

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1043 of 2024 & I.A. No. 3794 of 2024**

**(Arising out of the Order dated 02.04.2024 passed by the National Company Law Tribunal, Mumbai Bench -I in I.A. 1626 of 2023 in C.P. (I.B.) No. 1632/MB/2019)**

**IN THE MATTER OF:**

**1. Vistra ITCL (India) Limited**

Through Sandeep Khose (Authorized Person)  
Regd. Office: IL & FS Financial Centre Plot No C-22, G Block, Bandra, Kurla Complex, Mumbai, Maharashtra- 40005  
Email: [dipti.jain@vistra.com](mailto:dipti.jain@vistra.com)

**...Appellant No. 1**

**2. Pratiti Trading Private Limited**

Through Mr. Shreyans J. Shah (Authorized Person)  
Regd. Office: Aidan Building, 1st Dhobi Talaolane, Mumbai, Maharashtra-400002.  
Email: [info@mjshahgroup.com](mailto:info@mjshahgroup.com)

**...Appellant No. 2**

**3. Gajendra Investment Limited**

Through Mr. Shreyans J. Shah (Authorized Person)  
Regd. Office: A-1/2, Floor-5, Plot-2, A wing, Aidun Building, John Crasto Lane, Dhobi Talao 1st Lane, Marine Lines, Mumbai, Maharashtra- 400002  
Email: [info@mjshahgroup.com](mailto:info@mjshahgroup.com)

**...Appellant No. 3**

**Versus**

**1. Satra Properties (India) Ltd.**

Through Ms. Vaishali Arun Patrikar (Resolution Professional)  
Office at: A2 Shantidoot Society, Parvati Darshan, Opp. Muktangan English School, Pune, Maharashtra- 411009.  
Email : [vapatrikar@gmail.com](mailto:vapatrikar@gmail.com)

**...Respondent No. 1**

**2. Praful Satra**

R/o 701, Rehana Heights, 6, Chapel Lane, Near  
Bhagvan Cutpies Centre, Santacruz (W)- 400054  
Email: [prafulsatra@gmail.com](mailto:prafulsatra@gmail.com)

...Respondent No. 2

**3. Vishal R. Karia**

A-703. Prathamesh Residency, Dadabhai Road,  
Near Bhavans College,  
Andheri (W), Mumbai – 400058.  
Email : [vishalkaria@hotmail.com](mailto:vishalkaria@hotmail.com)

...Respondent No. 3

**4. Kamlesh B. Limbachiya**

Flat No. 13, 3'd Floor, Om Sainath CHS Ltd,  
Babhai Ram Mandir Road, Borivali (W),  
Mumbai - 400092  
Email Id: [kblimbachiya@gmail.com](mailto:kblimbachiya@gmail.com)

...Respondent No. 4

**5. Rubina K. Kalyani**

C/508. Riddhi Apartments, Kalyan Complex, Yari  
Road, Versova, Mumbai –400061  
Email: [rubinakalyani@gmail.com](mailto:rubinakalyani@gmail.com)

...Respondent No. 5

**6. Sahara. A. Murad**

Room No. 10, Evershine Apartment, Khoja Lane,  
Near Ram Mandir, Versova, Mumbai - 400061  
Email Id: [ajani.sara05@gmail.com](mailto:ajani.sara05@gmail.com)

...Respondent No. 6

**7. Dev Land & Housing Pvt. Ltd.**

10th Floor, Dev Plaza, Opp. Andheri Fire Station,  
S.V. Road, Andheri (West), Mumbai- 400058.  
Email: [devconstruction@gmail.com](mailto:devconstruction@gmail.com)

...Respondent No. 7

**8. C. Bhansali Developers Pvt. Ltd.**

5 & ^, Shakti Arcade, Plot No. 5, Sector- 19D,  
Vashi, Navi Mumbai, Thane- 400703  
Email : [Abhijeet.bhansali@gmail.com](mailto:Abhijeet.bhansali@gmail.com)

...Respondent No. 8

**Present**

**For Appellants:** Mr. Vaibhav Gaggar, Sr. Advocate along with Mr. Devashish Chauhan, Ms. Madhura MN & Ms. Jasleen Singh Sandha, Advocates.

**For Respondents:** Ms. Neha Agarwal, Mr. Pulkit Sharma & Ms. Vanshika Mittal, for R-1.

Mr. Malak Bhatt, Ms. Neeha Nagpal & Mr. Shreyansh Chopra, for R-2 to 6.

Mr. Aayush Agarwala & Mr. Prakash Jha, for R-7.

Mr. Zeeshan Hashmi, for R-8.

**J U D G E M E N T**

**(03 .07.2025)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. This appeal Company Appeal (AT) (Ins) No. 1043 of 2024 has been filed by the Appellants i.e. Financial Creditors of the Corporate Debtor, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”), challenging the Impugned Order dated 02.04.2024 passed by the National Company Law Tribunal, Mumbai Bench-I (“**Adjudicating Authority**”) in I.A. 1626 of 2023 filed in C.P. (IB) No. 1632/MB/2019, wherein the Adjudicating Authority has disallowed the application of the Resolution Professional under Section 66 of the Code for refund of amount in respect of transactions entered into between the suspended management and Respondent No. 7 & 8 aggregating to Rs. 32,59,00,000/- alongwith interest.

2. Satra Properties (India) Ltd., which is the Corporate Debtor, is the Respondent No. 1 herein.

3. The Suspended Management (Respondents No. 2–6), M/s Dev Land & Housing Pvt. Ltd. (Respondent No. 7) and M/s C. Bhansali Developers Pvt. Ltd. (Respondent No. 8) are the other Respondents herein.

4. The Appellants submitted that the Corporate Insolvency Resolution Process (CIRP) was initiated against Respondent No. 1 (Corporate Debtor) on 03.08.2020 vide order in CP(IB) No. 1632/MB/2019. The Appellants contended that the Forensic Audit Report dated 15.11.2021 by M/s BDO India LLP commissioned by the erstwhile Resolution Professional, conclusively identified suspicious and fraudulent transactions involving the suspended management and third parties, including Respondents No. 7 and 8.

5. The Appellants submitted that the Resolution Professional based on his independent analysis and the Forensic Audit Report preferred an application being IA No. 1626/2023 in CP(IB) No. 1632/MB/2019 under section 66 of the Code seeking refund for compensation of loss suffered to the creditors of the Corporate Debtor in respect of four transactions. The Appellants contended that the Adjudicating Authority erred in disallowing the application in respect of transactions with Respondents No. 7 and 8, despite compelling evidence of fraud.

6. The Appellants further submitted that the lack of credible documentation or justification reinforces the fraudulent nature of the transactions.

7. The Appellants submitted that an advance of Rs. 29.35 Crore was paid by the Corporate Debtor to Respondent No. 7 between 10.08.2015 and 31.03.2016, purportedly for a property purchase, but was entirely written off on 31.03.2020. The Appellants contended that no evidence exists of any property being acquired, indicating that the advance was siphoned off in connivance with the suspended management to defraud creditors.

8. The Appellants submitted that the alleged Memorandum of Understanding ('MoU') dated 18.08.2015 is unenforceable and suspect, as it is printed on a Rs. 100 stamp paper, neither registered nor notarized, despite involving a property transaction valued at Rs. 75 Crore. The Appellants contended that the MoU's forfeiture clause (Clause 9), allowing Respondent No. 7 to retain Rs. 29.35 Crore, is arbitrary and one-sided, designed to facilitate fraudulent transfer of funds. The Appellants further submitted that under Section 54 of the Transfer of Property Act, 1882, agreements for the sale of immovable property worth Rs. 100 or more must be registered, rendering the MoU legally deficient.

9. The Appellants submitted that similarly the Deed of Cancellation dated 20.03.2020, also on a Rs. 100 stamp paper and unregistered, is a sham document executed to justify the forfeiture of Rs. 29.35 Crore. The Appellant submitted that the suspended directors made no efforts to recover the advance, indicating complicity with Respondent No. 7 to defraud the Corporate Debtor's creditors. The Appellants submitted that the transaction's fraudulent nature is evident from the suspicious timing of the write-off and cancellation, executed sometime before

the CIRP admission on 03.08.2020, when the suspended directors knew likely insolvency.

**10.** The Appellants submitted that the Adjudicating Authority's reliance on the MoU and Deed of Cancellation to validate the transaction was erroneous, as these documents lack legal sanctity. The Appellants contended that the Adjudicating Authority's order dated 30.01.2024, directing Respondent No. 7 to file account statements, and its observation that orders could be passed under Section 66(1), support the Appellant's case that the transaction was fraudulent.

**11.** The Appellants submitted that a loan of Rs. 3.24 Crore advanced to Respondent No. 8, a related party, was partly written off in January 2018. The Appellants contended that the absence of documentation explaining the transaction's nature indicates it was undertaken to benefit Respondent No. 8 at the expense of the Corporate Debtor's creditors.

**12.** The Appellants submitted that the Resolution Professional has discharged the burden of proof under Section 66 of the Code by presenting the Forensic Audit Report, ledger accounts, and unregistered agreements as evidence of fraudulent conduct. The Appellants contended that the Respondents' failure to provide credible explanations shifts the burden to the Respondent to prove the transactions' legitimacy, as held in *Jaypee Infratech Ltd. v. Axis Bank Ltd.* [(2020) 8 SCC 401].

**13.** The Appellants submitted that the transactions' suspicious timing, lack of documentation, unregistered agreements, and related-party involvement establish

fraudulent intent under Section 66(1) of the Code. The Appellants contended that the Adjudicating Authority's failure to recognize this constitutes a misapplication of law. The Appellants submitted that the transaction with Respondent No. 8, a related party, warrants heightened scrutiny, as related-party transactions are prone to abuse, as observed in *Swiss Ribbons Pvt. Ltd. v. Union of India* [(2019) 4 SCC 17]. The Appellant contends that the write-off without justification confirms fraudulent purpose.

**14.** Concluding the arguments, the Appellants requested this Appellate Tribunal to set aside the Impugned Order and allow its appeal.

**15.** Per contra, the Respondent Nos. 2 to 6 (**"Respondents"**) (Suspended Director of the Corporate Debtor) denied all averments made by the Appellants as misleading and baseless.

**16.** The Respondent Nos. 2 to 6 submitted that the appeal is not maintainable due to the Appellants' lack of locus standi and authority. The Respondent Nos. 2 to 6 contend that the Board Resolutions dated 23.04.2024 and 05.02.2024 do not pertain to the present proceedings, rendering the Appellants unauthorized to file the appeal. The Respondents further submitted that the Appellants, representing only approximately 30% of the Committee of Creditors ('CoC'), have not produced any document or authority letter demonstrating that they represent the entire CoC. The Respondent Nos. 2 to 6 contended that, in the absence of such authority, the appeal is bad in law and liable to be dismissed.

**17.** The Respondent Nos. 2 to 6 submitted that the Interlocutory Application No. 1626 of 2023, filed two years after the Forensic Audit Report dated 15.11.2021, does not meet the requirements of Section 66 of the Code. The Respondents contended that the application lacks the three mandatory milestones under Section 66: a clear ‘opinion,’ a suitable ‘determination,’ and a concrete ‘finding’ of fraudulent intent. The Respondent Nos. 2 to 6 further submitted that the Resolution Professional failed to comply with Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and did not establish mens rea against the Respondents, rendering the application defective.

**18.** The Respondent Nos. 2 to 6 submitted that the transactions with Respondent No. 7 and Respondent No. 8 predate the filing of the Section 7 application and fall beyond the two-year look-back period from the CIRP admission date i.e., 03.08.2020. The Respondents contended that these transactions were conducted in the ordinary course of business and cannot be assailed as fraudulent under Section 66 of the Code.

**19.** The Respondent Nos. 2 to 6 submitted that the Corporate Debtor, engaged in construction and real estate development, routinely advances monies to third parties for property purchases through MoUs, as is standard industry practice. The Respondent Nos. 2 to 6 further submitted that such preliminary agreements, executed on stamp paper, are followed by registered documents only upon completion of due diligence and payment. The Respondents submitted that



transactions undertaken in the ordinary course of business, as per industry practice, cannot be deemed fraudulent absent clear evidence of intent to defraud.

**20.** The Respondent Nos. 2 to 6 submitted that the Forensic Audit Report dated 15.11.2021 is inconclusive and unreliable, as it explicitly states that it should not be relied upon by third parties and does not constitute an audit per Indian auditing standards. The Respondent Nos. 2 to 6 further submitted that the report's speculative assertions of "potential suspicion" do not constitute proof of fraud under Section 66 of the Code.

**21.** The Respondent Nos. 2 to 6 submitted that the Adjudicating Authority's order dated 02.04.2024 is well-reasoned and in consonance with the law. The Respondent Nos. 2 to 6 contended that the Adjudicating Authority correctly held that the transactions with Respondents No. 7 and 8 do not fall within the purview of Section 66 of the Code as the Resolution Professional failed to establish fraudulent intent or wrongful trading.

**22.** The Respondent Nos. 2 to 6 submitted that the Corporate Debtor entered into an MoU dated 18.08.2015 with Respondent No. 7 to purchase 2/3rd rights in land bearing CTS No. 93 and 93/1 to 3/23 at Village Hariali, Taluka Kurla, Mumbai, for Rs. 75 Crore. The Respondent Nos. 2 to 6 contended that the Corporate Debtor paid Rs. 29.35 Crore as earnest money, as recorded in the MoU, which was a preliminary agreement executed on stamp paper, consistent with real estate industry practice.

**23.** The Respondent Nos. 2 to 6 submit that the MoU's Clause 9, which allowed Respondent No. 7 to forfeit the earnest money if the Corporate Debtor failed to pay the full consideration by 31.08.2019, was mutually agreed upon. The Respondent Nos. 2 to 6 contended that the MoU's unregistered status does not render it invalid, as registration is not mandatory for preliminary agreements under the Transfer of Property Act, 1882.

**24.** The Respondent Nos. 2 to 6 submitted that, due to the Corporate Debtor's inability to pay the remaining consideration owing to litigation and other extraneous factors, the parties executed a Deed of Cancellation dated 20.03.2020, forfeiting the Rs.29.35 Crore earnest money per Clauses 4 and 5 of the MoU. The Respondent Nos. 2 to 6 contended that the deed's unregistered status does not invalidate it, as registration is not required for cancellation agreements. The Respondent Nos. 2 to 6 further submitted that the write-off of Rs. 29.35 Crore in March 2020 was a legitimate accounting adjustment, and Respondent No. 7 refunded Rs. 4.90 Crore to the Corporate Debtor as compensation, as confirmed by Respondent No. 2 via email to the Resolution Professional.

**25.** The Respondent Nos. 2 to 6 submitted that the transaction was conducted in good faith and in the ordinary course of business, with no intent to defraud creditors. The Respondent Nos. 2 to 6 contended that the Appellants' allegation of connivance is speculative and unsupported by evidence, such as communications or agreements indicating fraudulent intent. The Respondent Nos. 2 to 6 further submitted that the Adjudicating Authority rightly upheld the

transaction's legitimacy, noting its alignment with industry practice and the cancellation deed's terms.

**26.** The Respondents submitted that the transaction with Respondent No. 8, initiated in 2007, involved the Corporate Debtor's contribution to a Special Purpose Vehicle (SPV) formed with Respondent No. 8 and along with 11 other companies to purchase land at Rahatwade, Khopoli, for Rs. 40 Crore through an auction by the Debts Recovery Tribunal in 2007. The Respondents contend that the Corporate Debtor's 20% share in the SPV was recorded as an advance. The Respondent Nos. 2 to 6 submitted that the write-off of Rs. 3.24 Crore in January 2018 was a correction of an advance erroneously recorded as a loan, as no interest was applicable on the Corporate Debtor's contribution to the land purchase. The Respondent Nos. 2 to 6 contended that this accounting correction, made in the ordinary course of business, predates any insolvency proceedings by over two years, negating any inference of fraudulent intent.

**27.** The Respondent Nos. 2 to 6 submitted that the transaction was an investment, and the Corporate Debtor's rights in the SPV's land are preserved, with Rs. 9.38 Crore expected to be realized upon the land's development or sale. The Respondent Nos. 2 to 6 contended that the transaction does not result in a loss to the Corporate Debtor and does not fall under Section 66 of the Code, as it was not undertaken to defraud creditors. The Respondent Nos. 2 to 6 further submitted that Respondent No. 8's ongoing CIRP, currently stayed by this

Appellate Tribunal (03.11.2023), and the deposit of funds with the Tribunal by Respondent No. 8, ensure no loss accrues to the Corporate Debtor's creditors.

**28.** It is the case of Respondent Nos. 3,4 & 6 that in the present appeal as well as in the IA. No. 1626 of 2023 it has been stated that the present Respondents were a part of the purported fraudulent transactions over the year. However, it is pertinent to note that present Respondents were only holding office in the capacity of a non-executive independent director in the Corporate Debtor and were never engaged in managing the day-to-day affairs of the Corporate Debtor and thus, could not be held responsible for any purported transactions.

**29.** The Respondent Nos. 2 to 6 submitted that the Adjudicating Authority correctly held that the transactions do not fall within Section 66 of the Code, as the Resolution Professional failed to establish fraudulent intent or wrongful trading. The Respondents contended that the Appellants' reliance on the timing of the write-offs is misplaced, as no evidence links these decisions to the imminent CIRP.

**30.** Concluding their pleadings, the Respondents 2 to 6 requested this Appellate Tribunal to dismiss the appeal with costs.

**31.** The Respondent No. 7 i.e. Dev Land & Housing Private Limited, submitted that the appeal fails to meet the threshold requirements for initiating proceedings under Section 66 of the IBC, as laid down by the Hon'ble Supreme Court of India and other courts rendering it liable to be dismissed in limine with exemplary costs.

**32.** The Respondent No. 7 submitted that, as a third party to the Corporate Debtor, it cannot be subjected to proceedings under Section 66 of the Code. The Respondent No. 7 contended that the Hon'ble Supreme Court of India in *Gluckrich Capital Pvt. Ltd. v. State of West Bengal* [(2023 SCC OnLine SC 1187)] explicitly held that remedies against third parties are not available under Section 66 of the Code, and civil remedies, if any, must be pursued independently.

**33.** The Respondent No. 7 submitted that the Interlocutory Application (IA) No. 1626 of 2023 by the Resolution Professional was based solely on an incomplete and inconclusive Forensic Audit Report dated 15.11.2021, which cannot be relied upon. The Respondent No. 7 contended that the forensic report lacks critical documents and does not conclusively categorize the transaction as fraudulent, rendering it an unreliable basis for invoking Section 66 of the Code.

**34.** The Respondent No. 7 submitted that it neither knew nor could have known of any prospect of the Corporate Debtor entering CIRP, as required under Section 66(2)(a). The Respondent No. 7 contended that, as an independent entity with no role in the Corporate Debtor's affairs or management, it was not in a position to anticipate insolvency proceedings. The Respondent No. 7 submitted that it is not a related party to the Corporate Debtor as it is not involved in its business or management.

**35.** The Respondent No. 7 submitted that the Adjudicating Authority's order dated 02.04.2024, dismissing the said IA 1626 of 2023 in respect of Respondent No. 7, is legally sound and based on a proper evaluation of the evidence.

Concluding their pleadings, the Respondent No. 7 requested this Appellate Tribunal to dismiss the appeal with costs.

**36.** The Respondent No. 8 i.e. C Bhansali Developers Private Limited, submitted that the Appellants admit, at paragraph 7.8(II) of the appeal, that *“there are no documents available in the records of the Corporate Debtor to understand the nature of the transaction as entered into between the Corporate Debtor and C. Bhansali Developers Private Limited.”*, which demonstrates that the appeal is based on surmises and conjectures, lacking any factual basis to substantiate claims of a fraudulent transaction under Section 66 of the Code.

**37.** The Respondent No. 8 submitted that the transaction with the Corporate Debtor involved an inter-corporate deposit of Rs. 8.98 Crores for the purchase of property. The Respondent No. 8 further submitted that the transaction was an investment to build an asset, with no accrual of interest or repayment terms, distinguishing it from a loan transaction.

**38.** The Respondent No. 8 submitted that the write-off of Rs. 3.24 Crores on 01.01.2018 was a correction of an erroneous interest provision, as noted in the Corporate Debtor’s ledger with the remark *“being excess provision for interest now waived off.”* The Respondent No. 8 contended that this accounting adjustment, made much before the CIRP admission, was a legitimate commercial decision and not indicative of fraudulent intent.

**39.** The Respondent No. 8 submitted that the transaction’s nature was an inter-corporate deposit and not a fraudulent transaction under Section 66 of the Code,

as the board resolution of Respondent No. 8 demonstrates that Respondent No. 2 (a suspended director of the Corporate Debtor) was also a director of Respondent No. 8, actively managing the property's transactions, as reflected in the Corporate Debtor's 2018-19 financial statements listing Respondent No. 8 as an associate. Further, the Respondent No. 2, holding a 20% stake in Respondent No. 8, consciously decided to retain the valuable asset (the property) rather than seek repayment of the deposit, a decision that preserves the Corporate Debtor's investment.

**40.** Concluding pleadings, the Respondent No. 8 requested this Appellate Tribunal to dismiss the appeal with cost.

## **Findings**

**41.** Heard the Counsel for the parties and perused the record available with us. Shorn of unnecessary details, we note that the Corporate Debtor was initiated into CIRP vide order dated 03.08.2020. The present Appeal has been preferred by the Appellants, constituting 32.19% of voting share in the CoC, aggrieved by the impugned order dated 02.04.2024 passed by the Adjudicating in IA No. 1626/2023 in CP(IB) No. 1632/MB/2019. We note from the pleadings of the Appellant that the Adjudicating Authority failed to appreciate the fraudulent nature of the transactions entered into by the Corporate Debtor with Respondent Nos. 7 and 8 and erred in only partly allowing the Application filed by the Resolution Professional under Section 66 of the Code.

**42.** We note that during the CIRP, the Resolution Professional discovered several suspicious transactions involving diversion of funds from the Corporate Debtor to third-party entities without any alleged legitimate business purpose or commercial justification and therefore, appointed BDO India LLP as forensic auditor and the Forensic Audit Report dated 15.11.2021 identified four potential transactions under Section 66 of the Code. The Adjudicating Authority vide the impugned order partly allowed the I.A 1626/2023 and dismissed the I.A. qua the two transactions in relation to Respondent Nos. 7 and 8 transactions.

**43.** We have taken note of relevant portion of the forensic auditor report dated 15.11.2021 which has been filed by the Appellant as Annexure/2 of the appeal.

**44.** We take into consideration that the Adjudicating Authority examined the prayers of Resolution Professional and all four transactions purported to be fraudulent based on forensic audit report of BDO India LLP dated 15.11.2024 and Resolution Professional's opinion.

**45.** At this stage, we will take into consideration the relevant portion of Impugned Order which contains the finding of these four transactions in para 7.

**46.** We note that the Resolution Professional filed I.A. No. 1626 of 2023 before the Adjudicating Authority under Section 66 of the Code for seeking direction against the concerned respondents for seeking direction to said the respondent to remit/ refund the amount in favour in Corporate Debtor along with interest @ 18% p.a.



47. At this stage, we note that the following prayer were made by the Resolution Professional in his IA No. 1626 of 2023 dated 12.04.2023.

*“In the premises and circumstances aforesaid, the Applicant most humbly prays for the following reliefs that are alternate to each other and without prejudice to each other:*

*a) Be pleased to allow the present Application;*

*b) Be pleased to pass an order u/s. 66 of the Code directing the Respondent Nos. 1, 5 to 9 to remit I refund the amount of INR 29.35 Crore along with interest @ 18% p.a. in the bank account of the Corporate Debtor to compensate the loss suffered by the Creditors of the Corporate Debtor with respect to Transaction No. 1;*

*c) Be pleased to pass an order u/s. 66 of the Code directing the Respondent Nos. 2, 5 to 9 to remit I refund the amount of INR 2.65 Crore along with interest @ 18% p.a. in the bank account of the Corporate Debtor to compensate the loss suffered by the Creditors of the Corporate Debtor with respect to Transaction No. 2;*

*d) Be pleased to pass an order u/s. 66 of the Code directing the Respondent Nos. 3, 5 to 9 to remit I refund the amount of INR 3.24 Crore along with interest @ 18% p.a. in the bank account of the Corporate Debtor to compensate the loss suffered by the Creditors of the Corporate Debtor with respect to Transaction No. 3;*

*e) Be pleased to pass an order u/s. 66 of the Code directing the Respondent Nos. 4, 5 to 9 to remit I refund the amount of INR 1.22 Crore along with interest @ 18 % p.a. in the bank account of the Corporate Debtor to compensate the loss*

*suffered by the Creditors of the Corporate Debtor with respect to Transaction No. 4.*

*f) Be pleased to pass an order to take necessary action against the Respondents under Section 66 of the Code;*

*g) Be pleased to grant any other relief this Hon'ble Tribunal may deem fit to pass.”*

*(Emphasis Supplied)*

**48.** It is worth noting that the Adjudicating Authority agreed to the prayers made by Resolution Professional as far as transaction No. 2, involving Rs. 2.65 Crores along with interest @ 18% p.a., and in respect of transaction No. 4 involving Rs. 1.22 Crores along with interest @ 18% p.a.

However, the Adjudicating Authority rejected the prayer of the Resolution Professional w.r.t to Transaction No. 1 involving Rs. 29.35 Crores along with interest @ 18% p.a. as well as transaction No. 3 involving Rs. 3.24 Crores along with 18% interest.

**49.** Thus, the present appeal is confined to the two alleged fraudulent transactions i.e., Transaction No. 1 and 3 and as such, we shall deal with these two transactions in the following discussions :-

**50.** Transaction No. I with M/s Dev Land & Housing Pvt. Ltd. (Respondent No. 7 herein)

- (i) It is noted that Rs. 29.35 Crores was given by the Corporate Debtor to M/s Dev Land & Housing Pvt. Ltd./ Respondent No. 7 from 10.08.2015

to 31.03.2016 against the intended purpose of buying the property as mentioned in the MoU dated 18.08.2015.

- (ii) We note that the entire amount was written off on 31.03.2020 in the books of the Corporate Debtor and no evidence of any property ever taken from Respondent No. 7 by the Corporate Debtor.
- (iii) It has been brought to our notice that the transaction between the Corporate Debtor and Respondent No. 7 has been based on an alleged forged and unregistered MoU dated 18.08.2015, which was printed on a Rs.100/- stamp paper and was neither registered nor notarized, which intended to acquire immovable property valued at Rs. 75 Crores without any registration. It has also been pleaded before us that the said MoU lacks any payment schedule, and the signature of Mr. Praful Satra, the suspended Director of the Corporate Debtor, is conspicuously absent, thereby rendering the document suspicious from the very inception and further the said MoU only mentions that the entire payment should be paid in entirety on or before 31.08.2019, which is four years from the date of alleged execution of the MoU dated 18.08.2015, which is not normal in commercial sense as payment schedule is invariably stipulated as fulcrum of any MoU Agreement.
- (iv) We observe that Clause 9 of the MoU seems to be one sided and entitles only the Respondent No. 7 to forfeit the entire amount paid by the Corporate Debtor without any possibility for dialogue or negotiation.

Prima-facie, such clause defies any commercial logic as to why the Suspended Director should agree to such one -sided arbitrary Clause without taking care of the interest of the Corporate Debtor.

- (v) We take into consideration that Rs. 29,35,00,000/- was paid by the Corporate Debtor to Respondent No. 7 as an advance between 10.08.2015 to 31.03.2016, however, there has been no follow up or communication from the Corporate Debtor seeking extension of time or renegotiation on payment arrangements, or reduction of the consideration by way of one-time settlement, in case Corporate Debtor was facing financial distress. This become more significant since almost 40% of the entire sale consideration has been paid as EMD, which also seems to be exorbitant and excessive, looking at the overall consideration value.
- (vi) We further note that the Deed of Cancellation, dated 20.03.2020, was executed without any opposition by the suspended Director. We note that there was no Board Resolution either authorizing the transaction or ratifying its cancellation, which again raises doubt about genuineness of transaction and efforts of Corporate Debtor to protect its own interest. It has been alleged by the Appellant that the said Deed of Cancellation appears to be manufactured, fabricated and backdated document, having allegedly been executed during the peak of the COVID-19 pandemic. The Appellant also highlighted that the stamp

paper on which the deed was signed was procured in 2019, whereas the document itself bears the date of 20.03.2020, and the deed remains unsigned by the Suspended Director, just like the MoU dated 18.08.2015 which suggests that both documents were created harmoniously devoid of authenticity. The logic of the Appellant finds merit in the given context, circumstances and final outcomes.

- (vii) We observe that the Deed of Cancellation dated 20.03.2020 merely mentions “extraneous reasons” for non-payment of the full consideration by the Corporate Debtor but the said “extraneous reasons” have not been elaborated in the Deed of Cancellation nor has mentioned the same in any correspondence with Respondent No. 7 which gives credence that such documents have been doctored as an afterthought with intent to defraud creditors. We also note that Rs. 29.35 Crores were forfeited in its entirety in terms of a forfeiture clause (Clause 9 of the MoU dated 18.08.2015), but no attempt was made by the suspended directors to negotiate upon the same and later the said amount was completely written off on 30.03.2020. We need to appreciate that the Section 7 petition had already been filed on 11.05.2019 and after the same amount was forfeited as agreed between the Respondents, however, the impugned order erroneously records that no CIRP was impending.

- (viii) We note that the parties are stated to be inter-se related by the common directorship of Mr. Vijay T. Thakkar in Dev Land Housing Pvt. Ltd. (the Respondent No. 7 herein) and Centrio Lifespaces Ltd. (formerly Satra Realty and Builders Ltd.), which should have alarmed the Adjudicating Authority before disallowing the request of the Resolution Professional on this account.
- (ix) The said forfeiture of the money by the Respondent No. 7 was done taking shelter of Clause 9 “forfeiture clause as contained in the MoU dated 18.08.2015. At this stage, we have also taken into consideration the entire MoU dated 18.08.2015 and its various clauses especially Clauses 4, 5 & 9. We have also seen and noted provision of Deed of Cancellation dated 20.03.2020.
- (x) We note that the Adjudicating Authority has treated this transaction as commercial transaction treating the fact that the money was advance, given by the Corporate Debtor for purchase of land and property which the Corporate Debtor could not complete for want of non payment of balance Operational Creditor payment to the Respondent No. 7. The Adjudicating Authority has also taken into account the factor that the MoU dated 18.08.2015 and deed of cancellation dated 20.03.2020 were duly signed and therefore, the Adjudicating Authority concluded that the transaction could be held to be falling within the scope of Section 66 of the Code. However, the Adjudicating Authority found that from

the date of cancelation, Rs. 4.90 Crores is stated to be have been refunded by Respondent no. 1 and was allowed to be set up against the earnest money of Rs. 29.35 Crores and therefore, the Adjudicating Authority has directed the Resolution Professional to find out whether the said sum of Rs. 4.94 Crores was received by the Corporate Debtor and if it was found to be received by the Corporate Debtor, then the Resolution Professional was directed to make recovery of said amount from the concerned Respondents.

- (xi) Thus, we note that the crux of the matter lies in the structure of MoU dated 18.08.2015 and deed of cancelation dated 20.03.2020, which have been fully examined. It has been brought out that the total consideration of the said property was Rs. 75 Crores against which the EMD of Rs. 29.35 Crores was paid by the Corporate Debtor which tantamount to almost 40% of the consideration value.
- (xii) We take into consideration that the entire amount was requested to be paid by the Corporate Debtor on or before 31.08.2019 and thereafter, both the parties were required to execute the deed of conveyance in respect of 66.66% undivided share, rights, title and interest of the Respondent No. 7 in the said property in favour of the Corporate Debtor. We also do not appreciate as to why the Corporate Debtor agreed to take only 66.66% shares of undivided shares and not acquire the entire 100% even when remaining 33.34% may be with someone

else as without 100% of the said shares, the said property could not have been put to use by the Appellant. This does not support the cause and pleadings of the concerned Respondents.

- (xiii) It is important to note that the MoU also stipulates that in case, the Corporate Debtor is not able to make the payment within stipulated time period, then Clause 9 will be applicable. The Clause 9 reads as under:-

*“Clause 9. Notwithstanding anything contained in this MOU, it is specifically agreed by and between the Parties hereto that if the Intending Purchaser fails to make payment of the entire Aggregate Consideration amount to the Intending Vendor on or before 31 51 August, 2019, then the Intending Vendor shall be solely entitled to terminate this MOU at its discretion; and thereupon the Intending Vendor shall be entitled to forfeit all amounts till then paid by the Intending Purchaser to the Intending Vendor pursuant to this MOU and thereupon neither Party shall have any claim against the other. In such an event of termination, the Intending Purchaser shall not take any steps or initiate any proceedings against the Intending Vendor and the Intending Purchaser shall not claim any rights, title or interest in to or upon the said Property or otherwise against the Intending Vendor, either pursuant to this MOU or otherwise howsoever in relation to the*



transactions hereby contemplated .”

*(Emphasis Supplied)*

- (xiv) From above, it seems that the Clause 9 gives an absolute right to the Respondent No. 7, to terminate the MoU on its discretion and to forfeit the entire amount paid by the Corporate Debtor by then. The Corporate Debtor was also bound by MoU not to take any action for initiating any proceedings against the Respondent No. 7 and further the Corporate Debtor was also disentitled to file any claim for any right, title or interest in the said property. We find that the said Clause 9 to be rather unusual which gives unrestrictive and unfettered rights only in favour of the Respondent No. 7. It needs to be appreciated that normally, when commercial transactions takes place, the rights and obligations of both the parties are clearly stipulated and evenly balanced and not made in favour of any single party at the cost of other party.
- (xv) We appreciate that it is commercial decision between the parties and rightfully, the said MoU may include the Clause regarding forfeiture, but normally such MoU also gives the right to the intending purchaser (as the Corporate Debtor in the present case) which give some leeway to the purchaser to negotiate. Such terms give some flexibility and this could have facilitated the Corporate Debtor to preserve its rights, even with higher interest rates or with pre-specified damages including

liquidation charges. The termination of agreement and consequent forfeiture is the last resort. We do not find such commercial elements here taken by the Corporate Debtor rather find tame agreement in favour of the Respondent No. 7.

- (xvi) In this present case, we find that no efforts were made for any negotiation, dialogue or any effort for rearranging the timelines or reducing the said forfeiture amount or taking efforts to take over the property by the Corporate Debtor. The reasons and circumstances of the said default on the part of the Corporate Debtor have also not been explained in details especially using terms “extraneous reasons”, which is not found to be convincing.
- (xvii) This Appellate Tribunal is aware that every petition filed under section 7 of the Code and Section 9 or even under Section 94 and 95 and also under Section 66 are strongly contested on substantial as well as technical grounds. We observe that in contrast, the present case looks like cake walk or complete surrender or giving on platter the forfeiture of Rs. 29.35 Crores by the Appellants in favour of the Respondent No. 7, which raises doubts about intentions of the concerned Respondents at the cost of the Corporate Debtor and its creditors, thus falling in scope of Section 66 of the Code.

(xviii) We also find that the deed of cancelation also do not gives any rights to the Corporate Debtor to protect itself by way of negotiation nor by way of any legal proceedings.

(xix) Thus, on overall basis, we hold the transaction No. 1 falls squarely under Section 66 of the Code and be treated as fraudulent.

(xx) We have also considered the contentions of the concerned Respondents that Appellants do not constitute 100% of CoC. We hold that this is not a requirement as stipulated in the Code or regulations, as such we reject the pleadings of the Respondent on this ground.

**51. Transaction No. 3 w.r.t. C. Bhansali Developers Pvt. Ltd.(Respondent No. 8 herein)**

- (i) Now, we will also examine the Transaction No. 3 with C. Bhansali Developers Pvt. Ltd., where the impugned order concludes that the transaction with Respondent No. 8 was “in the nature of an investment”, whereas the materials on record, especially the Ledger Account of M/s C. Bhansali Developers Pvt. Ltd. in the books of the Corporate Debtor describe the payment as “Interest Recd on Loan.” This implies that the transaction was more in nature of loan extended by the Corporate Debtor, rather than in the nature of investment as found by the Adjudicating Authority in its Impugned Order. It is also noted that there is a common directorship of Mr. Praful Satra (Respondent No. 2) in C. Bhansali Developers Pvt. Ltd., confirming that the decision to transfer

funds might have been hit by conflict of interest and breach of fiduciary duty.

- (ii) It has also been brought out that C. Bhansali Developers Pvt. Ltd. is the related party of the Corporate Debtor, which is not disputed.
- (iii) The logic of the Adjudicating Authority while disallowing the request of the Resolution Professional is that interest charge has been written off as “excess provision of interest” and it was in nature of investment. No more details are available to substantiate the facts or law for coming to this conclusion by the Adjudicating Authority in the Impugned Order. The Adjudicating Authority has merely recorded that we do not find this transaction falling within the ambit of Section 66 of the Code. During pleadings, it was brought out that no documents are available in the records of the Corporate Debtor to understand the true nature of the transaction as entered between the Corporate Debtor and C. Bhansali Developers Pvt. Ltd. This also support the claims of the Appellants and do not support finding of the Adjudicating Authority on this account.
- (iv) It has also been brought out that C. Bhansali Developers Pvt. Ltd.(Respondent No. 8 herein), the alleged beneficiary, is the related party, the fact which has not been disputed. It is noted that the Corporate Debtor on 31.03.2020 has written off the amount appearing in its balance sheet after an application for initiation of CIRP against the Corporate Debtor was filed. It further observed that the same was

treated as excess interest without specific accounting details. As such, we are of prima-facie opinion that the same is to fall in the ambit of Section 66 of the Code.

- (v) We do not find any merit in the contentions of the Respondents and also do not find sufficient and strong logic in the Impugned Order to uphold the Impugned Order. It is not clear that the transaction was done with the related party, for which the amount which was rightfully recoverable by the Corporate Debtor, then all of a sudden, the amount was written off in the books of the Corporate Debtor. We note that no detailed logic of disallowing the request of the Resolution Professional in I.A. No. 1626 of 2023 has been recorded by the Adjudicating Authority as seen in Para 7.7 of the Impugned Order. Thus, we are not able to support the Impugned Order on this account as far as transaction No. 3 is concerned.
- (vi) We need to understand that Section 66 of the Code, 2016, does not prescribe any specific “look-back period”. The provision imposes a duty upon the directors of the Corporate Debtor to exercise due diligence and exercise its best business sense to minimizing any potential losses to the Corporate Debtor its creditors. In the present case, the conduct of the Suspended Director, Praful Satra, (the Respondent No. 2 herein) does not inspire confidence to justify his actions as there

is a glaring absence of due diligence and prudence in the discharge of his responsibilities.

- (vii) Section 66 of the Code is provided precisely to deal with such cases. It is noted that the Resolution Professional duly authorised by the CoC appointed forensic auditor i.e., M/s BDO India LLP, who gave its detailed report on 15.11.2021 and clearly held that all four transactions were fraudulent in nature. The Resolution Professional also gave its opinion for the same. While dealing the Section 66 of the Code, the intent of the parties become paramount and the courts/ tribunals are supposed to look into fundamental aspects including the intention of the parties, the structures or of the agreements, end objectives to identify the methodology of fraudulent transactions, reckless indifference of the Corporate Debtor in letting go its due money which may be done with the intention to defraud its creditors.
- (viii) Needless to say that it is always the duty of the directors of the Corporate Debtor to act in the interest of the creditors and to take all action to preserve the assets of the company.

**52.** We also reject the arguments of the Respondents for the transactions pertaining to the period prior to two year of CIRP. We hold that there is no restrictions on look back period for cases under Section 66 of the Code.

**53.** In fine, the appeal succeeds and the Impugned Order to the extent of disallowing Transaction Nos. 1 & 3 w.r.t. the Respondent Nos. 7 & 8 respectively

is set aside. The original petition bearing in C.P. (I.B) No. 534/MB/2023 is restored back. Both the parties are directed to appear before the Adjudicating Authority on **16.07.2025**, who shall take further action in accordance with law.

**54.** No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Justice Mohammad Faiz Alam Khan]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

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