

Payment made for legitimate and documented managerial services rendered in the ordinary course of business to maintain the company as a going concern cannot be deemed fraudulent under Section 66 without strict proof of malafide intent, especially when similar claims for other periods have been admitted

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in the case of **Rakshit Dhirajlal Doshi vs Chirag Shah [Company Appeal (AT) (Insolvency) No. 1855 of 2025] dated March 03, 2026**, has held that to classify a transaction as fraudulent or wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016 (IBC), there must be cogent and conclusive evidence demonstrating a deliberate intent to defraud creditors; a mere presumption or suspicion is not sufficient.

The NCLAT held that the payments made for legitimate and documented managerial services rendered in the ordinary course of business to maintain the company as a going concern cannot be deemed fraudulent under Section 66 without strict proof of malafide intent, especially when similar claims for other periods have been admitted.

However, any withdrawal made with the knowledge that the company's insolvency is imminent or inevitable, particularly if cleared after the commencement of the CIRP, can be directed to be refunded to the corporate debtor's account, added the Tribunal.

The Tribunal observed that establishing a case for fraudulent or wrongful trading under Section 66 of the IBC requires a high burden of proof, which must be of an unimpeachable nature and beyond reasonable doubt. Mere suspicion or presumption of fraud is insufficient to attract the provisions of Section 66 IBC.

The NCLAT noted that the Resolution Professional had admitted the appellants' remuneration claims of Rs. 54.36 lakhs for the period FY 2020-2021, which was supported by records like the IBBI Claims Portal and the Transaction Audit Report (TAR). Further, ledger entries clearly showed that salaries for FY 2019-2020 were due and paid accordingly.

Now, since the respondent did not deny that managerial services were rendered or allege any falsification of records, the NCLAT found it unjustified to treat the remuneration for 2019-2020 as fraudulent when similar remuneration for a subsequent period was accepted as legitimate.

The Tribunal found the respondent's argument regarding the proximity of the withdrawal date to the insolvency commencement date to be factually incorrect. Bank statements revealed that the withdrawal of Rs. 21.64 lakhs occurred on March 31, 2021, more than 15 months before the CIRP began, which negated the inference of last-minute siphoning of funds. However, regarding a separate withdrawal of Rs. 2 lakhs via a cheque (cleared after CIRP admission), the NCLAT opined that the appellant likely knew insolvency was imminent, and thus this amount should be refunded.

The NCLAT also dismissed the argument that routing funds through a sister concern was inherently fraudulent, stating it can be a standard business practice and requires specific

pleading and proof of fraudulent intent. Similarly, the inability to pay statutory dues during financial distress does not automatically prove a dishonest design to defraud creditors when paying for legitimate managerial services.

Finally, the NCLAT criticized the Adjudicating Authority for interchangeably using the terms 'preferential transaction' and 'fraudulent transaction'. It emphasized that these are distinct concepts under the IBC (governed by Section 43 and Section 66, respectively), each requiring different elements of proof and having different consequences.