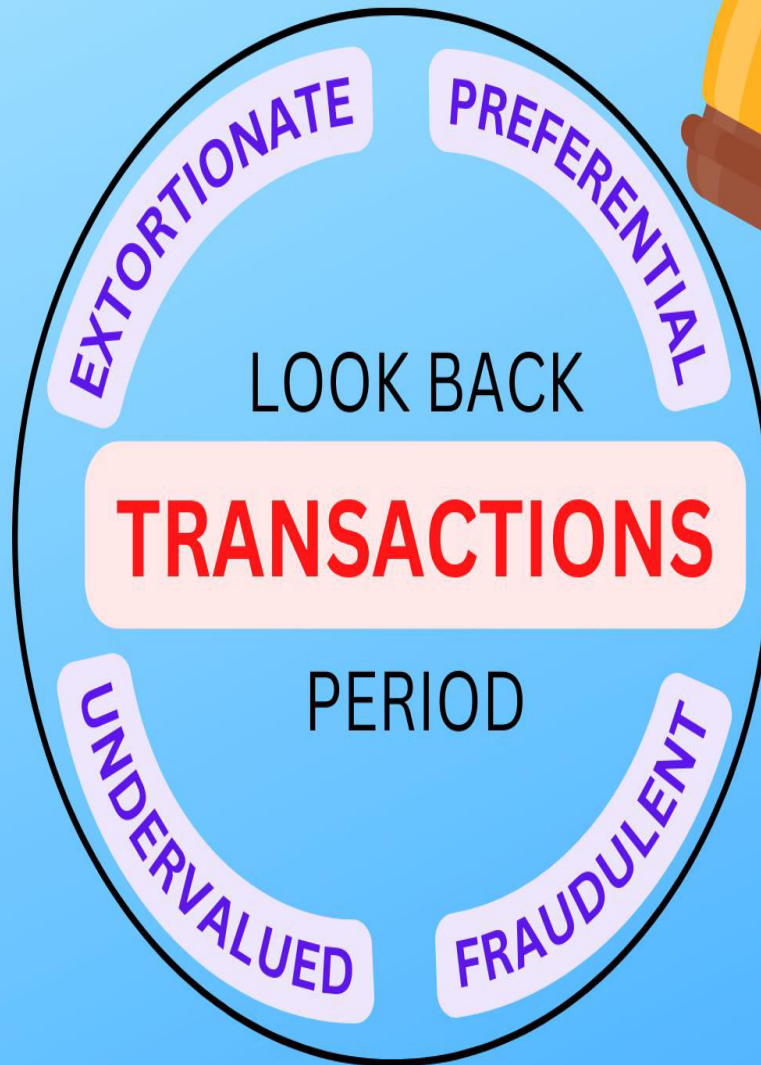
## FILE

- RP to file applications to the AA for appropriate Relief
- Within 135 days of commencement of CIRP

# RELEVANT TIME AND PERSONS IN CASE OF TRANSACTION AUDIT

- In case of a related party (other than by reasons only of being an employee), during the period of 2 years preceding the Insolvency Commencement Date (ICD).
- In case of a person other than a related party during the period of 1 year preceding the Insolvency Commencement Date (ICD).

**RP/LIQUIDATOR**



**CORPORATE DEBTOR**

# SECTION 43 OF THE CODE -PREFERENTIAL TRANSACTIONS

- Transfer of CD's Property or an interest thereof to creditor/surety/guarantor on account of CD's antecedent financial / operational debt / other liabilities (i.e. CD's prepetition obligation which existed before a CD's transfer of an interest in property).
- The aforesaid transfer puts such creditor/surety/guarantor in a beneficial position than it would have been in the event of distribution of assets as per waterfall mechanism under section 53 of the Code.

# SECTION 43 OF THE CODE -PREFERENTIAL TRANSACTIONS

➤ “Property” includes:

- a) Money,
- b) Goods,
- c) Actionable claims,
- d) Land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property.

# SECTION 45 OF THE CODE [UNDERVALUED TRANSACTIONS]-PROVISION

- A transaction shall be considered undervalued where the corporate debtor—
- (a) makes a gift to a person; or
  - (b) enters 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.

# SECTION 45 OF THE CODE [UNDERVALUED TRANSACTIONS]-PRACTICAL ILLUSTRATION

- Transfer of assets like land and building which has market value of Rs. 10 Cr. For Rs. 2 Cr. This is done with a hidden intention to keep the asset away from the reach of the genuine lenders who are unpaid.

# SECTION 49 OF THE CODE [UNDERVALUED TRANSACTIONS]-CONSEQUENCE OF ENTERING INTO AN UNDERVALUED TRANSACTION

- Section 49 gives the powers to the NCLT which is called the adjudicating authority, if satisfied that the same is an undervalued transaction, to restore the old position and to protect the persons who are the victims of this transaction.



# SECTION 50 OF THE CODE [EXTORTIONATE CREDIT TRANSACTIONS] –PROVISION

A transaction shall be considered extortionate under section 50(2) where the terms:

- require the Corporate Debtor to make exorbitant payments in respect of the credit provided; or
- are unconscionable under the principles of law relating to contracts.

# SECTION 50 OF THE CODE [EXTORTIONATE CREDIT TRANSACTIONS] –PRACTICAL ILLUSTRATION

- Corporate Debtor has taken a loan at the rate of 36% from a private company to fund the losses and repayments of the institutional borrowers. For taking this private loan, a huge chunk of charge free assets has been mortgaged. Also the mortgagee has got an option to convert the debt into equity at the face value if the servicing couldn't be done for 180 days continuously.

# SECTION 50 OF THE CODE [EXTORTIONATE CREDIT TRANSACTIONS] –PRACTICAL ILLUSTRATION

- These terms are exorbitant and unfavorable to the existing financial creditors interest. These have been created knowingly to the situation, for defrauding the creditors.

# SECTION 66 OF THE CODE [WRONGFUL AND FRAUDULENT TRADING] –PROVISION

- If during the CIRP or a liquidation process, it is found that any business of the CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose, the AA may on the application of the RP *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 CD as it may deem fit.*

# SECTION 66 OF THE CODE [WRONGFUL AND FRAUDULENT TRADING] –TIME LIMIT

- There is no time Frame for this kind of a transaction being classified as fraudulent trading u/s 66 of the Insolvency and Bankruptcy Code.
- This is a typical section wherein the liability is extended to the directors and even to the third party who is involved in that the fraud, without any limitation of liability.
- This section carries criminal implications once the default is established.



# Challenges in Transaction Audit

# CHALLENGES/DISPUTES IN TRANSACTION AUDIT

- A Transaction which does not actually fall under the purview of the criteria of Preferential Transaction is being concluded incorrectly as Preferential Transaction.
- Even though there is no transfer of Property or assets as per the definition of Property, it is being treated as preferential transaction.
- In certain cases in-conclusive statements are made where the occurrence of the Avoidance Transaction is not confirmed. Yet it is reported.

# CHALLENGES IN TRANSACTION AUDIT

- In some cases the transaction pertains to a mere accounting adjustment or a book entry which is wrongly interpreted as a preferential transaction.
- Whether a transaction is a preferential transaction or not depends on facts and circumstances of the case. It is generally restricted to transfer of Property/Asset.
- Some genuine transactions which are in the course of ordinary business are also interpreted as potential fraudulent transactions.



# CHALLENGES IN TRANSACTION AUDIT

- The facts or transactions being wrongly interpreted ignoring the intent or the procedures followed by the corporate debtor resulting into incorrect remarks for the company.
- There are also cases where the Transaction Auditor has reported transactions which are outside the Scope of the Insolvency and Bankruptcy Code, 2016.

# CHALLENGES IN TRANSACTION AUDIT

- It is the responsibility of the Resolution Professional to form an opinion based on the report submitted by the Transaction Auditor based on the evidence. But the Resolution Professional may attach the report submitted by the Transaction Auditor without forming an opinion on the same.

A close-up photograph of a person's hands, wearing a dark suit jacket and a blue tie, holding two interlocking wooden puzzle pieces. The puzzle pieces are light-colored wood and are joined together to form a horizontal bar. The word "DISPUTE" is printed in red, uppercase letters on the left piece, and the word "RESOLUTION" is printed in red, uppercase letters on the right piece. The background is a solid blue color.

DISPUTE

RESOLUTION

# DISPUTE RESOLUTION

## Reply to Interim Application filed by the Resolution Professional:

- The Erstwhile Management can file response to the application filed by the Resolution Professional with the National Company Law Tribunal.
- The transactions reported by the Transaction Auditor have to be reviewed in line with the provision of the law and have to be submitted along with the evidence in order to claim that the transactions do not fall under the purview of the transaction

# DISPUTE RESOLUTION

- The detailed interpretation of the provision, the transaction under purview and supporting evidence needs to be presented to the NCLT.
- NCLT is the Adjudicating Authority governing the Corporate Insolvency Resolution Process.
- NCLT may after review either pass an order stating that the transactions are avoidable transactions and make good the loss occurred or drop the proceedings in case the transactions are clearly outside the purview of the avoidable transactions under the IBC Code, 2016

# DISPUTE RESOLUTION

- If Erstwhile Management is aggrieved by the order passed by NCLT, then he can file an appeal to National Company Law Appellate Tribunal, where the decisions are reviewed and checked again from the point of law based on the evidences produced already by the Corporate debtor.
- If the outcome is not satisfactory, the last resort for redressal is supreme court.



# THANK YOU

**KKMK & ASSOCIATES**

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