IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
I.A. NO. 1367/ND/2025
IN
Company Petition No. IB/778/ND/2021
Application under Section 66 r/w Section 25(2)(j) of the Insolvency and Bankruptcy Code, 2016.

IN THE MAIN MATTER OF:

L&T FINANCE LIMITED	**...**	**Financial Creditor**
	Versus	
MABSOOT BUILDHOMES INDIA PRIVATE LIMITED	**...**	**Corporate Debtor**

AND IN THE MATTER OF:

MR AJIT GYANCHAND JAIN	**...**	**Applicant/RP**
	Versus	
Yogesh Goswami (Suspended Director Of Corporate Debtor) And Govind Singh Bisht Ex-Director Of Corporate Debtor Respectively R1 & R2		**Respondents**

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on 09.07.2026

PRESENT:

For the Applicant(RP)	**:**	Mr. Mr. Divij Kumar, Adv.
For the Respondents	**:**	Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Sachin Sharma, Mr. Ritesh, Advocates

ORDER

PER: Atul Chaturvedi (Member Technical)

1. The present Interlocutory Application has been filed by the Resolution Professional Mr. Ajit Gyanchand Jain of the Corporate Debtor Mabsoot Buildhomes India Private Limited under Section 66 read with Section 25(2)(J) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking following reliefs:
   i. Condone the delay in filing the instant application under Sec. 66 IBC for the reasons stated in the application
   ii. Pass an order allowing the present application and issuing necessary directions to the Respondents under Section 66 of the Code to immediately make contributions to the assets of the Corporate Debtor for an amount equaling
      a) INR 54,82,14,914/- (Indian Rupees Fifty-Four Crores Eighty-Two Lakhs Fourteen Thousand Nine Hundred and Fourteen Only) along with interest as applicable qua the illegal and unauthorized sale of 167 mortgaged units without obtaining a no-objection certificate from the Lender / current CoC
      b) INR 10,58,00,000 (Rupees Ten Crores and Fifty-eight lakhs only) along with interest as applicable qua the transaction with Supertech ORB Project Limited;

c) INR 4,23,00,000 (Rupees Four Crores and Twenty-Three Lakhs only) along with interest as applicable qua the transaction with Supertech Estate Private Limited; and

d) an amount equaling INR 47,00,000 (Rupees Forty-Seven Lakhs only) along with interest as applicable qua the transaction with Supertech Realtors Private Limited;

e) INR 5,53,56,700/- (Rupees five Crores Fifty-Three Lakhs Fifty-Six Thousand and Seven Hundred Rupees Only) along with interest as applicable to Stress Asset Branch of Union Bank of India and other banks for repayment of loan of other entities (unknown) and

iii. Pass any such further orders under Section 66 and 67 of the Code as this Tribunal may deem fit

2. **BRIEF BACKGROUND OF THE CASE: -**

i. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e., L&T Finance Ltd., against the Corporate Debtor i.e. M/s. Mabsoot Buildhomes India Private Limited, referred to as the corporate debtor and the said application was admitted vide Order dated 02.05.2023 ("CIRP Re-initiation Order") by this Adjudicating Authority and a moratorium was declared. Mr. Ajit Gyanchand Jain was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor.

ii. The Applicant perused the books of accounts and records of the Corporate Debtor and found that certain transactions of irregular nature were carried out by the Corporate Debtor prior to commencement of the CIRP proceedings.

iii. On 10.07.2023, the Applicant appointed Ronak Jain & Co. as the Transaction Auditor to conduct transaction audit of the Corporate Debtor for the period starting from 01.04.2020 till 02.05.2023 [“Review Period”] in order to ascertain whether the Corporate Debtor entered into any transaction(s) which come within the ambit of ‘preferential transactions.

iv. Pursuant to the audit, the auditor submitted his report on 04.03.2025 to the RP highlighting certain transactions which the RP has alleged to be Avoidance Transaction in this application.

v. The RP has categorized the transactions in two parts, fraudulent and preferential and has filed a separate Application for the preferential transaction.

vi. The RP has also filed an Application under Sec 19 of the IBC, 2016 prior to the filing of this Application.

3. **SUBMISSIONS MADE BY THE APPLICANT:**

i. The RP has made submission that he will be relying on the submissions made by them in the prior **I.A./4634/ND/2023** filed under Sec 19 of the IBC, 2016.

ii. The applicant has sought liberty from this Adjudicating Authority to amend/modify the application based upon the receipt of complete documents/information/explanation, as sought for by the Applicant in **I.A./4634/ND/2023.**

iii. The Applicant has raised multiple issues in his pleadings. They are as follows:

   a) The Corporate Debtor had a change in the composition of Board of Directors as Respondent No. 2 resigned and a new director was appointed during CIRP period.

   b) Transaction with respect to sale of 167 mortgaged units by the corporate debtor without obtaining no-objection certificate from L & T Finance Limited

   c) Transaction with M/s Supertech orb project limited

   d) Transaction with M/s Supertech Estate Private Limited

   e) Transaction with M/s Supertech Realtors Private Limited

   f) Transaction with Stress Asset Branch of Union Bank of India and other banks for repayment of loan of other entities (unknown)

TRANSACTION WITH RESPECT TO SALE OF 167 MORTGAGED UNITS BY THE CORPORATE DEBTOR WITHOUT OBTAINING NO-OBJECTION CERTIFICATE FROM L&T FINANCE LIMITED:

iv. The Applicant has submitted that the Corporate Debtor availed a loan amount of Rs. 2,15,00,00,000/- from the lender L&T Finance Limited pursuant to a loan agreement between the parties to acquire 624 units comprising of 558 residential dwelling units and 66 commercial shop units in the Project North Eye Tower.

v. The lender later assigned its rights and title which arose out of the loan agreement to Phoenix ARC, thus Phoenix ARC was made a part of the CoC and the approval of this adjudicating authority was taken.

vi. The loan amount was divided into 3 parts, an amount of Rs. 180 crores were for the purchase of project inventory, Rs. 22.5 crore was for administrative and marketing expenses and Rs. 12.5 crores were given for charges towards Stamp Duty and other charges towards purchase of project inventory.

vii. The applicant submits that against this loan amount, certain securities were provided to the lender. Along with other securities, all 624 units were mortgaged to the lender and any cash flow arising out of them were to be deposited in an escrow account and later utilized by lender towards interest and prepayment of the loan.

viii. The applicant further submits that pursuant to his visit at the office of Supertech Limited, he came to know that 167 out of 624 units were sold illegally by the corporate debtor without obtaining any NOC from the lender, which was a mandatory obligation as per the loan agreement.

ix. A consideration of Rs. 54,82,14,914/- (Fifty-Four Crores Eighty-Two Lakhs Fourteen Thousand Nine Hundred and Fourteen Only) was generated, out of which Rs. 34,72,20,585/- (Thirty-Four Crores Seventy-Two Lacs Twenty Thousand Five Hundred and Eighty-Five Only) is alleged to have been received by the Corporate Debtor.

x. The applicant has stated that no details of the relevant bank accounts, any books of account, balance sheet, financial statements etc. have been provided which would reflect receipt of any such amounts. Further, in terms of the Sales MIS dated 06.01.2024 an amount of INR 20,09,94,329/- (Indian Rupees Twenty Crores Nine Lacs Ninety-Four Thousand Three Hundred and Twenty-Nine Only) remains as receivables.

xi. The applicant in his further submission has submitted that on the prima facie scrutiny of the Bank Account statements received from the bank, out of the 167 units only 58 could be identified. Also, no sale deed/agreement was provided to verify these sale transactions. Hence, the received amount of Rs. 34,72,20,585/- (Indian Rupees

Thirty-Four Crores Seventy-Two Lacs Twenty Thousand Five Hundred and Eighty-Five Only) couldn't be confirmed as relevant information for 109 units are missing/not provided to the RP.

xii. Further making his submission, the applicant has stated that had the amount been used for the purpose of interest and pre-payment as per the loan agreement, it would have resulted in reduction of the outstanding loan amount. Hence, this transaction cannot be termed in the usual course of business.

TRANSACTION WITH M/S SUPERTECH ORB PROJECT LIMITED

xiii. In regards to the transaction, the applicant submits that the Company, M/s Supertech Orb Projects Limited is currently under CIRP vide order dated 13.10.2023, passed by NCLT, Allahabad Bench [CP(IB) No. 29-ALD-2023] and the said company is a related party of the Corporate Debtor.

xiv. The applicant submits that the corporate debtor has given an unsecured loan of Rs. 10,58,00,000/- (Indian Rupees Ten Crores and Fifty-Eight Lakhs Only) to Supertech ORB Project Limited (currently under CIRP) which was disbursed on 24.04.2023 and 02.05.2023. The Applicant had sought the clarification from the respondents who held the position of Directorship when the alleged transaction took place, but no documents were provided.

xv. Making further submission, the applicant submitted that the said disbursement of an unsecured loan amount to a related party deviates from the normal/ordinary course business transaction. Further, no document or Loan Agreement between the Corporate Debtor and Supertech ORB Project Limited has been made available to the Applicant.

xvi. The applicant further submits that the timing of these transactions raise further question on the intention of conducting such transactions as these transactions were carried out on close proximity to the CIRP date. As the payment of INR 8,00,00,000/- was made on 24.04.2023 and the payment of INR 2,58,00,000/- was made on the date of admission of the Application under Section 7 of the Code for commencement of CIRP against the Corporate Debtor.

xvii. The respondents holding the position of Director at the point of time had knowledge of the alleged transaction but failed to carry proper due diligence.

TRANSACTION WITH SUPERTECH ESTATE PRIVATE LIMITED

xviii. The applicant submits that the Corporate Debtor advanced Rs. 4,23,00,000 (Rupees Four Crores Twenty-Three Lakhs Only) to Supertech Estate Private Limited on 24.04.2023 from the same account in which the funds were made available by L&T Finance Ltd.

xix. The applicant submits that they enquired about the details of the transaction from the respondents through an e-mail but did not receive any reply, hence could not verify whether approval was taken to carry out the specific transaction between the related parties.

xx. Raising issue on the timing of carrying such transactions, the applicant has submitted that when the account of the corporate debtor had already been declared NPA for the non-payment of the debt, carrying out such transactions are an attempt to defraud the corporate debtor of its assets at the cost of unjust enrichment of the parties.

TRANSACTION WITH SUPERTECH REALTORS PRIVATE LIMITED

xxi. The applicant submits that the corporate debtor had advanced an amount of Rs. 47,00,000/- (Rupees Forty-Seven Lakhs Only) to Supertech Realtors Private Limited on 04.05.2023 post the initiation of CIRP of the Corporate Debtor. When asked about the details of the transaction in question, the respondents chose not to answer the query raised by the applicant via E-mail.

xxii. The applicant further submits that no repayment plan has been shared with him nor any approval or purpose as to why such transactions were carried out. Moreover, the timing of such payments made by the Corporate Debtor raises severe concerns since such payments have been made from the Corporate Debtor's bank account on 04.05.2023, after an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 had been admitted by this Hon'ble Tribunal on 02.05.2023.

xxiii. The applicant submits that the transaction is not in the ordinary course of business but an attempt to defraud the creditors and the corporate debtor.

TRANSACTION WITH STRESS ASSET BRANCH OF UNION BANK OF INDIA AND OTHER BANKS FOR REPAYMENT OF LOAN OF OTHER ENTITIES (UNKNOWN)

xxiv. The applicant submits that this particular transaction of tune of Rs. 5,53,56,700/- (Rupees five Crores Fifty-Three Lakhs Fifty-Six Thousand and Seven Hundred Rupees Only) was carried out between 15.09.2021 to 07.10.2021 from the account in which the lender L&T Finance Limited had disbursed the loan to the corporate debtor for the purpose specified in the loan agreement. The applicant submits that the loan amount was misutilised at the cost of the interests of the corporate debtor.

xxv. Making further submission, applicant submitted that the alleged transaction was carried out to settle loans for other entities in complete derogation to the purpose for which loan was sanctioned by the Lender and are not recoverable now.

xxvi. The applicant further submits that these transactions are not in the ordinary course of business and are fraudulent transactions.

4. **REPLY ON BEHALF OF THE RESPONDENTS**

i. The respondents submit that the present application is barred by limitation as it has been filed after 130 days as stipulated in the regulation 35A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

ii. Making their submissions, the respondents have stated that the corporate debtor was admitted into CIRP on 02.05.2023 but the application was filed on 10.03.2025, which is beyond what is prescribed in the regulation 35A.

iii. The respondents state that the allegation that they didn't cooperate with the RP is baseless, concocted and false and the RP should be put to strict proof.

iv. The respondents submit that the delay in providing the documents was because the concerned team was unavailable and the relevant information was shared at the earliest without any inordinate delay.

v. The respondents submit that the same allegations have been levelled against them in I.A./4634/ND/2023 and their reply submitted in that application should be read here.

vi. The respondents submit that the resignation of Respondent 2 from the board of directors occurred inadvertently and was administrative in nature and was replaced by Mr. Avinash Kumar due to an internal procedural update carried out by the concerned department.

vii. The respondents further submit that R2 is ready to resume the position should the same be deemed appropriate or necessary.

viii. Making submission on the legality of the appointment of a director when the Board of Directors was suspended, the respondents submitted that it is legal and was done in compliance with Sec 149(1) of the Companies Act, 2013, which mandates that a private limited company must have a minimum of two directors.

ix. Relying on the case of Dr. J.S. Gambhir v. Millennium Health Institute and Diagnostics Pvt. Ltd. [2014 SCC OnLine Del 658], where the Delhi High Court held that the resignation of a director becomes effective from the day, he has submitted his resignation, and there is no need to any acceptance from the company, unless the AoA provides otherwise. The respondents have stated that the AoA of the corporate debtor doesn't require any approval from the company for acceptance of the resignation of a director.

x. Relying on the above submissions, the respondents state that the change in directorship was a lawful and procedural step, devoid of any element of concealment or contravention

xi. On the issue of sale of 167 units, the respondents submit that out of consideration of Rs. 54.82 Crores, the total sale consideration actually received as on date stands at approximately Rs. 34.72 Crores and remaining balance amount, constituting approximately Rs. 20.09 Crores, is structured to be received at the time of handing over possession of the respective units to the customers, in accordance with the terms and conditions of the underlying agreements.

xii. The respondents submit that the considerations received from the sale of these units have been deposited in the bank account of the corporate debtor and the details of this should already be with the RP.

xiii. The respondents submit that 134 units were replaced with other units and all the parties were aware of the same including the lender and no issue was raised by either party.

xiv. The respondents submit that the transaction with **Supertech Realtors private limited** done after the RP took charge of the corporate debtor pursuant to the order of this adjudicating authority admitting the sec 7 petition on 02.05.2023.

xv. The respondents submit that this transaction of Rs. 47 Lakhs was done on 04.05.2023, and the RP should have better understanding of why the payment was made not the respondents.

xvi. Making submission on the transaction with M/s Supertech Orb Project Limited, the respondents submit that the transaction was done on account of a loan agreement with Glider Information System Limited. The GISL was in financial distress and needed a loan to buy certain units from M/s Supertech Orb Project Limited and the corporate debtor had signed a loan agreement with GISL granting a loan amount of 10.58 crores for this purpose and GISL was to repay the loan by sharing the profit arising out of the bought units. The respondents further submit that the tenure of the loan was 5 years.

xvii. On the transaction with Supertech Estate Private Limited, the respondents submit that the Resolution Professional has adopted contradictory positions and has been selectively cherry-picking documents for its own benefit, despite all records being solely in its custody. A bare perusal of the financial documents such as bank statements and ledger accounts, which are also in the RP's possession, clearly demonstrates that the amount repaid to Supertech Estate Pvt. Ltd. ("Estate") was merely a return of money advanced by Supertech Estate Pvt. Ltd. to the Corporate Debtor in the ordinary course of business.

xviii. On the Transaction with Stress Asset Branch of Union Bank of India, the Respondents submit that the sum of Rs. 5.04 Crores did not constitute an independent or unilateral disbursement by the Corporate Debtor. Instead, this amount had already been credited to the Corporate Debtor's account by STPL before the payment was made. Consequently, the Corporate Debtor was simply executing a repayment or adjustment of funds previously received from STPL. As a result, the transaction was entirely revenue-neutral and caused no depletion or adverse effect on the Corporate Debtor's assets. This movement of funds represents a routine internal adjustment of inter-company balances rather than a preferential, fraudulent, or irregular transfer. The Respondents therefore contend that any adverse inference drawn by the Resolution Professional (RP) regarding this transaction is completely misconceived, given that its financial impact was neutral and did not diminish the value of the Corporate Debtor's estate.

5. **REJOINDER OF THE APPLICANT:**

i. In its rejoinder, the applicant has further reiterated the submissions made in the Application and clarified them and has made no new submissions on the transactions in question.

ii. The Applicant has submitted that the disbursement of loan to M/s Supertech Orb Project Limited was very close to the CIRP initiation date and after the filing of the sec 7 petition.

iii. The Applicant submits that the loan amount transferred to the M/s Supertech Orb Project Limited on behalf of GISL was done without mentioning that a director of the corporate debtor was holding the control over GISL.

iv. On the advancement of Rs. 47,00,000 (Rupees Forty-Seven Lakhs Only) to Supertech Realtors Private Limited on 04.05.2023, post the initiation of CIRP of the Corporate Debtor, the applicant submits that the contention of the respondents that the corporate debtor was under the control of the RP is frivolous and misleading as the RP received the order on 08.05.2023.

v. The Applicant further submits that the transaction with Stress Asset Branch of Union Bank of India from the account where the lender had transferred the loan amount to the corporate debtor for purchasing the units was misuse of the funds of the corporate debtor.

vi. The applicant submits that the application is not barred by the limitation as the timeline mentioned in the regulation 35A is directory and not mandatory. The applicant has relied on various judgments of Hon'ble NCLAT to further buttress his submissions.

vii. The Applicant has made submission on the legality of the appointment of a director during CIRP period. The Applicant submits that post initiation of CIRP period, the act of cessation and appointment of the director is against the law.

6. **WRITTEN SUBMISSION OF THE RESPONDENT:**

i. This adjudicating authority had granted the liberty to both the parties to file rejoinder and written submissions to further buttress their submissions. The Applicant filed a rejoinder to the reply of the respondents and subsequently the respondents filed a succinct written submission.

ii. In the written submission filed before this adjudicating authority, the respondents have not made any different submission but have reiterated the submissions made in their reply.

7. **FINDINGS AND ANALYSIS:**

i. We have heard the submissions of Ld. Counsel appearing for the Applicant. We have also perused the records.

ii. The present application has been filed under Section 66 of Insolvency and Bankruptcy Code, 2016. The Sections 66 and 67 of the Code envisages certain requirements to be proved by the Applicant. Therefore, Sections 66 and 67 of the Code are reproduced hereunder for ready reference:

"Section 66: Fraudulent trading or wrongful trading.

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.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

Section 67: Proceedings under section 66.

"67. (1) Where the Adjudicating Authority has passed an order under sub-section (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section."

iii. It is the case of the Applicant that post the appointment of the transaction auditor has submission of his report, the applicant perused the report and came to the understanding that certain transactions were Avoidance transactions and then he approached adjudicating authority by filing 2 different applications by classifying them into preferential transactions and fraudulent transactions.

iv. Before analyzing whether the impugned transactions pass the test of Sec 66, first we need to see whether the current application is barred by the limitation and the appointment of a new director is in consonance with the IBC,2016.

v. 35-A Preferential and other transactions-

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under section 43, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43,45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date,

(3) Where the resolution professional make a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date, whichever is earlier.

vi. Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Manbodhan Lal Shrivastava' AIR 1957 SC 912 has deliberated on the nature of timeline mandated in the regulation 35A. the Hon'ble Supreme Court has stated as below:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the

phraseology of the provisions but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other......"

vii. The Hon'ble NCLAT in the matter of Prasant Chandra Rath v. Surya Kanta Satapathy, 2022 SCC OnLine NCLAT 3822, has held that the timeline is directory in nature and not mandatory and the Adjudicating Authority may exercise its discretion in condoning the delay.

viii. By perusing the E-mail trail and submissions made by the RP in the present I.A. and the **I.A./4634/ND/2023** filed under Sec 19 of the IBC, 2016, we can see that the RP has not been provided all the documents. The RP has not been provided all the details of the sale of 167 units along with all the relevant documents mentioned in the current I.A. and **I.A./4634/ND/2023** filed under Sec 19 of the IBC, 2016. Even though, the respondents have made submission that all the requisite documents have already been made available but in their reply to both these I.A.s, they have failed to put on record the proof of when and how they have provided the documents that have been asked in the multiple E-mails and also mentioned in these I.A.s.

ix. Thus the delay in filing this Application is justified and this adjudicating authority is of the view that the delay should be condoned.

x. The second issue that needs deliberation is the resignation of R2 and appointment of a Director when the Board of Directors was already suspended.

xi. Post initiation of the CIRP, the suspended boards loses its managerial powers and this is vested in the RP/IRP. The suspended board only has administrative power as granted by the IBC,2016.

xii. It is settled law that upon initiation of CIRP, the powers of the Board of Directors stand suspended and the management of the Corporate Debtor vests in the Resolution Professional (RP).

xiii. Suspended Board can neither appoint nor dismiss a director during this period of time. They have no right to operate or act in the name of the corporate debtor. Hence, they can't appoint or dismiss a director.

xiv. On perusal of the submissions made by the parties on the transfer of certain funds to M/s Supertech orb project limited, we see that an amount of Rs. 10.58 crore was advanced by the corporate debtor to M/s Supertech orb project limited. It can be seen that this transaction was made fulfilling the terms of the loan agreement signed between the corporate debtor and a company GISL. This loan was granted to GISL, as it was under financial distress and needed a loan to buy certain units from the project of M/s Supertech orb project limited. The loan was granted for a period of 5 years with repayment in the form of sharing of the profits from the alleged units. The Applicant has alleged that the amount was transferred on 24.04.2023 and 02.05.2023, the first being just 8 days prior to the initiation of the CIRP i.e. 02.05.2023 while the respondents allege that there are no wrong doings in the alleged transaction as the transfer was made pursuant to the signing of a loan agreement between corporate debtor and GISL.

xv. After analyzing these facts and circumstances surrounding this particular transaction, we find that while the company itself was in distress and couldn't pay the debts as is evident from the fact that a sec 7 IBC, 2016 petition against the corporate debtor was lying before this adjudicating authority, the corporate debtor advanced a loan to another company that too a related party to the corporate debtor. This is evident from the fact that the director holding a majority shareholding in the corporate debtor was also a director in the company to whom the loan was granted.

xvi. The current transaction can't be termed during ordinary course of business from the fact that a loan was granted to a related party and from the circumstantial fact that the loan was granted while a sec 7 petition lied before this adjudicating authority.

xvii. From this it is safe to come to conclusion that the act was done at the cost of detriment of the corporate debtor and is a fraudulent transaction.

xviii. On the Transaction with M/s Supertech Estate Private Limited, the respondents have submitted that they were only returning what was paid earlier to the corporate by M/s Supertech Estate Private Limited and this can be proved from looking into ledger and books of account of the corporate debtor. The Applicant submits that in this particular transaction and also a transaction with the Union Bank, the payments that were made were from the same bank account which the lender had used for disbursement of loan to the corporate debtor. Making further submissions Applicant stated that the fund was misutilised and was used to pay previous loans with various other banks.

xix. We see a pattern in the transactions made by the corporate debtor when the sec 7 petition was already filed before this adjudicating authority and the bank account of the corporate debtor was already declared NPA. The corporate debtor was granted loan for a specific purpose and diverting certain amount from the loan disbursed when the matter was already before this adjudicating authority raises question on the intent and purpose for making such transactions. The arguments of the respondents that the lender had certain recourse available to them for the breach of the agreement is not very convincing for us that there was no foul play. A transaction made at the detriment of the corporate debtor and its financial creditors along with circumstantial evidence of these being carried very close to the CIRP initiation date is not in an ordinary course of business.

xx. It is true that covenants of the agreement had provided recourse for the breach of the contract and the lender didn't exercise the power/rights granted but breach of an agreement attracts certain liquidated/ unliquidated damages. The corporate debtor made those transactions and has not been able to show that it was made after the approval of the lender.

xxi. These facts clearly pass the test of sec 66 IBC,2016 as the transactions were made to defraud the creditors of the corporate debtor and not only the respondents fail to carry due diligence but they have actively participated in this process.

xxii. The transaction with the M/s Supertech Estate Private Limited and with the Union Bank of India are fraudulent in nature. These transactions were made between 15.09.2021 and 07.10.2021 which was immediately after the bank account of the corporate debtor was declared NPA on 13.08.2021

xxiii. A transaction was made with Transaction with M/s Supertech Realtors Private Limited on 04.05.2023 only 2 days after the initiation of CIRP. The company was transferred an amount of Rs. 47 lakhs by the corporate debtor. The applicant has submitted that he received the order on 08.05.2023 and the transaction was made prior to the handover and vesting of the power to the Applicant. The applicant has submitted that it is a matter of fact that the order was uploaded on 08.05.2023 and only thereafter he took the charge. The same is corroborated from the date of upload mentioned on the DMS portal. The respondents have failed to justify the transaction and have made a false submission regarding this transaction. From this it is clear that the respondents were actively engaged in siphoning of company funds and were acting against the interests of the corporate debtor. This transaction is a fraudulent transaction and the respondents still in charge of the management of the company are presumed to have full knowledge of the transaction making them personally liable and responsible to cover the losses suffered due to their negligence and not taking due diligence or active participation.

xxiv. The corporate debtor had sold 167 units out of 624 units it had bought in the project. The Applicant has alleged that these units were already mortgaged with the corporate debtor and they were sold without obtaining any NOC from the lender. The Applicant further submitted that as per loan agreement the receivables obtained from the sale of the units were to be deposited in the escrow account for the interest and payment of loan purpose. The Applicant has further stated that out of 167 units, only 58 units could be traced with the information and documents available with them and they have no information of the other 109 units sold by the corporate debtor. The applicant made further submission that the consideration amount for those sales was Rs. R 54,82,14,914/- out of which 34,72,20,585/- was received by the corporate debtor, and the remaining amount remains due till date. The respondents have submitted that the amount due will only be payable at the time of handover of the premises. Refuting the allegations of the Applicant that the consideration amounts were not received by the corporate debtor, they submitted that all the consideration amount was received in the bank account of the corporate debtor.

xxv. The issue of the receipt of the consideration amount is a matter of fact as the bank statement will show whether the payments were received or not. The respondents have failed to provide the sale agreement and other details of 167 units to the Applicant. The applicant has himself mentioned that they have by prima facie perusal of the bank statements of the corporate debtor come to a conclusion that the corporate debtor received the consideration amount for 58 units.

xxvi. From this we can say that this can't be termed fraudulent transaction at this stage without proper enquiry of all the sale agreement and other necessary documents for the sale of 167 units.

xxvii. The respondents are directed to provide all the documents asked by the Applicant for proper enquiry into avoidance transaction.

8. The first prayer being condonation of delay in the filing of this application is granted for the reason of non-cooperation on the parts of the respondents and the timeline as per regulation 35A being directory in nature.

9. At this stage we cannot conclusively state that the sale of 167 units and the inability of the Applicant to track their consideration receipt a fraudulent transaction for the lack of conclusive evidence. Hence, this Adjudicating Authority can't grant relief prayed in prayer b(i).

10. The prayers made in b (ii), (iii), (iv) and (v) are granted as these are clear case of fraudulent transactions.

11. The Applicant had requested the liberty to approach this adjudicating authority again in case they further track Avoidance transactions after the receipt of asked documents, the same is granted to the Applicant.

12. The respondents are directed to make the contributions in respect of fraudulent transactions as per b (ii), (iii), (iv) and (v).

13. The appointment of a new director after initiation of CIRP is void ab initio for the lack of Locus Standi on the part of suspended board of directors as sec 28 (1) (j) clearly states that this power is vested with the CoC.

14. In view of the above, IA/1367/ND/2025 in IB/778/ND/2021 stands disposed of in above terms.

15. The Registry is directed to send a copy of this order to the IBBI for their record.

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
I.A.4634/ND/2023
IN
I.B./778/ND/2021

Under Section 19 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and Rule 11 of the NCLT Rules, 2016.

IN THE MAIN MATTER OF

L& T Finance Limited	...	**Applicant**
	Versus	
Mabsoot Buildhomes India Private Limited	...	**Respondent**

AND IN THE MAIN MATTER OF

MR. AJIT GYANCHAND JAIN Resolution Professional of Mabsoot Buildhomes India Private Limited	...	**APPLICANT**
	Versus	
MR. YOGESH GOSWAMI Suspended Director of Corporate Debtor & Suspended Director of Supertech Limited	...	**Respondent 1**
MR. GOVIND SINGH BISHT Suspended Director of Corporate Debtor	...	**Respondent 2**
Supertech Limited through its **RP**	...	**Respondent 3**
MR. ANIL KUMAR SHARMA Suspended Director of Supertech Limited	...	**Respondent 4**
MR. GULSHAN LAL KHERA Suspended Director of Supertech Limited	...	**Respondent 5**
MR. PRADEEP KUMAR GOEL Suspended Director of Supertech Limited	...	**Respondent 6**
MR. ANIL KUMAR JAIN Suspended Director of Supertech Limited	...	**Respondent 7**
MRS. MANDEEPA JOSHI Suspended Director of Supertech Limited	...	**Respondent 8**
MR. R.K ARORA Suspended Director of Supertech Limited	...	**Respondent 9**

MR. BRIJESH KUMAR PANDEY ... **Respondent 10**
Suspended Director of Supertech Limited

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on 09.07.2026

PRESENT:

For the Applicant (RP) : Mr. Divij Kumar, Adv

For the Respondents : Mr. Sachin Sharma, Mr. Ritesh, Advocates

ORDER

Per: Atul Chaturvedi Member (Technical)

1. The present Application is filed on behalf of the Applicant RP of the corporate debtor **MR. AJIT GYANCHAND JAIN,** Resolution Professional of Mabsoot Buildhomes India Private Limited under Sec 19 of the IBC, 2016 seeking following reliefs in the prayer:

   i. *Allow this Application thereby directing the Respondent No.1 and Respondent No.2 to share all documents, information and clarifications listed in paragraph 3 of this Application and as sought vide emails dated (i) 23 May 2023; (ii) 5 June 2023; (iii) 6 June 2023; (iv) 14 June 2023; (v) 21 June 2023; (vi) 20 July 2023;*

   ii. *Allow this Application thereby directing the promoters/ex-management of Respondent No.3, being namely, Respondent Nos. 4-*

10 along with Respondent No.1, to share all documents, information and clarifications as sought vide email dated 20 July 2023, annexed hereto at "Annexure A-18";

iii. *Allow this Application thereby directing Respondent Nos. 1, 2 and 4-10 to share the credentials and control of the bank account(s) in which the amount towards sold flat i.e. INR 37.7 crores has been parked;*

iv. *Pass such other favourable order(s) as the Hon'ble Adjudicating Authority deem fit and appropriate in the facts and circumstances of the case and in the interest of the justice.*

2. This Adjudicating Authority had vide its order dated 2nd May 2023, had accepted Sec 7 Petition against the corporate debtor and initiated CIRP against the corporate debtor.

3. Pursuant to the initiation of CIRP, the applicant was appointed the IRP for the corporate debtor. The Applicant has submitted that the order was uploaded on 8th day of that month, hence he assumed the charge thereafter.

4. The Applicant has submitted that he asked for certain documents and certain additional documents from the Respondent number 1&2. The applicant demanded these documents through E-mail and also when he physically met the respondent. The applicant further submits that he was assured by the respondent that he will be provided all necessary assistance.

5. The applicant further submits that he visited the North Eye Tower in which the corporate debtor had purchased 624 units comprising of residential dwellings and commercial units. The Applicant states that upon his visit he found certain units were occupied and it couldn't be confirmed whether they belonged to the corporate debtor. The respondents were asked to provide status of units belonging to the corporate debtor in the North Eye Project. The applicant submits that the respondent replied to the query and said that the units mentioned in the ATS were not handed over as the Respondent No. 3 is undergoing insolvency.
6. After perusing the MIS date, the applicant came to know that 133 units were sold and certain amount was received by the corporate debtor however there was no certainty towards the utilization of the proceeds. On the contra, the respondents replied that certain units in the ATS were replaced with another similar unit in the same project. The respondent No. 1 further replied that he being an investor was not privy to certain information of the corporate debtor.
7. The Applicant submits that he found certain discrepancies in the dealings of the part of suspended directors of the corporate debtor such as certain units were allotted without even obtaining the project wise occupation certificate coupled with the fact of respondent 1 & 2 not providing relevant information even after multiple requests made by the IRP.

8. The Applicant submits that when he along with his team visited the project site physically, he found reluctancy on the part of the team stationed there and only few units were made available for the inspection citing multiple reasons like the units were locked and keys were not available.
9. The Applicant further submits that he forwarded same query to the Respondent No. 3 but the R3 replied that he had very limited role in the projects of the R3 except as mandated by Hon'ble NCLAT, hence he didn't carry out due diligence of the sites but have forwarded these queries to the R4-R10 and have sought reply. The respondents R4-R10 provided a lease agreement entered between the corporate debtor and M/s Skyfit, where certain units were leased by the corporate debtor.
10. The Applicant makes his submission that the respondents are bound by Sec 19 of the IBC, 2016 to cooperate with the IRP/RP and the IRP/RP is similarly bound by sec 20(1) of the IBC to, make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. And in terms of Section 25 (2), the resolution professional to take immediate custody and control of all the assets including the business records of the corporate debtor.
11. The Applicant submits that as per sec 29 of the IBC, 2016, he has to prepare an information memorandum for formulation of resolution plan

and the non-cooperation on the part of respondents are creating hindrance in discharging legal duties of the Applicant mandated by the IBC 2016.

12. The applicant submits that there are no employees of the corporate debtor and are being managed by the employees of R3 and the business of the corporate debtor being in the nature of a homebuyer can only be managed by the Applicant after the receipt of the information requested and non-cooperation will result in the interests of the corporate debtor in the peril.

13. Respondents 1,2 and 4 to 10 have filed separate reply to this application under sec 19.

14. Respondents R1 and R2 submit that the application has entirely ignored the reply given by them to the Applicant for any help needed and has filed this application.

15. On issue of the information regarding the sale of 133 units, they submit that these units were replaced with the similarly placed units in the same project and the applicant's contention that he was not apprised with the consideration value received from such transaction is misplaced as they were investors of the corporate debtor and were not in place to be privy of such information.

16. Making further submission R1 and R2 submit that the applicant is approbating and reprobating his own stance by requesting to hold the

CIRP in abeyance on the account of R3 in the insolvency proceedings and also seeking information to keep the corporate debtor as a going concern.

17. The Respondents 1&2 make submission that the applicant has already been handed over the physical documents on his appointment after the admission of sec7 petition.

18. The respondents submit that the delay in providing the documents on the account of the unavailability of the concerned team and not an intentional delay and these documents have been provided thereafter.

19. The respondents R4 to R10 have filed their submission and have stated that they are not duty bound to comply with the demands of the Applicant as sec 19 of the IBC, 2016 applies only to the management of the corporate debtor and not to the third entity and the term **any other person** should be read in context with the specific section and not independently.

20. To further buttress their submissions the respondents R4 to R10 have relied on the Hon'ble Supreme Court judgment in the case of Maharashtra University of Health Sciences & Ors. v. Satchikitsa Prasarak Mandal & Ors. [(2010) 3 SCC 786] and have stated that these terms cannot be read independently and should be interpreted in the terms of the section itself.

"…Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be from their context…"

21. The respondents submit that since R3 is in CIRP, all the documents are already with the RP and respondents have already supplied all the documents and information to the applicant via E-mail dated 03.05.2021 and 29.09.2023

22. The Applicant filed rejoinder to the reply filed by the R1 and R2 in the form of an affidavit in compliance with the directions of this adjudicating authority. The Applicant has made submission that the R1 and R2 have made false claim that they are only investors of the corporate debtor and are not privy qua these transactions and the respondents were in the active participation of the management of the corporate debtor prior to the initiation of the CIRP.

23. The Applicant further submits that his Application for the abeyance of CIRP of the corporate debtor was necessitated due to R3 in the insolvency proceedings and the non-cooperation on the parts of respondents.

24. The Applicant makes further submission that the information provided by R1 and R2 were incomplete and they failed to disclose critical information.

25. The Applicant has filed written submissions in compliance with the order of this adjudicating authority and stated that only partial information have been provided by the respondents and other relevant documents have still been not made available.

26. The respondents have filed written submission before this Adjudicating Authority on 12.12.2025.

27. The respondents make submission that pursuant to the initiation of CIRP, all the documents have been handed over to the IRP and they cannot be expected to produce something that is not in their possession and the ambit of sec 19 is only till the cooperation is regarding something reasonably available with the personnel of the corporate debtor and not for something which is not in control or possession of the personnel of the corporate debtor. And the respondents have provided full cooperation as and when asked.

28. The respondents submit that the question was not of whether there was any non-cooperation on the part of the respondent but what caused such a delay in the CIRP. The respondents further contend that this is an attempt on the part of the applicant to justify the no progress made in the CIRP.

29. Findings and Analysis:

i. After perusal of the application and further rejoinder and written submissions filed by the applicant, we see that the applicant has alleged non-cooperation on the part of R1 and R2 mainly. R3 is company under CIRP and R4 to R10 are suspended board of directors of the R3 and have submitted that as per sec 19 of the IBC, 2016 they are not mandated to comply with the demands of the applicant yet they have co-operated with the applicant and have provided with the documents.

ii. The issue of R1, R2 are distinct from that of R3 and R4 to R10 as their legal identity and obligations with respect to the IBC, 2016 changes. First we need to consider the issue between the applicant and Respondents No. 1& 2.

iii. The Applicant has asked for certain documents from R1 & R2 and have provided the list in the written submission filed before this adjudicating authority. The Applicant has later made submission that some of the documents in the list were provided to them. On the contra, the respondents have submitted that they have already handed over all the documents to the RP and they can't be compelled to produce which they don't have or are not in existence.

iv. The respondents 1 and 2 have also contended that they are only investors of the corporate debtor and are not privy to certain information sought from them, while the Applicant has submitted that they are in actual control of the corporate debtor.

v. The contention of the respondents that they were only investors prima facie seems wrong as they were the directors of the corporate debtor. The respondents have also been party to the sec 7 petition and had appealed the order of this adjudicating authority. These facts clearly indicate that they indeed had more say in the management and affairs of the corporate debtor. Now claiming at this stage that they were not privy to the transactions is not correct.

vi. The respondents R4 to R10 are suspended directors of the Supertech Limited and have contended that the mandate of sec 19 of the IBC, 2016 doesn't cover them still they have cooperated with the applicant in his duties. Sec 19 of the code reads thus:

19. Personnel to extend cooperation to interim resolution professional.—(1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor. (2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions. (3) The Adjudicating Authority, on receiving an application under sub-

section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

vii. The scope of sec 19 indeed is limited to the corporate debtor and its personnel and the word "any other person" can only be read in conjunction with the section and not independently. We agree with this view of the respondents no. 4 to 10 in this respect that they need not comply with the provisions of sec 19 of the IBC, 2016 if they were an independent entity/third party.

viii. The 624 units bought by the corporate debtor is the only asset with the corporate debtor and to run the corporate debtor as a going concern, the applicant needs to know the status of these units. It is reasonable for the Applicant to presume that two people who should have such information regarding these units are those who have sold it and those who have bought it. The Respondents 4 to 10 are the suspended directors of the Respondent 3, and it is a fact that both the parties i.e. R3 and corporate debtor have signed an agreement to sale. Hence, these respondents can't dismiss their responsibility claiming that they are not obligated to comply.

30. Order

i. R4 to R10 are directed to handover all the documents related to the corporate debtor they have in their possession to the Applicant.

ii. R1 and R2 are directed to handover all the documents demanded by the Applicant and if they have already delivered on any prior date, they are directed to provide them to the applicant again in the interest of justice.

iii. RP of the R3 is also directed to handover all the documents he may have gotten post his appointment as the RP of the Supertech Limited.

iv. The Respondents are directed to extend necessary cooperation and provide all information as sought by the Applicant and make available the documents as prayed for in the present Application within a period of 15 days from the date of this order. There should not be any further delay in the submission of the same to the Resolution Professional.

v. If the Respondents fail to cooperate then this Tribunal would be constrained to issue any other orders as deemed fit in order to ensure compliance.

vi. Accordingly, the I.A. is disposed of.

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
I.A. NO. 4255/ND/2025
IN
Company Petition No. IB/778/ND/2021
Application under Sec 60(5) of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016

IN THE MAIN MATTER OF:

L&T FINANCE LIMITED	**...**	**Financial Creditor**
	Versus	
MABSOOT BUILDHOMES INDIA PRIVATE LIMITED	**...**	**Corporate Debtor**

AND IN THE MATTER OF:

Yogesh Goswami (Suspended Director Of Corporate Debtor) And Govind Singh Bisht Ex-Director Of Corporate Debtor	**...**	**Applicants**
	Versus	
MR AJIT GYANCHAND JAIN		**Respondent/RP**

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on 09.07.2026

PRESENT:

For the Applicants	:	Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Sachin Sharma, Mr. Ritesh, Advocates
For the Respondent	:	Mr. Divij Kumar, Adv.

ORDER

PER: Atul Chaturvedi (Member Technical)

1. The present application has been filed by the suspended directors of the corporate debtor Mabsoot Buildhomes Private Limited under sec 60(5) read with rule 11 of the NCLT Rules, 2016, for impleadment as respondents in the application I.A. 1902/ND/2024.
2. This Adjudicating Authority vide its order dated 2nd May 2023, had accepted Sec 7 Petition against the corporate debtor and initiated CIRP against the corporate debtor.
3. The RP had filed I.A. 1902/ND/2024 before this adjudicating authority for abeyance of CIRP until such time that the proposal for completion of the project north eye tower is finalised in the ongoing proceedings before the Hon'ble NCLAT, New Delhi in Ram Kishore Arora v. Union of India bearing company appeal (at) (ins.) no. 406 of 2022.
4. The respondents have submitted that the RP has in contravention with the law and without any mandate and, which is beyond the contours of the Insolvency and Bankruptcy Code, 2016 has acted erroneously and filed an application before this adjudicating authority for keeping the CIRP in abeyance.
5. The respondents further submitted that they should be impleaded in the said application as party.
6. The applicants further submitted that they are the necessary parties to the application and should have been impleaded. The applicants have

relied on the judgment of the Hon'ble Supreme Court in the case of Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Ors. [(1992) 2 SCC 524]. The relevant para cited by the Applicant reads thus:

> *"…It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights…"*

7. To further buttress his claim the applicant has also relied on the case of Sulthan Said Ibrahim v. Prakasan & Ors. [(2025) SCC OnLine 1218]. The relevant para relied by the applicant reads thus:

> *"45. The power to strike out or add parties under Sub-rule (2) can be exercised by the court on an application made by the parties before it, or upon an application by a third party who desires to be added as a party, or even suo motu…"*

8. The applicants submit that since the RP has filed avoidance transaction applications against the applicant, the applicants will be left in the lurch and whims of the RP if they are not made party to the application.
9. The RP has filed the reply in the form of affidavit opposing the present application on the ground that the applicants are not the necessary parties to the I.A. 1902 of 2024.
10. The respondent has submitted that the Applicants have no locus standi in the I.A. 1902 of 2024 on the ground that post initiation of the

CIRP, the RP takes over the charge of the management of the corporate debtor and the suspended directors have limited role in the process as the whole process is creditor led and not the debtor led.

11. The respondent submits that for the applicant to qualify as necessary party the Applicant has to show that presence of the Applicant is necessary to decide the Appeal.

12. The respondent further submitted that it is settled law that once a company is admitted into corporate insolvency proceedings, the role of the suspended board of directors is limited merely to assisting and co-operating with the Resolution Professional for a smooth resolution of the Corporate Debtor.

13. The respondents also submitted that applicants placing the timelines of the present corporate insolvency proceedings in abeyance would be detrimental to the maximization of the value of the Corporate Debtor's assets.

14. The respondent submitted that the abeyance of CIRP will lead to value maximization of the assets of the corporate debtor as the corporate debtor was allotted a number of units by Supertech Ltd, which is at present in insolvency and the resolution process of the Supertech Limited has a direct bearing on the value maximization of the assets of the corporate debtor.

15. The respondent also submits that this is commercial decision taken by the CoC and the Coc is the supreme authority on commercial

decisions. The respondent has relied on the judgment of Hon'ble NCLAT in the case of Bank of Maharashtra v. Videocon Industries Ltd., Company Appeal (AT) (Ins.) No. 503 of 2021. The relevant para relied by the respondent in the reply is reproduced below:

> *"35. ... The Hon'ble Apex Court has already held in CoC of Essar Steel (supra) that the commercial wisdom of the CoC cannot be adjudicated by the Adjudicating Authority. As far as commercial decisions are concerned, they are the supreme authority, they have the full power to decide one way or other any resolution based on input provided to them or otherwise. It is a settled law that commercial wisdom is non-justifiable and that's why the commercial decisions are beyond the purview of the judicial wisdom in case falling under the Code.*
>
> *Needless to mention that the CoC is to decide the fate of the Corporate Debtor as they are the one who are going to bear the loss of insolvency and who has sufficient expertise in dealing with revival and rehabilitation of the Corporate Debtor."*

16. The respondent further submits that as per Order I Rule 10 (2) of the Code of Civil Procedure 1908 clearly mandates that a person can be impleaded only if the court is satisfied that such person is a necessary or proper party, i.e., if their presence is required to effectively and completely adjudicate the matter in issue.

17. The respondent submits that the Hon’ble NCLAT in the matter of SREI Multiple Asset Investment Trust v. Arcelormittal India (P) Ltd, 2025 SCC Online NCLAT 1193 had clearly observed that the principles enshrined in Code of Civil Procedure with regard to power of the court to strike off or to add a party to the proceeding also need to be followed while considering any application filed before the Tribunal.

18. The respondents have stated that the supreme court in the case of Kasturi v. Iyyamperuma (2005) 6 SCC 733 determined the test for determining a necessary party. The relevant para reads thus:

> *"7....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."*

19. Further, the Hon'ble NCLAT in SREI Multiple Asset Investment Trust v. Arcelormittal India (P) Ltd, 2025 SCC OnLine NCLAT 1193 had defined the principles needed to be applied to exercise discretion of the court in such impleadment applications. The principles are as follows-

> *"48. From the judgments of the Hon'ble Supreme Court as noted above, following are few principles which are discernible, which can be applied for exercise of discretion by the Court, while considering an application for impleadment of a third-party in a proceeding;*

i. The party seeking impleadment must establish that it has a direct interest as distinguished from a commercial interest in the subject matter of the litigation. [Para 14(2) of 'Razia Begum' (Supra)]

ii. If the intervenor has a cause of action against the plaintiff related to the subject matter of the existing action, the Court has power to join the intervenor. [Para 8 of 'Ramesh Hirachand Kundanmal' (Supra)]

iii. The Court need not implead a party who has no direct interest in the subject matter of the litigation and addition of the respondent would result in causing serious prejudice to the Appellant and the substitution or the addition of new cause of action and would only widen the issue which is required to be adjudicated and settled. [Paragraph 18 of 'Ramesh Hirachand Kundanmal' (Supra)]

iv. The Court cannot allow adjudication of collateral matters. [Paragraph 16 of 'Kasturi' (Supra)]

v. If the Court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application, even if he is found to be a proper party.

Paragraph 24.4 of the 'Mumbai International Airport Private Limited' (Supra))"

20. The respondents relying on the above submissions has stated that the applicant has failed to show how they are necessary parties to the I.A. 1902 of 2024.

21. The respondent further submits that the applicant is not the dominus litis in the I.A. 1902 of 2024 as the respondent in the present I.A. are the dominus litis and for any party to be impleaded, they have to show that they are the necessary parties otherwise it is the applicant who is competent enough to determine who is necessary party.

22. The respondent states that the reliefs sought in the I.A. 1902 of 2024 neither contradictory to the actions of the Resolution Professional, nor do they pose any risk to the potential of the Corporate Debtor to continue as a going concern.

23. The applicant in response to the reply of the respondent has stated that the respondent in the I.A. 1902 of 2024 has taken the ground that the CIRP of corporate debtor is dependent upon the CIRP of Supertech Limited and that the applicants if made party can demonstrate that both the CIRPs are distinct and not inter-dependent.

24. The applicants have raised another ground from I.A. 1902 of 2024 to further buttress their case and have stated that the claim of the applicant (I.A. 1902 of 2024) that the application was filed due to lack of cooperation from the suspended board of directors of the Corporate Debtor is factually wrong and they should be given an opportunity to contest the allegation.

Findings And Analysis

25. We have perused the pleadings of both the parties and after analyzing the same, we see that for the applicants to be impleaded in

the I.A. 1902 of 2024, they have to show that they are the necessary parties to the Application in question.

26. The Applicant in his written submissions made many submissions to buttress their claim as a necessary party.

27. The first submission that has been made is that the abeyance of CIRP is in contravention to the law and IBC, 2016 doesn't provide any mandate for putting CIRP in abeyance.

28. The second submission made by them is that they are the necessary party as putting the CIRP in abeyance will be detrimental to their interests in the corporate debtor as they are legitimate stakeholder.

29. The third submission is that the CIRP of corporate debtor is distinct from the CIRP of Supertech Limited and if impleaded they can show that putting CIRP in abeyance is not needed.

30. The fourth submission made is that one of the grounds taken for putting CIRP in abeyance is that the suspended directors of the corporate debtor are not cooperating with the RP as per Sec 19 of the IBC, 2016 and they should have the right to contest the allegations.

31. The respondent meanwhile has made three major submissions in his pleadings the first being that the suspended directors have a very limited role post CIRP as mandated by the IBC, 2016 hence they lack the locus to be impleaded, the second submission being that the applicants have failed to show that they are necessary parties to the

application and have failed to make their case as they could not show how their interests have been affected. They have cited various judgments to buttress their claim. The third major submission that they have relied upon is the decision of putting the CIRP in abeyance is a commercial decision of the CoC and it is a trite law that the commercial wisdom of the CoC is sacrosanct.

32. After perusing these arguments, we see that the first submission of the applicants that the application for putting the CIRP in abeyance is in contravention of law is not a valid ground for impleadment of the Applicants as the Applicants have to show how they are necessary party to the Application and it is the duty of this adjudicating authority to look into whether any demand is legal or not and also at this stage the issue is impleadment of the Applicants and not the legality of the I.A. 1902 of 2024.

33. For considering the second submission of the Applicant we have to ponder upon 2 questions for the Applicant to be considered a necessary party. These questions were framed by Hon'ble NCLAT in the case of SREI Multiple Asset Investment Trust v. Arcelormittal India (P) Ltd, 2025 SCC Online NCLAT 1193

i. What are the requirements, which need to be fulfilled by a thirdparty to a proceeding, who is claiming impleadment in the present application as party-respondent?

ii. Whether the Applicant Suspended directors of the corporate debtor have made out grounds for impleadment.

34. Hon'ble Supreme Court in AIR 1958 SC 886 Razia Begum' v. 'Sahebzadi Anwar Begum categorically held that a person may be added as a party he should have direct interest as distinguished from commercial interest in the subject matter of the litigation.

35. Based on the pleadings of the Applicant, we see that the Applicant has not been able to prove how they have direct interest in the matter, as they have very limited role after the initiation of insolvency proceedings.

36. The IBC, 2016 has granted very limited role to the suspended directors and their role are only administrative in nature and the managerial role shifts to the RP.

37. The third submission of the applicant that both the CIRPs are distinct in nature and there is no need to put this CIRP in abeyance and the applicants can show the distinction, is an issue to be considered in the I.A. 1902 of 2024 and if this adjudicating authority needs any assistance, then it may call upon the applicants for any assistance at that stage.

38. The fourth submission made by the Applicants is that the RP in the abeyance application has made non-cooperation from the suspended directors one of the ground for holding the CIRP in abeyance. Mere allegation can't be criteria to make someone a

necessary party, they have to qualify the twin test held by the Hon'ble Supreme Court in the case of Kasturi v. Iyyamperuma (2005) 6 SCC 733 wherein it was held that firstly that there must be a right to some relief against such party in respect of controversies involved in the proceedings and secondly, that no effective decree can be passed in the absence of such party.

39. More over on the issue of the non-cooperation of the suspended directors, the RP has already moved an application before this adjudicating authority which is already in consideration, hence there is no reason to litigate same issues in multiple applications.

40. In wake of the above observations, we find this application to be non-maintainable. Ergo, the I.A. is dismissed.

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
I.A. NO. 1449/ND/2025
IN
Company Petition No. IB/778/ND/2021
Application under Section 43 of the Insolvency and Bankruptcy Code, 2016.

IN THE MAIN MATTER OF:

L&T FINANCE LIMITED	**...**	**Financial Creditor**
	Versus	
MABSOOT BUILDHOMES INDIA PRIVATE LIMITED	**...**	**Corporate Debtor**

AND IN THE MATTER OF:

MR AJIT GYANCHAND JAIN	**...**	**Applicant/RP**
	Versus	
Yogesh Goswami (Suspended Director Of Corporate Debtor) And Govind Singh Bisht Ex-Director Of Corporate Debtor Nitesh Kumar Arora Key Shareholder of Corporate Debtor Respectively R1, R2 & R3		**Respondents**

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on 09.07.2026

PRESENT:

For the Applicant(RP)	:	Mr. Divij Kumar, Adv.
For the Respondents	:	Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Sachin Sharma, Mr. Ritesh, Advocates

ORDER

PER: Atul Chaturvedi (Member Technical)

1. The present Interlocutory Application has been filed by the Resolution Professional Mr. Ajit Gyanchand Jain of the Corporate Debtor Mabsoot Buildhomes India Private Limited under Section 43 read with Section 25(2)(J) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking following reliefs:
    i. Pass an order allowing the present application and issuing necessary directions to the Respondents under Section 44 of the Code to immediately make contributions to the assets of the Corporate Debtor for an amount equaling INR 2,50,00,000/- (Indian Rupees Two Crores and Fifty Lacs Only) along with interest qua the preferential transactions as described herein above;
    ii. Pass any such orders under Section 44 of the Code as this Hon'ble Tribunal may deem fit; and
    iii. Pass any other order as may be deemed fit in the facts and circumstances of the present case.
2. **BRIEF BACKGROUND OF THE CASE: -**
    i. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e., L&T Finance Ltd., against the Corporate Debtor i.e., M/s. Mabsoot

Buildhomes India Private Limited, referred to as the corporate debtor and the said application was admitted vide Order dated 02.05.2023([“CIRP Re-initiation Order”) by this Adjudicating Authority and a moratorium was declared. Mr. Ajit Gyanchand Jain was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor.

ii. The Applicant perused the books of accounts and records of the Corporate Debtor and found that certain transactions of irregular nature were carried out by the Corporate Debtor prior to commencement of the CIRP proceedings.

iii. On 10.07.2023, the Applicant appointed Ronak Jain & Co. as the Transaction Auditor to conduct transaction audit of the Corporate Debtor for the period starting from 01.04.2020 till 02.05.2023 [“Review Period”] in order to ascertain whether the Corporate Debtor entered into any transaction(s) which come within the ambit of ‘preferential transactions.

iv. Pursuant to the audit, the auditor submitted his report on 04.03.2025 to the RP highlighting certain transactions which the RP has alleged to be Avoidance Transaction in this application.

v. The RP has categorized the transactions in two parts, fraudulent and preferential and has filed a separate Application for the fraudulent transaction.

vi. The RP has also filed an Application under Sec 19 of the IBC, 2016 prior to the filing of this Application.

3. **SUBMISSIONS MADE BY THE APPLICANT:**

i. The applicant has submitted that the corporate debtor was lent a loan of Rs. 2,50,00,000 by a shareholder of the company namely Nitish Kumar Arora who is a key Shareholder of the Corporate Debtor holding 99% of the shares of the Corporate Debtor. The loan was granted without any security, hence an unsecured debt.

ii. The Applicant submits that the corporate debtor repaid the loan to the shareholder. The Applicant further submits that the loan was repaid vide two separate bank transactions dated 15.02.2023 and 16.02.2023 of INR. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs each) respectively.

iii. The applicant submits that the purpose of the loan advancement was not provided, neither was a reason assigned as to why the unsecured loan was paid instead payment of loan of the secured creditor while the sec 7 petition was pending before this adjudicating authority.

4. **REPLY ON BEHALF OF THE RESPONDENTS**

i. The respondents have made three relevant submissions and rest are repeated submissions already made in the Sec 66 Application filed by the RP. This adjudicating authority has already considered these submissions made in that application and will only concern itself with the particular transaction in the present instant application.

ii. The first submission made by the respondents is that the present application is barred by limitation as regulation 35A mandates a timeline for filing application under Sec 43 of the IBC, 2016 and the RP has filed this application after the passing of the timeline.

iii. The second submission the respondents have made is that the particular transaction in question is in ordinary course of business stating that the transaction was done in accordance with the principles of commercial prudence and within the ambit of the ordinary course of business.

iv. Further buttressing their arguments, the respondents have relied on the decision of Hon'ble Supreme Court in the case of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd V. Axis Bank Ltd. and Ors. [(2020) 8 SCC 401] and state that if the purported transaction is done in the ordinary course of business, it will not fall within the ambit of 'preferential transactions'. The relevant para reads thus:

"22.4 ....and the corporate debtor is deemed to have given preference at a relevant time to a related party or unrelated party, as the case may be, such deemed preference may yet not be an offending preference, if it falls into any or both of the exclusions provided by sub-section (3), i.e., having been entered into during the ordinary course of business of the corporate debtor or transferee or resulting in acquisition of new value for the corporate debtor."

v. The respondents have further submitted that the petition under sec 95 of the IBC, 2016 against the respondent no. 3 in the present application was duly admitted and a moratorium under sec 101 of the IBC was imposed in relation to Respondent No. 3. Hence, respondent no. 3 can't be compelled to contribute to the assets of the corporate debtor.

5. **Rejoinder to the reply filed by the respondents**

i. The applicant RP states that the delay in filing the present application is on account of non-cooperation on the part of the respondents.

ii. The applicant has submitted that the Respondents have sought to take refuge behind technicalities, such as limitation and alleged procedural lapses, despite the clear record of their non-cooperation and failure to provide key documents even after multiple reminders. The delay in filing the present Application under Section 43 of the Code has been necessitated by the obstructive conduct of the Respondents, and therefore the delay is liable to be condoned, especially in light of settled judicial precedent that timelines under Regulation 35A are directory and not mandatory.

iii. The applicant has relied on the judgment of Hon'ble NCLAT in the matter of Ashok Mahindru & Anr. V.Vivek Parti, 2022 SCC OnLine NCLAT 460 and submits that *"any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed"* in Section 96 of the Code (which has also been used identically in Section 101 of the Code) cannot be construed to include future liabilities or obligations. Furthermore, it was held that the stay of proceedings under Sections 19(2) and 66-67 has not been contemplated under Section 96 also the present preferential transaction does not fall within the scope of a 'debt' under Section 3(11) of the Code, and the moratorium under Section 101 of the Code does not provide any shelter to Respondent No. 3.

6. In the further written submission filed by the respondents, they have reiterated the same submissions already made in the written reply and have made no new submissions.

7. The submissions made by the applicant filed in the written submissions are repetitive and no new submission has been made.

8. **Findings and Analysis**

i. The first issue that needs consideration is whether the present application is barred by the limitation and hence liable to be dismissed.

ii. 35-A Preferential and other transactions-

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under section 43, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under sections 43,45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date,

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the Adjudicating Authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date, whichever is earlier.

iii. Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Manbodhan Lal Shrivastava' AIR 1957 SC 912 has deliberated on the nature of timeline mandated in the regulation 35A. the Hon'ble Supreme Court has stated as below:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provisions but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other......"

iv. The Hon'ble Supreme Court in the matter of Prasant Chandra Rath v. Surya Kanta Satapathy, 2022 SCC OnLine NCLAT 3822, has held that the timeline is directory in nature and not mandatory and the Adjudicating Authority may exercise its discretion in condoning the delay.

v. We have already deliberated upon the issue of non-cooperation in various interlocutory applications on the issue of non-cooperation on the part of the suspended directors of the corporate debtor.

vi. Thus the delay in filing this Application is justified and this adjudicating authority is of the view that the delay should be condoned.

vii. The second issue is whether this particular transaction is preferential or not. Sec 43 of the IBC, 2016 reads thus

43. Preferential transactions and relevant time - (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers-

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that-

(1) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

viii. Hon'ble Supreme Court in the matter of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited V. Axis Bank Limited & Ors. has laid following guidelines to identify whether the transaction is fraudulent or not:

a) The RP has to see whether the beneficiary is a related party or not, if it is related party, the look back period is 2 years.

b) The next step is whether the beneficiary involved in the transaction stands in the capacity of creditor or surety or guarantor qua the corporate debtor.

c) In the next step, the said shortlisted transactions would be scrutinised to find if the transfer in question is made for or on account of an antecedent financial debt or operational debt or other liability owed by the corporate debtor.

d) In yet further step, such of the scanned and scrutinised transactions that are found covered by clause (a) of sub-section (2) of Section 43 shall have to be examined on another touchstone as to whether the transfer in question has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets per Section 53 of the Code. If answer to this question is in the affirmative, the transaction under examination shall be deemed to be of preference within a relevant time, provided it does not fall within the exclusion provided by sub-section (3) of Section 43.

e) In the next and equally necessary step, the transaction which otherwise is to be of deemed preference, will have to pass through another filtration to find if it does not answer to either of the clauses (a) and (b) of sub-section (3) of Section 43.

ix. Section 43 of IBC is a deeming provision and any transaction covered by sub-section (2) falls within the ambit of preferential transaction. However, sub-section (3) lays down exceptions one of which is when transfer is made in the ordinary course of the business of the Corporate Debtor and the transferee.

x. In the present matter, the RP has submitted that the Respondent No. 3 who was beneficiary to the transaction is a related party. The respondent No. 3 holds 99% share of the corporate debtor and is a related party to the transaction.

xi. The concerned transaction was carried out during the period of pendency of the sec 7 petition against the corporate debtor. Hence, the transaction was carried out during the look-out period.

xii. Next issue that needs deliberation is whether the transfer in question has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets per Section 53 of the Code. We see that the status of the beneficiary was that of unsecured creditor. L&T Finance Limited was the secured creditor. It is obvious from these facts that had the distribution been made as per Sec 53, the respondent wouldn’t have gotten preference over the secured creditors and other stakeholders like workmen.

xiii. Now we need to see whether this transaction falls under the exceptions mandated by clauses (a) and (b) of sub-section (3) of Section 43.

xiv. The respondents have submitted that the concerned transaction was in the ordinary course of business.

xv. While the Insolvency and Bankruptcy Code does not explicitly define the term "ordinary course of business," Black’s Law Dictionary describes it as the normal routine in managing a trade or business.”.

xvi. The decision of the corporate debtor to repay the loan amount of an unsecured creditor when the sec 7 petition is already pending before this adjudicating authority along with the fact that the bank account of the corporate debtor was already declared NPA, leaves very little doubt that the particular transaction is not in the ordinary course of business.

xvii. From the analysis and perusal of above facts and submissions, we have come to the conclusion that the concerned transaction is preferential transaction under Sec 43 of IBC, 2016.

xviii. The respondents have submitted that the respondent no. 3 is already under insolvency process and a moratorium has been imposed hence in view of the subsistence of the said moratorium, any attempt to compel or direct Respondent No. 3 to contribute to the assets of the Corporate Debtor is legally unsustainable and impermissible under the framework of the IBC.

xix. The respondents further submit that the Resolution Professional's prayer seeking such contribution is therefore devoid of merit and stands barred by operation of law, rendering the same liable to be rejected at the threshold.

xx. The same matter has been deliberated by the Hon'ble NCLAT in the case of Ashok Mahindru & Anr. V Vivek Parti Company Appeal (AT) (Insolvency) No.1324 of 2022, where the personal guarantor had filed an application for staying the proceedings under Sec 19 and Sec 66 of the IBC, 2016 on the ground that an interim moratorium had been imposed under sec 96 of the code.

xxi. The appellants in the application had submitted that there is possibility of any order against the Appellants in terms of monetary consideration, which may be paid by the Appellants ultimately, hence, proceedings are required to be stayed in view of the interim moratorium. While the respondents had submitted that sec 96 moratorium only applied in case of debt and not in case of proceedings under sec 19 or sec 66 & 67.

xxii. The Hon'ble NCLAT while contemplating the issue made following observation:

When we read Section 96(1)(b) with the definition of 'debt' in Section 3(11), what is contemplated to be stayed is the proceeding relating to debt, which means a liability or obligation in respect of a claim which is due from any person. Interim moratorium shall be for such proceedings which relate to a liability or obligation due i.e. due on date when interim moratorium has been declared. Section 96(1)(b) cannot be read to mean that any future liability or obligation is contemplated to be stayed. Thus, stay of proceedings under Section 19(2) and Section 66-67 is not contemplated under Section 96(1)(b) and the scheme of Code in no matter provide for stay of such applications.

xxiii. The same issue was deliberated in the case of Rakesh Kumar Jain, RP HBN Homes Colonizers Pvt. Ltd. vs. Jagdish Singh Nain, RP of HBN Foods Ltd. and Ors., Company Appeal (AT) (Ins.) No. 425 of 2022 and made following observations:

"14. The core contention of the appellant is that the prohibition under Section 14 (1) (a) is applicable to Section 66 of IBC also. This contention cannot be accepted for the reason that these

two provisions are independent, incorporated for different purposes. Section 14 of IBC is intended to prevent fictitious claims by 3rd parties to realise the amount by execution of the orders decrees etc. whereas Section 66 of IBC is intended to prevent fraudulent trading or business by corporate debtor through its corporate insolvency resolution professional or suspended directors, during insolvency resolution process or liquidation process. These two provisions have to be read independently to achieve the object of the enactment.

15. While interpreting the provisions, the statute must be construed to make it effective and workable. The Courts/Tribunals strongly lean against a construction which reduces the statute to a futility, vide judgment of Apex Court in M. Pentiah Vs. Veeramallappa Muddala. A statute or any enacting provision therein must be so construed as to make it effective and operative "on the principle expressed in the maxim: ut res magis valeat quam pereat", vide judgment of Apex Court in CIT Vs. S. Teja Singh[2]. On application of the principles that courts while pronouncing orders upon the constitutionality of a statute start with a presumption in favour of constitutionality and prefer a construction which keeps the *statute within the competence of the Legislature, vide judgment of Apex Court in Corporation of Calcutta Vs. Liberty Cinema.*

16. In view of the settled principle of law both the provisions referred above should be construed harmoniously to give effect to the intendment of the code and to make it workable. Even otherwise the Court must interpret the provisions harmoniously to avoid inconsistency or repugnancy. It has already been seen a statute must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act, so, as to make a consistent enactment, of the whole statue. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statue. It is the duty of the courts to avoid "a head on clash" vide Raj Krushna Vs. Binod Kanungo, Sultana Begum Vs. Premchand Jain, Kailash Chandra Vs. Mukundi Lal, between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise" vide University of Allahabad Vs. Amritchand Tripathi Accordingly, the provisions of the Maharashtra Regional and Town Planning Act, 1966, were read together by the Supreme Court after noting the *purpose of the Act. The Act was held not to envisage a situation of conflict, and therefore, the edges were required to be ironed out to read those provisions of the Act which were slightly incongruous, so that all of them are read in consonance with the object of the Act, which is to bring about orderly and planned development vide Manohar Joshi Vs. State of Maharashtra and Ors.*

17. Applying the principles laid down by the Apex court in the above judgments it is the duty of this Tribunal to construe Section 14 (1) (a) and Section 66 of IBC harmoniously to make the enactment effective and workable.

18. In the present facts of the case there is absolutely no inconsistency or repugnancy between Section 14 (1) (a) and Section 66 of IBC. Section 14 of IBC is a bar against institution and prosecution of any suits or proceedings or execution of orders and decrees in other courts or Tribunals but not a bar to pass appropriate order in the pending proceedings against the resolution professional or suspended directors and related parties, before the Adjudicating Authority, during the insolvency resolution process or liquidation process. On the other hand, Section 66 of IBC empowered the Tribunal to pass *appropriate orders when the suspended directors or insolvency professional of the Corporate Debtor carried on fraudulent trading or business during resolution process. Therefore, the Adjudicating Authority passed the impugned order only by exercising power that conferred on it by Section 66 of IBC. Hence, the contention that during moratorium, the Adjudicating authority shall not pass an order impugned in this appeal is unsustainable, without any merit. If such contention is accepted by this Tribunal, Section 66 of IBC would become otiose or redundant."*

xxiv. The same issue also came before Hon'ble Supreme Court in the matter of (2018) 17 SCC 394, State Bank of India vs. V. Ramakrishnan & Anr. The relevant para of the judgment reads thus

"26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the

protection of the moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.

26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."

xxv. If the submissions of the respondents are accepted, all sections related to avoidance transactions shall become otiose.

9. The request was made by the applicant to approach this adjudicating authority again in case they further track Avoidance transactions after the receipt of asked documents, the same is granted.

10. Order

    i. Application is allowed.

    ii. R1, R2 and R3 named in the application are directed to deposit the amount of INR 2,50,00,000/- (Indian Rupees Two Crores and Fifty Lacs Only) with interest @12% per annum within 15 days from the date of this order with the RP.

Sd/-	Sd/-
(ATUL CHATURVEDI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**