CBI Criminal Case No.04-2024

-:: **Order below Discharge Application vide Exh. 167** ::-

1. Read this application and perused all case papers and reply filed by the prosecution. Heard Ld. Advocate Mr. A. B. Mehta for the liquidator of accused No.21 and Ld. P.P. Mr.Guru Deep Singh for the Prosecution.

2. Present application has been preferred by the accused No.21 M/s Sunil Hi Tech Engineer Ltd., under the provisions of Section-239 of the Cr.P.C. to discharge himself from the present matter. The case is registered by CBI, EOB, Mumbai for the offences punishable under Section 120-B r/w Section 420, 467, 468 & 471 of the IPC and Section 13(2) r/w Section 13(1) of The P. C. Act, on the basis of a written complaint and after completion of investigation, Investigating Officer has filed charge-sheet against all the accused for the offence punishable under Section 120-B r/w Section 420, 465, 467, 468 & 471 of IPC and it is registered as CBI CC No.04/2024. This application is contested by the CBI by filing written reply vide Exh.205.

3. The applicant-accused has stated in this application that, At the outset, it is essential to note that an application against Sunil Hitech Engineers Limited, Accused No.21 ("SHEL"), was filed by one of the financial creditors for initiating the corporate insolvency resolution process ("CIRP") in accordance with the provisions of the Insolvency and Bankruptcy Code ("Code"). The Hon'ble National

Company Law Tribunal, Mumbai ("Adjudicating Authority") vide its order dated 10th September 2018, initiated CIRP against the Corporate Debtor, and a resolution professional was appointed for CIRP of the Corporate Debtor. It is further stated that, In the absence of a resolution plan, the resolution professional preferred to file an application under Section 33 of the Code before the Adjudicating Authority for initiating the liquidation process against SHEL. In this regard, the Adjudicating Authority, vide an order dated 25th June 2017 ("Liquidation Order"), initiated liquidation proceedings against SHEL and appointed me, namely Mr. Avil Menezes, as the liquidator of SHEL.

3.1 The applicant has further stated that, pursuant to the liquidation order, a public announcement inviting claims from stakeholders was made on 1 July 2019. As per the provisions of the Code, the liquidator is duty-bound, inter alia, subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified. In this regard, in accordance with the provisions of the Code read with Liquidation Regulations, it is essential to note that in consultation with the Stakeholders Consultation Committee, pursuant to the offer received from one Dandare Infra Projects Pvt Ltd ("Successful Bidder"), SHEL, was sold on a going concern basis by way of private sale and Letter of Intent (LOI) containing comprehensive terms and conditions was issued in favour of the Successful Bidder.

3.2 The applicant has further stated that, the Successful Bidder has paid the entire consideration, and with effect from December 2024, the Liquidator has handed over the affairs of SHEL to the Successful Bidder. It is further pertinent to note that the Successful Bidder had also filed Interlocutory Application No. 1584 of 2025 seeking certain reliefs and concessions from the Hon'ble Tribunal. In this regard, the Hon'ble Tribunal, vide order dated 28th May 2025, allowed certain reliefs and concessions, which clearly demonstrate that the SHEL has been sold as a going concern to the Successful Bidder.

3.3 The applicant has further stated that, It is essential to note that the Liquidator is an officer of the Court appointed by the Adjudicating Authority for the purpose of facilitating the liquidation process and discharging statutory duties to achieve the intent of the Code, ie, value maximization for all stakeholders of the company in liquidation. The Liquidator, in due compliance with the provisions of the Code, read in conjunction with the Liquidation Regulations, has sold SHEL on a going concern basis to the Successful Bidder by way of a private sale. Accordingly, the Successful Bidder has taken over the management and affairs of SHEL. Be that as it may, it is essential to note that I have handed over the affairs of SHEL to the Successful Bidder with effect from December 2024. Further, I am in the process of filing a Closure Application before the Adjudicating Authority seeking directions for closure of the Liquidation Process which has been conducted in accordance with the provisions of the Code read with Liquidation Regulations.

3.4 The applicant has further stated that, the Applicant herein is an officer of the Court, appointed solely to discharge statutory duties under the Code in a fiduciary capacity, and therefore cannot be held liable for any acts, omissions, or obligations of SHEL prior to or after the sale. Any such liability, if at all, stands transferred to and is to be borne by the Corporate Debtor, SHEL, under the management of the Successful Bidder. Additionally as per Section 233 of the Insolvency and Bankruptcy Code. no suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, officer or other employee of the Board or an insolvency professional or liquidator for anything which is in done or intended to be done in good faith under this Code or the rules or regulations made thereunder. Therefore, the applicant has prayed to allow this application and discharge him.

4. On the other hand, the opponent - CBI has filed written reply vide Exh.205 and denied all facts of the application of applicants. It is further submitted by the opponent in reply that, CBI, EOB, Mumbai registered the instant case against M/s. Archon Engicon Ltd. earlier known as M/s. Archon Engicon Pvt. Ltd. (hereinafter referred as to M/s AEL/ the company), and its directors and other unknown public servant(s) & private person(s) u/s 120-B & 420, 467, 468 & 471 of IPC and 13(1) r/w 13(2) of PC Act, 1988 based on a written complaint preferred by Sh. Amit Kumar Nanda, General Manager, IDBI, Bank Limited, Ahmedabad on the allegations that from the year 2008 to 2015, the company & its directors availed various Credit Facilities from IDBI Bank, Ahmedabad under a consortium arrangement with SBI as a lead Bank. The directors of the company in connivance with the other accused persons fraudulently inflated its turn over by circulating the loan proceeds within its associates companies without having underlying business transaction. It is further alleged that the company and its directors fraudulently written off bad debts to the tune of Rs. 158.49 Crores and thereby, diverted the loan proceeds without its end utilization and thereby, caused a wrongful loss to the bank to the tune of Rs. 83.37 Crores.

4.1 It is further submitted that the investigation has revealed that, M/s Archon Engicon Ltd. through its directors hatched criminal conspiracy with other associate / known companies and were involved in creating a deception that the rise in sales/turnover figures of the company are on account of genuine business in power/telecom sector. Subsequently, accused No.2 Chandrashekhar Panchal induced the IDBI Bank and Focused company was been found to be involved in falsification of book of dishonestly obtained credit facilities from consortium IDBI Bank. However, the account and mis-representation of financial statements to the banks for accused No.1 and its directors and other accomplice accused persons committed availing Credit Facilities. Investigation revealed that M/s Archon Engicon Ltd. offences of cheating, forgery and used the forged documents as genuine. thereby, cheated IDBI Bank, the complainant as well as other member bank of SBL led Consortium and caused a loss to the tune of Rs 83 crores to IDBI Bank.

4.2 It is further submitted that the investigation has revealed that, on 30.12.2021, CBI filed a charge-sheet in this Hon'ble Court against M/s Archon Engicon Ltd (A-1) and other 05 accused persons / entities constitute the offences punishable u/s 120B r/w Sec. 420, 468 and 471 IPC. Further, on 21.12.2023, CBI filed a Supplementary Charge-sheet in this Hon'ble Court against M/s. Sunil Hi-Tech Engineers Ltd (A-21) through its official liquidator and others for the offences punishable u/s 120-B r/w 420, 465, 467, 468 & 471 of IPC and substantive offences thereof. Presently, the case is at Pre-charge Stage.

4.3 It is further submitted that the investigation has revealed that, accused No. 21 is represented through its Liquidator Avil Menzes. As per the provision of section 34 and 35 of IBC, official liquidator is bound to represent the company in prosecution and other proceedings on behalf of corporate debtor. Investigation revealed that M/s. Sunil Hi Tech Engineers Ltd (A-21) through its directors Sh. Sunil Ratnakar Gutte (A-22) was involved in fabrication of fake/forged Bill of exchanges, invoices, lorry receipts wherein it was shown that Sunil Hi Tech Engineers Ltd (A-21) has sold TMT/Tower Material to M/s Archon Engicon

Ltd (A-1). However, no actual business or physical movement of material took place in respect of those forged bill of exchanges and invoices. Investigation revealed that on the strength of such fabricated bills/LC documents, having no. LC No. 140375ILCU01082, LC No. 140375ILCU00976, LC No. 140375ILCU01135 and LC No. 140375ILCU01154, total Rs. 15.70 Cr. was disbursed into CC account of M/s Sunil Hitech Engineer Ltd. (A-21) having A/c No. 909030044739307 maintained with Axis Bank, Nariman Point Branch, Mumbai. Out of which, Rs.3.9 Crores was returned into the account of M/s Archon Engicon Pvt Ltd. A-1) while the rest of amount was further diverted by accused No.22 Sunil Ratnakar Gutte by RTGS transactions.

4.4 It is further submitted that the investigation has revealed that, the new management generally assumes all existing responsibilities and obligations of the company. They cannot simply disclaim past liabilities without specific legal clearance or a court order. In essence, a change of management does not provide an automatic "clean slate" from criminal prosecution for offenses committed by the company in the past. The prosecution can proceed against the company, and the new management must address these existing legal challenges. It is submitted that under corporate law, a company is a separate legal entity from its directors, shareholders, or management. This means that the company's legal identity remains the same even if its ownership or management changes. Therefore, liabilities and offences committed by the company continue to attach to it. It is further submitted that, Criminal prosecution of a company can continue even after the initiation of the Insolvency Resolution Process (IRP) as Criminal Conduct is Separate from Insolvency. Therefore, the opponents prayed to Hon'ble Court may kindly be dismissed the application of accused.

5. In support of his discharge application, on behalf of liquidator of accused No.21, Ld. Advocate Mr. A. B. Mehta mainly argued that, the applicant is innocent and has not committed any offence. The applicant submits that, looking to the charge-sheet itself, it does not disclose any offence, against the applicant company as alleged by the prosecution. Further, Ld.Advocate for the accused has argued that, the accused no.21 is company and the company petition was filed the financial creditor for initiation of Corporate insolvency resolution process (CIRP) under the provision of Insolvency and Bankruptcy Code, 2016 before the Hon’ble NCLT, Ahmedabad and the Hon’ble NCLT has passed order dated 10.09.2018 and appointed Mr.Avil Menezes as Adjudicating Authority and thus, accused No.21 company is not liable to the offence mentioned in the charge-sheet and as per the Section-32A of the IBC Act, grant protection to the corporate debtor and its assets from any liability for prior offences post approval of a resolution plan and once a resolution plan is approved by the adjudicating authority and therefore, the corporate debtor is discharged from any prosecution for offences committed prior to commencement of the corporate

insolvency resolution process. Further the Ld.Advocate for the accused argued that, during the investigation, it is revealed that, there is not enough evidence to frame the charge against accused No.21 and therefore, the present discharge application has been filed before this Hon'ble Court. He had tried to create oral evidence against the present applicant malafidely to implicate him into the present offence. Further, Ld. Advocate for the accused No.21 has argued that, the accused No.1 company had taken loan from the IDBI Bank in the year 2004 and loan account was turned NPA. Further, name of the accused No.21 company was not mentioned in the FIR. Further, the accused No.1 company is not in existence and Mr.Avil Menezes is appointed as a liquidator and therefore, no liability has been arisen against the liquidator Further, bank submitted false forensic audit report and therefore, there is no any offence made against the accused No.21 Therefore, Ld. Advocate for the accused has prayed to grant this application and discharge the present accused No.21 from the all above allegations.

6. While, Ld. Special PP Mr.Guru Deep Singh for the Prosecution has argued as per his reply and denied all the averments made by the present applicant in his present application and argued that his role in commission of offences as mentioned in the charge-sheet is evident and to prove the there are sufficient evidence available on record. The oral and documentary evidences collected during the investigation also established that prosecution has got

sufficient incriminating material against the accused applicant showing his involvement in the crime. The role of this accused is particularly established from the statements of the witnesses and relevant documents. That there are prima facie materials on record showing the involvement of the applicant accused in the above said offences, which is sufficient for framing charges against the accused. Further, Ld. PP has argued that, Mr.Avil Menezes is appointed as a liquidator, but accused No.21 is the company which prima facie involved in the crime and only change of management does not provide an automatic clean slate from criminal prosecution for essence committed by the company in the past. Therefore, prayed, that the application for discharge filed by the applicant may kindly be rejected and charges may be framed as per law.

7. I perused facts of the application of accused and facts of the reply of the opponent side and considered the arguments of both the parties. On perusal of all papers of investigation, it is transpires that, accused No.1 M/s. Archon Engicon Ltd company was engaged in business of construction, erection and commissioning of power transmission and telecom towers since year 2004. As per documentary evidence of Investigation, it is transpired that, the said accused No.1 company and its directors availed various credit facilities from the IDBI Bank, Ahmedabad during the year 2008 to 2015, under a consortium arrangement with SBI as a lead bank and further, reveals that the directors of the company i.e. accused No.3 and other directors in connivance with the other accused fraudulently inflated its turn over by circulating the loan proceeds within its associate companies without having underlying business transactions. Further, during the investigation, it reveals that the company and its directors fraudulently written off bad debts to the tune of Rs.158.49 crores and thereby, diverted the loan proceeds without its end utilization and thereby cuased a wrongful loss to the band to the tune of Rs.83.37 crores. Thereafter, CBI EOW, Mumbai was registered FIR bearing No.RC0682021E0002 on the basis of complaint filed by Mr. Amitkumar Nanda, GM, IDBI Bank, Ahmedabad, and thereafter, on completion of investigation, the prosecution-CBI has filed the charge-sheet against the applicant-accused No.1 and No.27, 28, 29 and other accused for the offence u/s- 120-B r/w 420, 465, 467, 468, 471 of IPC before this Court after the completion of investigation and it is registered as CBI CC No.04/2024. Thereafter, copy of investigation papers has been given to the accused, but in this case, there is no charge framed against this accused. Therefore, applicant-accused No.25 has filed this application for discharging it. So, the prosecution has put sufficient evidences against the accused for framing of charge. Further, as per settled proposition of law, at the time of consideration of the discharge application, the Court cannot act as a mouth piece of the prosecution or act as a post office, but the Court has to consider all investigation papers of the charge-sheet and find out whether the allegation made against the accused are groundless or not. Further, for framing of charge, the probative value of the material on the record cannot be gone into, but before framing the charge, the Court must apply its judicial mind and consider all materials placed on the record and the Court must be satisfied that there are sufficient materials and evidences against the accused for framing of charge.

8. On perusal of all the papers of investigation, it is transpired that, accused no.1 M/s Archon Engicon Ltd and its promoter/directors were involved in circular and fraudulent business transaction with several accused companies including its associates, shell companies and various private persons without conducting any genuine business. Further, it is also transpired that, accused No.2 Chandrasekhar Panchal and accused No.22 Sunil Ratnakar Gutte, who was the director of accused No.21 M/s Sunil Hi-Tech Engineering Ltd and accused No.24, accused No.27 and accused No.28 entered into criminal conspiracy with accused No.19 and 20 and in pursuance to the same criminal conspiracy, accused No.19 Anurag Srivastava on the guise of his consulting business and with the aid & assistance of his employee accused No.20 Ajay Chaudhary, manage and coordinated fraudulent business and corresponding banking transactions among various accused companies like accused No.1 M/s Archon Engicon Pvt Ltd, accused No.21 M/s Sunil Hi-Tech Engineers Ltd, accused No.23 M/s ABN Tradelink Pvt Ltd, accused No.25

M/s DPIL and accused No.26 DPTL and the money with respect to those facilitate business transactions were circulated from one company to another company without conducting any genuine business with an ulterior motive to infalte their respective turnover so that those companies can easily obtain credit facilities from the bank. Further, it is transpired from the investigation that, accused No.22 Sunil Gutte, the then director of accused No.21 M/s Sunil HiTech Engineers Ltd entered into criminal conspiracy with accused No.2 Chandrasekhar Panchal and accused No.19 Anurag Srivastav and in pursuance to said criminal conspiracy accused No.22 Sunil Gutte has shown his company (i.e. accused No.21) to be involved in steel material trading with accused No.1 Archon Engicon Ltd. Further, it reveals from the documentary evidences that, accused No.22 Sunil Gutte as a director of accused No.21 company got issued fact deal of exchanges, commercial invoices, tax invoices and lorry receipts in the name of accused No.21 Sunil Hi-Tech Engineers Ltd. Further, it reveals from the documentary evidence that, the vehicles mentioned in the fake lorry receipts are belonged to the one Hemant Bhanushali, who is the director of M/s Ashish Container Movers Pvt Ltd, who had never provided any kind of transportation services to the accused No.21 Sunil Hi-Tech Engineers Ltd. and therefore, it reveals that, there was no actual transfer of goods or genuine business took place between the accused No.21 Sunil Hi-Tech Engineers Ltd. and accused No.1 M/s Archon Engicon Pvt Ltd and found all such transactions were only paper based. Thus, accused no.21 and 22 have played a pivotal role in the Instant fraud which caused a huge loss to IDBI Bank as well as other consortium members bank. Therefore, there are ample of evidences against the accused which clearly shows the involvement and malafide intentions of accused no.21 and 22 in the instant fraud. Hence, accused No.21 cannot be discharged from the case.

9. On considering the charge-sheet and all papers of the investigation, there is ample evidence against the accused no.1, 22 and role of accused no.21 are very crystal clear. Further, It is revealed during the further investigation that, accused no.22 was the director of accused No.21 Sunil Hi-Tech Engineers Ltd. entered into criminal conspiracy with accused Nos.1, 2 and other accused. Further, it is revealed that, accused No. 21 is represented through its Liquidator Avil Menzes. As per the provision of section 34 and 35 of IBC, official liquidator is bound to represent the company in prosecution and other proceedings on behalf of corporate debtor. Further, it reveals from the investigation that, accused No.21 M/s. Sunil Hi Tech Engineers Ltd, through its directors accused No.22 Sunil Ratnakar Gutte was involved in fabrication of fake/forged Bill of exchanges, invoices, lorry receipts wherein it was shown that accused No.21 Sunil Hi Tech Engineers Ltd has sold TMT/Tower Material to accused No.1 M/s Archon Engicon Ltd. However, no actual business or physical movement of material took place in respect of those forged bill of exchanges and invoices. Therefore, there is ample evidence against the accused No.21, hence accused No.21 cannot be discharged from the case.

10. As per above discussion and careful reading of all documentary evidence and gone through the record and submission of the prosecution side, it transpires that, management of accused No.21 M/s Sunil Hi-Tech Engineers Ltd was taken over by adjudicating authority Mr. Avil Menezes through Corporate Insolvency Resolution Process (CIRP) in accordance with the provisions of insolvency and Bankruptcy Code as per order passed by Hon'ble NCLT and hence presently management of accused No.21 company is functioning under the CIRP, but accused has not filed any documentary evidences or contract between the accused No.21 and present company that, he had taken over all the responsibilities and debts of accused No.1 company and therefore, criminal liability of accused No.21 cannot be shifted. Further, it transpires from documents and statement of witnesses that, accused No.21 company has not produced any documentary evidence that, the company has paid all the debts of the bank. Further, it is transpired from the documents that, accused No.22 has dishonestly made false documents, and transferred the fund to another accounts with an intention to cause fraud with the bank by committing misappropriation and cheat the bank and therefore, there is sufficient evidence against the present accused no.21 of its active role in the conspiracy in the alleged offence. Further, the applicanct-Avil Menezes is the only administrative officer appointed as a liquidation

process under CIRP and Avil Menezes is personally not an accused in this charge-sheet. Hence, Looking to the charge sheet, oral and documentary evidences collected during the investigation prosecution established that as there are number of evidences which prima-facie established that the accused No.21 M/s Sunil Hi-Tech Engineers Ltd is responsible for this offence.

11. Further, Ld.Advocate for the Accused no.21 has submitted the various citations of the Hon'ble Supreme Court of India, which are carefully read over by this Court. The Hon'ble Supreme Court in the case of *"Gangakhed Sugar Energy Ltd -Vs.- CBI., Cri.M.A. No.32691/2023 on dated 23.12.2023* held that, once a resolution is duly approved by the adjudicating authority under sub-section 31(1) of IBC, the claim as provided in the resolution plans shall stand frozen and will be binding on the corporate debtor and its employees. But, the Hon'ble Supreme Court has passed an order in Civil Application and held that, there is no civil liabilities of the company in which resolution is passed. While in the present case, accused No.21 is a company and accused Nos. 22 is the director of the company. Therefore, as per settled law, when the company is accused, its directors, held can be roped in only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory regime attracts the doctrine of vicarious liability. In this case, there are sufficient incriminating evidences against the accused no.21 to 22 which were director of Accused no.21 company. Therefore,

there is ample evidence against the accused, so accused No.21 M/s Sunil Hi-Tech Engineers Ltd cannot be discharged from the case.

12. As per the settled proposition of law, when there is sufficient material proceed against the accused, they are required to be prosecuted and they are not to be discharged U/s-239 without appreciation of evidence. Therefore, whatever the defence of the accused might have, the same can be proved during the trial but at this stage, there is no viable ground and contention for believing the contention of the accused and therefore, the accused is required to be prosecuted and therefore, the present application is required to be rejected and hence, in the interest of justice, I pass the following order.

:: O R D E R ::

1. The present discharge application filed by the present applicant-accused No. 21 is hereby rejected.
2. It is ordered to frame the charge against the accused for offence punishable under Section - 420, 465, 467, 468, 471 r/w 120-B of IPC.
3. No order as to costs.

Signed and Pronounced on this day of 18th, day of Month February, Year- 2026.

Date : 18/02/2026
Place: Ahmedabad

[Nilesh N. Pathar]
Addl. Chief Judicial Magistrate,
CBI Court No.1,
Ahmedabad (Rural), Navrangpura,
UIC No. GJ00876.

(N.B.Bhavsar, PA)