THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 3475 of 2025

Section 66 of the Insolvency and Bankruptcy Code, 2016

CS Vaishali Arun Patrikar

(Resolution Professional of M/s. Point Developers Private Limited)

...**Applicant**

V/s

Shri. Jatin Arvind Mehta & Anr.

…**Respondent**

In the matter of

COMPANY PETITION (IB) NO. 244 OF 2023

M/S. RUSHABH CIVIL CONTRACTORS PRIVATE LIMITED

…Petitioner

V/s

M/S. POINT DEVELOPERS PRIVATE LIMITED

…Respondent

Order delivered on: 05.05.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Avinash R. Khanolkar a/w Adv. N. Mahesh
For the Respondent	:	Adv. Shyam Kapadia a/w Adv. Harsh Shah

ORDER

1. This Application IA 3475/2025 was filed on 17.07.2025 by CS Vaishali Arun Patrika (Applicant), the **Resolution Professional** in Corporate Insolvency Resolution Process ("CIRP") of M/s. Point Developers Private Limited **("Corporate Debtor")** under the provision of section 66 (1) of the Insolvency and Bankruptcy Code 2016, seeking following reliefs:-

   a) *Admit and Allow the Present Application;*

   b) *Pass an Order directing the Respondents, jointly or severally, to make contribution of 2,66,59,687/- towards the Assets of the Corporate Debtor for a Diversion of fund being given as Loans and Advances to the Respondents;*

   c) *Pass an Order directing the Respondents, jointly or severally, to make contribution of 22,44,720/- towards the Assets of the Corporate Debtor for a Diversion of fund through adjusting the Lesser payable amount against the Receivables from Smt. Kajal Sahjiwani;*

   d) *Pass an Order directing the Respondents, jointly or severally, to make contribution of ₹ 7,02,880/- towards the Assets of the Corporate Debtor for fraudulently writing-off the receivables;*

   e) *Pass an Order directing the Respondents, jointly or severally, to make contribution of 23,10,600/- towards the Assets of the Corporate Debtor* *for a Diversion of fund through making payments to the unknown persons / entities without any supporting Invoice/Bill/Receipt for such payment;*

f) Pass an Order directing the Respondents, jointly or severally, to make contribution of 4,75,000/- towards the Assets of the Corporate Debtor for a Diversion of funds which were collected for formation of Co-operative Society under the applicable provisions of Law;

g) Pass an Order directing the Respondents, jointly or severally, to make contribution of ₹4,65,400/- towards the Assets of the Corporate Debtor for a Diversion of fund for personal benefit of the related entity through making payment to a Forensic Auditor for conducting Forensic Audit of related entity without any benefit to the Corporate Debtor;

h) Pass an Order directing the Respondents, jointly or severally, to make contribution of 31,279/- towards the Assets of the Corporate Debtor for a Diversion of fund being excess amount paid against repayment of availed Loans;

i) Pass an Order directing the Respondents, jointly or severally, to make contribution of 2,00,000/- towards the Assets of the Corporate Debtor for fraudulent trading of non-recovery of Security Deposit against Leave & License Agreements against Unit No. 501 & 502 with Shri. Sanjeev Parekh;

j) Pass an Order directing the Respondents, jointly or severally, to make contribution of 2,22,852/- towards the Assets of the Corporate Debtor for loss of revenue due to lesser construction of Unit than that off sanctioned plan;

k) *Pass an Order directing the Respondents, jointly or severally, to make contribution of 9,04,500/- towards the Assets of the Corporate Debtor for loss of Revenue in the Sale Transaction of Unit 702 & 705;*

l) *In alternative to Reliefs as sought in Clauses (b) to (j) herein-above, be pleased to pass an Order directing the Respondents, jointly or severally, to make contribution of any suitable amount (s) towards the Assets of the Corporate Debtor as it Hon'ble Tribunal may deem fit for conducting the business of the Corporate Debtor in Fraudulent manner;*

m) *Pass any other order in the interest of justice, equity and good conscience.*

2. Shri. Jatin Arvind Mehta and Shri Chaitanya Jatin Mehta, the Director (with Suspended Powers) of the corporate debtor are Respondent No. 1 and 2.

3. This Tribunal vide order dated 26.07.2024, admitted Company Petition CP (IB) 244 / MB / 2023 filed by M/s. Rushabh Civil Contractors Private Limited, under Section 7 of the Code against the Corporate Debtor herein appointing Shri. Manoj Kumar Agarwal as the interim resolution professional. Thereafter, vide an order dated 07.01.2025 passed in IA 65 of 2025, the applicant herein was appointed as the Resolution Professional of the Corporate Debtor replacing the IRP.

4. This Application is being preferred and filed on behalf of the Resolution Professional seeking contributions from the Respondents to the Corporate Debtor's Assets against the funds diverted fraudulently by the Respondents from the kitty of the Corporate Debtor.

5. During this exercise the Applicant examined the Books of the Corporate Debtor, Tally Data and the Bank Account Statements. In this exercise the Applicant noticed following transactions which have been, in opinion of the Applicant, carried out to divert the funds of the Corporate Debtor.

a. Short Term loans and Advances amounting to Rs. 2,67,87,187/- to the Respondent no. 2 from October, 2021;

b. A sum of Rs. 6,02,880/-, written off on 1.4.2023, receivable from Ms. Karvi Financial Services Limited against the rent charges for two office units leased out to it by the corporate debtor, and a sum of Rs. 1,00,000/-, written off on 1.4.2023, advanced to Nikhil Mansukhalal Suba for supply of material prior to 1.4.2019, both aggregating to Rs. 7,02,880/-;

c. Undue gain to Smt. Kajal for an amount of Rs. 22,44,720/- by transferring an Permanent Alternate Accommodation valued at Rs. 34,00,000/- against her settled claim for transit rent amounting to Rs. 13,58,280/-, out which a sum of Rs. 2,03,000/- was paid to Shri Jeetendra Sahjiwani, son of Smt. Kajal;

d. Payments to the unknown persons / entities without any supporting Invoice / Bill / Receipt for such payments :

    i. Payment of Rs. 8,50,000/- to M/s. Laxmi Parking Systems for installation of Stack Car Parking, which was found incomplete and not in working condition by applicant, and no invoice is available;

    ii. Payment of Rs. 1,20,000/- to Mr. Hemal Mehta, explained to paid for Services rendered for sanction of SBI Loan under ABL Scheme, but was written of on April, 2023 and no invoice is available;

    iii. Payment of Rs. 2,00,000/- to Shri Maroof Siddik Khan towards labour work during the period of January to March 2020, but was written of on April, 2023 and no invoice is available

    iv. Payment of Rs. 1,50,000/- to Shri. Prakash S Dani in FY 2019-20, but transferred to Legal & Professional charges, explained to have been paid a matter handled by him in the High Court, relating to mutation entries

    v. Payment of Rs. 5,90,600/- to Shri. Ramchandra Gupta in FY 2019-20, stated to be paid towards Registration and Stamp duty charges payable to PNB Housing Finance;

vi. Payment of Rs. 4,00,000/- to M/s. Smart Designs prior to FY 2019-20, explained to have been paid for Design Services and execution of Interiors for Unit 505, however, no invoice is provided and squared off by debiting the said amount to “Office Expenses;

e. Diversion of Rs. 4,75,000/- being amounts collected from the purchasers of offices in the Business Point project, Chembur as “Share Money and Entrance Money” for the formation of a Society, and no society was formed;
f. Payment of Rs. 4,65,000/- to M/s BDO India LLP for carrying out forensic audit of a Limited Liability Partnership Firm namely M/s. Arihant Realtors LLP owned by Respondent No. 2 (wife of respondent no. 1) and daughter of Respondent No. 1;
g. Excess payment of Rs. 15,897/- and Rs. 15,382/-, totaling to Rs. 31,279/- to Shri. Mohit Ved Prakash Gupta and Smt. Suman Gupta respectively while repaying their loan taken in 2017 by the corporate debtor;
h. Non-recovery of security deposit amounting to Rs. 2,00,000/- given by the corporate debtor to the landlords owning unit 501 & 502 while vacating the same in FY 2018-19;
i. Loss of revenue arising from lesser construction (100 sq. ft.) than the sanctioned plan (108.72 sq. ft.) in relation to Shop no. 7 in Business point, thus causing loss of Rs. 2,22,852/- @ Rs. 25,567/- for per Sq. Ft. as per ready reckoner rate of the said Sale;
j. Short realization from the buyer of Unit No. 702, namely Anshu Chhabariya & Asha Chhabariya, amounting to Rs. 8,13,500/- as per sale deed (the books of account shows a receivable of rs. 9,85,886/- from them), and buyer of unit no. 705, namely Nikesh M Chhaabria, amounting to Rs. 91,000/-.

6. It is stated by the applicant that the Corporate Debtor is merely a legal entity who was being managed by the Respondents when the transaction carried out, hence, the Respondents are liable for the same. It is further stated that the

Applicant has clearly examined the books of account of the Corporate Debtor and then only ascertained the nature of the afore-mentioned transactions. There is no contrary document on record to show bona-fide of the Respondents behind the said transactions, there is nothing on record which proves that the Corporate Debtor and / or its creditors have been benefitted from the transactions in question. Finally, it is concluded by the applicant that, *accordingly, it is being stated and submitted that, in all, the Respondents have diverted an amount of Rs. 3,42,16,918/- from the funds of the Corporate Debtor which could had been utilised either for the payments to the Creditors of the Corporate Debtor or for business purpose of the Corporate Debtor. However, by performing all the transactions, as mentioned hereinabove, the Respondent, who were entrusted with a duty to make benefit to the Corporate Debtor, had only made their personal benefits and the Corporate Debtor's funds were misappropriated. And therefore, the elements of fraud are very much present in this matter and the amounts, which could have been utilised for betterment of the Corporate Debtor's business by paying-off the Creditors in regular course of business, have been misappropriated for the sole personal benefits of the Respondents.*

7. Respondent No. 1 & 2 filed common reply stating that all the transactions, financial dealings have been bonafide ones and in regular due course of business like any other company and that there being no financial irregularities or fraud of any nature whatsoever in the Corporate Debtor entity by the Respondents and the Respondents have diligently and lawfully carried out the business and operations of the Corporate Debtor. It is further stated that the captioned application is also not maintainable considering that the RP is no longer in charge of the affairs of the Company and presently the Corporate Debtor is in liquidation. Even otherwise, the Resolution Professional has exceeded her authority in filing this application, as there is no specific provision authorizing the RP to initiate a proceeding of this nature without appropriate approval from

the Committee of Creditors, especially for allegations that are speculative in nature. It is further stated that the application does not adequately establish that the alleged transactions were carried out "with intent to defraud creditors" or "for any fraudulent purpose", instead, the application relies heavily on conjecture and presumptions rather than concrete evidence of fraudulent intent. It is further stated that Respondent No.1 has himself from time to time advanced monies to the Company aggregating to INR 3,05,39,163/- on various dates during the subsistence of the Project. In addition to the above, Ms. Pallavi Mehta i.e. Respondent No.1's wife (and the mother of Respondent No.2) has advanced a sum of INR 24,36,505/- to the Corporate Debtor. It is further stated that the decision to write off certain receivables, adjust outstanding balances, or make advance payments falls within the ordinary course of business judgment that directors are entitled to exercise, and neither have the Respondents benefited from these transactions or undertook the transactions to defraud any creditors. Further, many of the allegations in the Application relate to transactions that occurred beyond the limitation threshold and also date back to 2019-2020. Further, the Respondents have given explanation in relation transactions narrated in their application, which shall be considered while dealing with the transactions.

8. Heard the learned counsel and perused the material on record.
9. Indubitably, the corporate debtor is a closely held company managed by the respondents only, accordingly, there is presumption as to "knowledge" on their part in relation to impugned transactions. It is for the respondents to demonstrate by cogent evidence that the impugned transactions were carried out by some other person, without their knowledge. Further, there is no financial creditors in the corporate debtor, and the CoC comprise of sole operational creditor, namely the original petitioner at whose instance the CIRP commenced.
10. It is noted that the CoC of the corporate debtor had resolved to liquidate the corporate debtor in its meeting held on 2.9.2025 and this tribunal passed an order

for liquidation of corporate debtor pursuant thereto on 23.09.2025. Accordingly, the resolution professional, the applicant herein, was well within her power to file the present application. It is further noted that the present application has been filed by the applicant for the corporate debtor as is evident from the cause title, accordingly, her successor, the liquidator, is entitled to prosecute the present application. Further, it is noted that section 25(2)(j) of the IBC obligates the resolution professional to file application for avoidance of transactions in accordance with Chapter III, if any. Regulation 35A(3) of the CIRP Regulations provides that "*Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief*". Section 28 of IBC requiring approval of CoC before taking any action by the resolution professional does not enumerate the filing of avoidance application before this tribunal by the resolution after his determination thereof in terms of Regulation 35A of CIRP regulations read with section 25(2)(j) of IBC. Hence, we do not find any merit in the contention of the Respondents on these grounds.

11. It is noted that the applicant has impugned the transactions in terms of section 66(1) of the IBC as is evident from Para 97 of the application. Section 66(1) of the IBC provides "*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.*"

12. Indubitably, section 66(1) of the IBC vests power in this tribunal to pass an order requiring a contribution from any persons who were knowingly parties to the carrying on of the business with intent to defraud creditors of the corporate debtor or for any fraudulent purpose.

13. In case of ***Renuka Devi Rangaswamy vs Mr. Madhusudan Khemka (NCLAT Chennai), (2023) ibclaw.in 384 NCLAT***, the necessary ingredients for impugning a transaction in terms of Section 66 of the Code were laid down. The relevant part of said decision reads as follows *:*

> *"**33.** To be noted that, the expression `Party to the carrying on business', indicates `taking positive steps', in carrying on `company's business', in a `fraudulent manner'. The intent to `defraud', is to be judged, by its `effect' on a `Person', who is the `object of conduct', in question.*
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> ***34.** A `preponderance of probability suffices', but the degree of probability must be such that the `Tribunal', is satisfied and further that under Section 66 of the I & B Code, 2016, it is not essential to attract that there ought to be a `Debtor' and a `Creditor' relationship.*
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> *xxx xxx xxx*
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> ***38.** The Appellant has a `duty', to establish to the satisfaction of this `Tribunal', that a `person', is knowingly carrying on the business with the `Corporate Debtor', with an `dishonest intention', to `defraud', the `Creditors'. For a `Fraudulent Trading' / `Wrongful Trading', necessary materials are to be pleaded by a `Litigant' / `Stakeholder', by furnishing `Requisite Facts', so as to come within the purview of the ingredients of Section 66 of the I & B Code, 2016. Suffice it, for this `Tribunal', to pertinently point out that the ingredients of Section 66 (1) and 66 (2) of the I & B Code, 2016, operate in a different arena."*

14. The applicant has impugned Short Term loans and Advances amounting to Rs. 2,67,87,187/- to the Respondent no. 2 from October, 2021 as fraudulent. The ledger account of respondent no. 2 appearing in the books of corporate debtor shows that a sum of Rs. 44,85,000/- was payable to the Respondent No. 2 by the corporate debtor as on 1.4.2021, and there receipts and payments in the said

account resulting into net receivable from Respondent No. 2 as on 30.3.2022. Against this, a sum of Rs. 6,30,000/- was credited to said account towards remuneration payable to him, which is not disputed by the applicant herein. The balance amount of Rs. 75,60,000/- was transferred on 31.3.2022 to Respondent No. 2's Advance Account, thereby settling this account and carrying the balance therein in another account, namely Respondent No. 2's Advance Account. The ledger account in name of Respondent No. 2's Advance Account appearing in books of corporate debtor also shows receipts and payments, and the said ledger account shows a net receivable of Rs. 2,66,59,687/- from respondent no. 2 as on 31.7.2024. The Respondents have contended that Respondent No. 1, the father of Respondent No. 2 has advanced monies from time to time from his bank accounts to the Corporate Debtor for smooth cashflow requirements for the Corporate Debtor which are to the tune of INR 3,05,39,163/- and Ms. Pallavi Mehta, mother of Respondent No. 2, has advanced INR 24,36,505/-, accordingly, if there was any intent on their part to defraud the creditors, they could have sought to simply adjust the amounts against the alleged advances to Respondent No.2. It is noted that 'intent to defraud' is one of basic ingredients, even there may a fraudulent conduct of business otherwise than to defraud its creditors for bringing that fraudulent transaction within ambit of section 66 of IBC. In view of the fact that there was financial lender, there is a sole operational creditor in the CIRP of the corporate debtor and Respondent No. 1, father of Respondent No. 2 and mother of Respondent No. 2 have infused substantial amounts in the corporate debtor which taken together are in excess of the amounts due from Respondent No. 2, we find merit in the contention of Respondents that the payments were made to Respondent No, 2 with an intent to defraud the creditors, accordingly, the amounts becoming due from the Respondent No. 2 consequent to such payments to respondent no. 2 per se can not fall within the ambit of section 66 of the IBC. Nonetheless, it can not be disputed that the amounts are due from Respondent No. 2, hence, he is obligated to pay it back to the corporate debtor otherwise.

15. The applicant has sought an order for contribution in relation to a sum of Rs. 6,02,880/- receivable from M/s. Karvy Financial Services Limited against the rent charges for two office units leased out to it by the corporate debtor. The said amount was written off on 1.4.2023. It is case of the applicant that the Respondents has not provided any documents to show that what steps were taken by the Corporate Debtor to recover the dues from M/s. Karvi Financial Services Limited. The ledger account of the Karvy Financial Services Limited shows that the rent due to the corporate debtor was paid upto December, 2019, and thereafter, it committed default leading to vacation of the leased premises by M/s Karvy Financial Services Limited finally. It is further noted that the narration of entry passed on 1.4.2023 to write off the sum of Rs. 6,02,880/- reads as "*Deposit a/c was written off on 31. 03.2022 and was offered as income by error. It was to be set off against receivables of Karvy so this error is rectified on 01.04. 2023*". It is noted that the applicant has not verified this fact and has also not disputed the said narration stated under write off entry in the ledger account. Since, the applicant had the books the accounts of the corporate debtor for the year ended 31.3.2022, this fact ought to have been verified before arriving at a conclusion in relation fraudulent write-off. In our considered view, the applicant has proceeded mechanically after observing a 'write-off' entry in the books, and has founded her case on surmises and conjectures. The allegation in relation to siphoning are not backed by any cogent evidence. Hence, this transaction falls outside the ambit of section 66(1) of IBC.

16. Further, the applicant has sought an order for contribution in relation to a sum of Rs. 1,00,000/-, written off on 1.4.2023, advanced to Nikhil Mansukhalal Suba for supply of material prior to 1.4.2019. It is noted that there is no entry in the ledger account of this party since 1.4.2019 except write off of outstanding amount on 1.4.2023. The Respondents have also failed to place on record any

evidence substantiating the purpose for which such advance was given and the reasons leading to non-supply and write off thereof subsequently. These facts do not rule the possibility of settlement of account with the said party out of books of the corporate debtor. Accordingly, it can be said that it is probable than not that the amount paid by the corporate debtor to Nikhil Mansukhalal Suba is in nature of unauthorised withdrawal from the corporate debtor, and an order for contribution of Rs. 1,00,000/- is required to be made.

17. The applicant has sought an order for contribution in relation to alleged undue gain to Smt. Kajal Ashok Sahijwani for an amount of Rs. 22,44,720/- by transferring an Permanent Alternate Accommodation valued at Rs. 34,00,000/- against her settled claim for transit rent amounting to Rs. 13,58,280/-, out which a sum of Rs. 2,03,000/- was paid to Shri Jeetendra Sahjiwani, son of Smt. Kajal. It is noted that, vide recital K of the agreement to sell dated 16.5.2018 entered with Smt. Kajal by the corporate debtor, it is averred that "*As per the terms agreed between the Promoter and the Premises Holders/Allottees the Promoter has agreed to sell and the Premises Holders/Tenants have agreed to the allotment of Premises being Shop No.2 on the Ground floor of the said New Building to the Premises Holders as and by way of Permanent Alternate Accommodation. The area of the said Shop No 2 is 251 sq feet out of which an area of 140 sq. ft. is being allotted to the Premises Holders/ Allottees free of costs in lieu of the area of the Tenanted Premises as per the said Agreement no the balance area of 111 sq feet is being sold/allotted to the 34,00,000/- (Thirty Four Lakhs Only)*". It is further averred in recital N that "*Certain payments under the said Agreement dated 29-02-2012 that were due and payable by the Promoter to Mrs. Kajal A. Sahijwani, is being adjusted towards the consideration payable by the Premises Holders/Allottees to the Promoter of Rs 34,00,000/- (Rupees Thirty Four Lakhs Only), being the full and final payment of the sale consideration towards the 111 sq. ft. (approx 10.31 sq. mtrs.) carpet area of the said Premises agreed to be sold by the Promoter to the Promises*

Holders/Allottees". Clause 1(c) of the said agreement further states that "*Both the parties herein have mutually agreed that the certain payments under the said Agreement dated 29-02-2012 that were due and payable by the Promoter to the Premises Holder/Allottees is being adjusted towards the consideration payable by the Premises Holders/Allottees to the Promoter of Rs. 34,00,000/- (Rupees Thirty Four Lakhs Only) under this Agreement*". It is further stated in clause 4 of said agreement that "*The Promoter has given possession of the Premises to the Premises Purchaser/Allottee on or before execution of this Agreement*". It is noted that the applicant had asked the Respondents in relation to balance consideration after adjustment, however, the Respondents only stated vide email dated 2.7.2025 stating that "*Details of payables to Ms Kajal Sahajivani, which you adjusted towards consideration of Rs. 34 Lakhs of Shop No. 2 on ground floor- Rent already paid.*" Consequently, the applicant vide email dated 3.7.2025 further asked him "*Still wanted the clarification, which amounts were payable to Ms Kajal, why the consideration of Rs 34 Lakhs is adjusted. The rent payable does not calculate to Rs. 34 Lakhs".* It is case of the applicant that Smt. Kajal was entitled to Transit Rent of Rs. 22,63,800/-, which was settled for 60% of rent payable in a meeting was held on 7%December, 2017 between the Corporate Debtor and Tenants, accordingly, only a sum of Rs. 13,58,280/- was payable to Smt. Kamal. Further, the applicant was informed by son of Smt. Kajal vide letter dated 9.8.2024 that "*My mother expired on 3rd March, 2019, myself as her only legal heir entitled to the said Shop and the said amount. Out of the said amount, I have received only an amount of Rs.2,03,000/- leaving a balance of Rs. 11,55,280/- payable to me"* thus leaving a balance of Rs. 11,55,280 adjustable against the said consideration. Thus, assuming that the balance amount was adjusted against the sale consideration of Rs. 34,00,000/-, the applicant has stated that the details of balance amount of Rs. 22,44,720/- were not found credited in account of corporate debtor. It is noted that the respondents have failed to give the details of balance payments receivable in terms of aforesaid agreement and have evaded the details as to how the remaining amount stood settled. These facts do not rule the possibility of settlement of account with the said party out of books of the corporate debtor. Accordingly, it can be said that it is probable than not that the amount payable by Smt. Kajal to the corporate debtor have been received out of books of corporate debtor, and an order for contribution for a sum of Rs. 22,44,720/- thereof is required to be made. Nonetheless, the Respondents shall have an opportunity to give evidence of receipt of money receivable in account of corporate debtor within 15 days on equitable consideration to the satisfaction of incumbent liquidator to discharge themselves from liability in relation to this transaction.

18. The applicant has also sought contribution for following sums paid to various parties for services, which were written off/adjusted in the books of account without any Invoice / Bill /Receipt. It is stated that, in all such case, the invoices were not available and the balances were adjusted on 1.4.2023. It is noted that all such payments were invariably made prior to financial year 2019 as is evidence from the ledger which records these amounts as opening balance. There is no allegation that the corporate debtor was availing credit facilities during the year such advances were paid. It is admitted fact that the corporate debtor was engaged in constructing a real estate project, which was complete pending certain approvals in relation to occupation certificate. The commonality of facts in relation to these advances only indicate that these advances remained unadjusted in the books of corporate debtor for want of bills or appropriate adjustment entry. It is also pertinent to note that the transactions had taken place six years prior to admission of corporate debtor in CIRP while there was no financial creditor and only one operational creditor, hence labelling such transaction as fraudulent may lack intent to defraud the creditors, which is sine qua non for invoking powers in terms of section 66(1) of the IBC. In this context, these payments are dealt with in the following para on basis of individual facts :

i. A Payment of Rs. 8,50,000/- to M/s. Laxmi Parking Systems was paid for installation of Stack Car Parking, which was found incomplete and not in working condition by applicant after commencement of CIRP. It is not the case of the applicant that no work was complete, instead, the averment by the applicant that work done by the party was found incomplete and said stack car parking was not found in working condition itself indicates that the payment of such money was in ordinary course of business, and the settlement of such account remained pending in the books of corporate debtor for want of completion of ordered work by the recipient of money. Further, the ledger account of recipient party in an entry passed on 1.4.2023 to transfer the said amount to Stack parking account records that "*Amount paid for installation of stack Car parking but party not completed work/ not issue the Bill*" Accordingly, simply because, the invoice is not available, no adverse inference can be drawn, and the transaction can not fall within the ambit of section 66 of IBC.

ii. Payment of Rs. 1,20,000/- to Mr. Hemal Mehta, explained to paid for Services rendered for sanction of SBI Loan under ABL Scheme, but was written of on April, 2023 and no invoice is available. The ledger account of recipient party in an entry passed on 1.4.2023 to transfer the said amount to legal & professional charges records that "*Amount paid for TDS on behalf of party but not reimbursed by party now rectify....*" If that be so, there was no requirement for receipt of invoice, instead, the earlier debit on account of such tds deposit was required to be verified from the books of corporate debtor, which we feel the applicant has failed to take note of and verify the records of corporate debtor verify the assertion. Further, the applicant ought to have verified from the records whether any attempt to obtain loan from SBI was made by the corporate debtor during the relevant time. The applicant has proceeded on the basis that *the entry in the Ledger and the explanation given by the Respondents is completely mismatching*, however, for classifying a transaction as fraudulent, the applicant ought to have verified the records as well to ascertain the factual aspect in relation to services, if any rendered by Hemal Mehta. Accordingly, we feel that this transaction does not fall within ambit of section 66 of IBC. Nonetheless, the Liquidator may verify the same from the books of corporate debtor for earlier years whether the debit to the said party account arose from the tds deposited on their behalf and recoverable from them and the corporate debtor had applied for a loan as explained by the respondents. Needless to say, the respondents shall co-operate to the liquidator in such identification. In case, the narration stated in the books is found false, the liquidator shall be at liberty to approach this tribunal.

iii. Payment of Rs. 2,00,000/- to Shri Maroof Siddik Khan towards labour work during the period of January to March 2020, but was written of on April, 2023 and no invoice is available. The ledger account of recipient party in an entry passed on 1.4.2023 to transfer the said amount to Repair & Maintenance charges records that "*Amount credited vide Bill Na Nil/ Dt. 01.12.2020/ by over site bill not book now rectify...*" It is case of the applicant that the said payment has been made without any Invoice / Bill / Receipt from the payee, and the said payment is against the Labour Works then the said payment would not have been in round-off manner. Though, we find substance in the said observation, however, it is noted that the same party was paid Rs. 1,50,000/- which were appropriated against earlier two bills dated 2.9.2019 & 13.1.2020 , which have not been doubted by the applicant. In such circumstances, the entry dated 1.4.2023 recording an invoice no. 1.12.2020 can not be held to be fraudulent or sham on the ground the payment could not have been in round manner. Accordingly, we are of considered view, the said payment does not fall within ambit of section 66(1) of the IBC.

iv. Payment of Rs. 1,50,000/- to Shri. Prakash S Dani in FY 2019-20, but transferred to Legal & Professional charges, explained to have been paid for a matter handled by him in the High Court, relating to mutation entries. The ledger account of recipient party in an entry passed on 1.4.2023 to transfer the said amount to legal & professional charges records that "*Amount paid to above party for legal fees through Ganesh& co. Bill not received*". It is case of the applicant that "*the Tally Narrations mentioned are having a different name and as the bill was not received, a journal entry was added to deceive the Applicant and the creditors by showing NIL receivables*". It is noted that the applicant has not given any finding whether any case was prosecuted before High Court in relation to mutation entries and who handled the said matter for corporate debtor. The payment of legal counsel fee through attorneys is a normal practice in the legal fraternity. Hence, no adverse inference could be drawn in the absence of cogent evidence in this relation. Accordingly, we are of considered view, the said payment does not fall within ambit of section 66(1) of the IBC.

v. Payment of Rs. 5,90,600/- to Shri. Ramchandra Gupta in FY 2019-20, stated to be paid towards Registration and Stamp duty charges payable to PNB Housing Finance. The ledger account of recipient party in an entry passed on 1.4.2023 to transfer the said amount to Stamp Duty records that "*Amount paid for PNB Housing Finance for -Ragistration Fees & stamp duly paid*". It is noted that the applicant has not given any finding whether any loan was obtained from PNB Housing Finance by the corporate debtor, and the documents requiring stamping thereof were executed? It is case of the applicant that this transaction is also a Sham & Bogus transaction for which book entries have been made only to misguide the Stakeholders on the ground no invoice is available, however, the payment for stamp duty and registration fees could be evidenced from the executed documents in relation to credit facility if any obtained from PNB Housing Finance. Hence, no adverse inference could be drawn in the absence of cogent evidence in this relation. Accordingly, we are of considered view, the said payment does not fall within ambit of section 66(1) of the IBC. Nonetheless, the Liquidator may verify the same from the books of corporate debtor for earlier years whether there was any credit facility obtained from PNB Housing Finance and the documents were executed by the corporate debtor in relation thereto requiring payment of said stamp duty from the earlier financial statements. Needless to say, the respondents shall co-operate to the liquidator in such identification. In case, the narration stated in the books is found false, the liquidator shall be at liberty to approach this tribunal.

vi. Payment of Rs. 4,00,000/- to M/s. Smart Designs prior to FY 2019-20, explained to have been paid for Design Services and execution of Interiors for Unit 505, however, no invoice is provided and squared off by debiting the said amount to “Office Expenses. The ledger account of recipient party in an entry passed on 1.4.2023 to transfer the said amount to Office Expenses records that “*Amount paid to Smart designs for office repairing/ Painting Amount paid but party has not given Bill*”. It is case of the applicant that the said amount was paid for Design Services and execution of Interiors for Unit 505. However, since in similar fashion, there was no Invoice / Bill / Receipt for the said transaction the same was shown was advanced. It is noted that the said amount was paid prior to financial year 2019 as is evident from the ledger account which shows an opening balance as on 1.4.2019. There is no finding that the said explanation was false and the corporate debtor had never contemplated such work. Hence, no adverse inference could be drawn in the absence of cogent evidence in this relation. Accordingly, we are of considered view, the said payment does not fall within ambit of section 66(1) of the IBC.

19. The applicant has also sought contribution for diversion of Rs. 4,75,000/- being amounts collected from the purchasers of offices in the Business Point project, Chembur as "Share Money and Entrance Money" for the formation of a Society of flat buyers, which the corporate debtor was to form in terms of Rule 9 of The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates Of Interest And Disclosures On Website) Rules, 2017, as no society was formed, and the money remained with the corporate debtor. It is case of the applicant that the Respondents, being director of the corporate debtor, had a duty to rightly appropriate the afore-mentioned monies, however, the Respondents have deliberately not done so and thereby diverted the said amounts for their personal gains. The applicant has not placed on record as to how and in what manner the amount so collected accrued to the personal gain of the respondents, hence, such conclusion is hollow. Nonetheless, the money so collected is not available with the corporate debtor now. Even so, no adverse inference can be drawn in the context of section 66(1) of IBC in this relation requiring a contribution from the respondents, while the money so collected remained with the corporate debtor and was utilized for its business purposes. Accordingly, we are of considered view, the said payment does not fall within ambit of section 66(1) of the IBC. Nonetheless, the corporate debtor, having collected the money from the buyers for form corpus for such society, held such money in trust and the respondents ought to be vigilant to keep such money in separate account, which didn't belong to the corporate debtor. In our considered view, the money so collected for

onward remission to the society of buyer to be formed is in trust with the corporate debtor, and has to be treated accordingly in the liquidation process of the corporate debtor. Accordingly, the liquidator shall identify such amounts and treat it accordingly in the liquidation process.

20. The applicant has also sought contribution for Payment of Rs. 4,65,000/- to M/s BDO India LLP for carrying out forensic audit of a Limited Liability Partnership Firm namely M/s. Arihant Realtors LLP owned by Respondent No. 2 (wife of respondent no. 1) and daughter of Respondent No. 1. It is case of the applicant that the Corporate Debtor's funds have been used for the benefit of a related party entity without any benefit to the Corporate Debtor. The respondents have not given any cogent reason for spending corporate debtor's money for the benefit of Arihant Realtors LLP, which is owned by Respondent No. 2 and his daughter. Further, the respondents shall also be liable to contribute such further sum, as is determined payable to BDO in the liquidation process against their claim, if any admitted. In view of these facts, the amount paid to BDO for service rendered to Arihant Realtors LLP is required to be contributed to the assets of the corporate debtor. Hence, we direct the respondents to pay a sum of Rs. 4,65,000/- to the corporate debtor within 30 days.

21. The applicant has also sought contribution for Excess payment of Rs. 15,897/- and Rs. 15,382/-, totalling to Rs. 31,279/- to Shri. Mohit Ved Prakash Gupta and Smt. Suman Gupta respectively while repaying their loan taken in 2017 by the corporate debtor. These excess payments are shown as recoverable prior to April, 2019 as is evidenced from the ledger account placed on record, and are not written off. Merely because certain amounts are recoverable from parties can not lead to an inference that such receivable partake character of fraudulent transaction. Even so, no adverse inference can be drawn in the context of section 66(1) of IBC in this relation requiring a contribution from the respondents. However, the applicant shall be at liberty to recover those amounts from them.

22. The applicant has also sought contribution for Non-recovery of security deposit amounting to Rs. 2,00,000/- given by the corporate debtor to the landlords owning unit 501 & 502 while vacating the same in FY 2018-19. It is stated that the Corporate Debtor had vacated the said premises sometime in 2018-19. However, while vacating the premise or even after that the Corporate Debtor had not asked the Lessor to refund the Security Deposit lying with it. The said security deposit is outstanding as per books of accounts of the corporate debtor. The respondents have stated that the rent was outstanding, and the same was adjusted against the payable rent in accordance with the standard commercial practice to adjust security deposits against outstanding dues. However, it is pertinent to note that the said security deposit is still not adjusted in the books of corporate debtor, though the respondents have stated that the adjustment was made in the ordinary course of business and was duly recorded in the books of accounts. The said explanation is contrary to the facts. However, since the security deposit is claimed to be recoverable from the owners of Unit No. 501 & 502, which does not support the case of the applicant also that the said amounts were misappropriated in an unlawful way, in order to deprive the creditors of their money, by the Respondents. It is not clear from the pleadings of both the parties whether this amount stands adjusted or paid to a person other than corporate debtor, though the books of corporate debtor shows the said amount still recoverable as security deposit. Considering the facts of the case, we consider it appropriate to direct the liquidator to approach owners of unit no. 501 & 502 to recover the outstanding security deposit amounts from them, who shall either refund the same to the corporate debtor or provide proof of its payment or adjustment towards outstanding rent, if any, within 15 days of communication of this order by the liquidator. In case, the said security deposit is claimed to be paid back to the respondents or any other person other than corporate debtor, the same shall be recoverable from respondents herein as contribution in terms of section 66(1) of IBC. Needless to say, the respondents shall extend necessary

co-operation to the liquidator in this relation, failing which an adverse inference shall stand drawn making them liable to contribute to the assets of corporate debtor presuming that the said amount of security deposits has already been refunded back by the owners to them or to persons nominated by respondents.

23. The applicant has also sought contribution for loss of revenue arising from lesser construction (100 sq. ft.) than the sanctioned plan (108.72 sq. ft.) in relation to Shop no. 7 in Business point, thus causing loss of Rs. 2,22,852/- @ Rs. 25,567/- for per Sq. Ft. as per ready reckoner rate of the said Sale. The corporate debtor sold one shop no. 7 at Business Point to one Shri. Kishore Shemlani admeasuring 100 sq. ft. vide an Agreement to Sale registered with Sub —Registrar Office, Kurla — 5, Mumbai, Maharashtra at serial number 12217 / 2016 on 8 December, 2016. It is case of the applicant that the sanctioned plan for the said unit shows built up area as 10.10 Sq. Mtr. i.e. 108.72 Sq. Ft. Accordingly, the Corporate Debtor ought to have constructed a Unit with 108.72 Sq.Ft. Though, we can understand the concern of the applicant that the Corporate Debtor lost the revenue for remaining 8.72Sq.Ft. equivalent to 2,22,852/- @ Rs. 25,567/- for per Sq. Ft. as per ready reckoner rate of the said Sale on account of alleged negligence on part of the respondents, but such negligence can not take color of fraudulent practice that too with a malicious or deceitful intent. In our considered view, the said transaction does not fall within ambit of section 66(1) of the IBC, and no adverse inference can be drawn in the context of section 66(1) of IBC in this relation requiring a contribution from the respondents.

24. The applicant has also sought contribution for short realization from the buyer of Unit No. 702, namely Anshu Chhabariya & Asha Chhabariya, amounting to Rs. 8,13,500/- as per sale deed, and buyer of unit no. 705, namely Nikesh M Chhaabria, amounting to Rs. 91,000/-. It is case of the applicant that the last two tranches of payment receivable from Anshu Chhabariya & Asha Chhabariya, which have been claimed to be paid through two Cheques i.e. one Cheque Number 142756 for an amount of Rs. 2,76,800/- by Anshu Chhabariya

and another Cheque Number 350581 for an amount of Rs. 5,36,700/- by Asha Chhabariya, has not been Credited to the Corporate Debtor's Account. Further, the Corporate Debtor has sold Unit No. 705 to one Nikesh M Chhaabria for an amount of T 1,59,00,000/- and in this regard a Sale Deed is registered with the Sub —Registrar, Kurla — 3, Mumbai, Maharashtra with Reg. No. 7389 / 2024, whereby the Last Tranche of payment has been acclaimed to be made through a Cheque being number 462889 for an amount of Rs. 91,000/-, however, the same is not found realised in the bank account of corporate debtor. The Respondents have submitted that the cheques were drawn around the time of registration, however, since there was some leakage in the units, it was agreed between the parties that the cheques would be deposited after the leakage work would be completed. Eventually, before the Corporate Debtor could complete the works, the unit holders themselves got the leakage works completed and thereafter refused to renew the cheques citing costs for the works done and lacuna in services, and the Applicant was also provided with the last known office address of Mr. Nikesh Chhabria. It is noted that both the sale deeds record discharge of sale consideration after taking into consideration aforesaid cheques, accordingly, the said sale deed, in the absence of clearance of cheques, can be challenged by the liquidator before the registration authorities. It is noted that the applicant appears to have not approached either of buyer, and has proceed to allege diversion of the said monies by the respondents for their personal gains on surmises and conjectures. In our considered view, the applicant ought to have inquired the buyers to find out correct facts. In the absence of complete facts, no adverse inference can be drawn to hold that the said transaction fall within ambit of section 66(1) of the IBC requiring a contribution from the respondents. Nonetheless, we consider it appropriate to direct the liquidator to approach these buyers requiring them to pay the amounts short paid by them and inform them that in case of their failure he may proceed with the cancellation of executed sale deed for want of full consideration having been discharged. In case, it is ascertained that the buyer's have discharged the consideration by payment to a person other than the corporate debtor, the respondents shall be liable to contribute the amount so paid to third person in terms of section 66(1) of IBC. The liquidator shall recover the same from the respondents within 30 days from the date of his communication to the respondents in this relation. Needless to say, the respondents shall co-operate with the liquidator in this relation.

25. In terms of above, the IA 3475 of 2025 is partly allowed and disposed of.

-Sd/-	**-Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)