THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 4240 OF 2025

Section 66(1) and 43 of the Insolvency and Bankruptcy Code, 2016

Pankaj Bhattad
(Resolution Professional of Laxmiramuna Investments Private Limited)

...**Applicant**

V/s

Krishan Raghunath Prasad Khadaria & Ors.

…**Respondent**

In the matter of
COMPANY PETITION (IB) NO. 612 OF 2024

DISHA LAND DEVELOPERS PRIVATE LIMITED

…Petitioner

V/s

LAXMIRAMUNA INVESTMENTS PRIVATE LIMITED

…Respondent

Order delivered on: 06.05.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For Applicant/SRA : Adv. Jesal Singh

For Respondent No.1 & 2 : Adv. Nishant Rana

ORDER

1. This Application IA 4240/2025 was filed on 24.7.2025 by Mr. Pankaj Bhattad ("Applicant/RP"), the Resolution Professional in the Corporate Insolvency Resolution Process ("CIRP") of Laxmiramuna Investments Private Limited ("Corporate Debtor") under Section 43 and 66(1) of the Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs:-

1.1. To declare Transaction from Para A to Para A.1 as a Preferential Transaction in terms of Section 43 of the Code, and direct Respondents to pay an amount INR 25,78,778/-of back to the Corporate Debtor.

1.2. To declare Transaction from Para B to Para B.4 as Fraudulent Trading or Wrongful Trading in terms of Section 66 of the Code, and direct Respondents to pay an amount INR 1,09,24,082 of back to the Corporate Debtor.

1.3. Pass appropriate directions/orders in terms of section 44 & 67 of the Code including for recovery/restoration of legitimate amounts due to the Corporate Debtor.

1.4. Any for such other/further order(s) and/or direction(s) as the facts and circumstances of the case may warrant.

2. This Tribunal admitted the Corporate Debtor in CIRP process vide order dated 02.01.2025 ("Insolvency Commencement Date") appointing the Applicant herein as the Interim Resolution professional ("IRP") of the Corporate Debtor to carry out the functions as per the provisions of the Code, who was subsequently confirmed as Resolution Professional.

3. The Respondent No. 1, Krishan Raghunath Prasad Khadaria, and Respondent No. 2, Mohit Krishan Khadaria, are the Suspended Director of the Corporate Debtor (hereinafter referred collectively to as Respondents) who were handling the daily affairs and managing the business of the Corporate Debtor and by whom these Fraudulent and Preferential Transactions were done.

4. This Application is prosecuted by Successful Resolution Applicant Consortium comprising of Mr. Sandeep Kedia, Ms. Ruchi Kedia and Mr. Ravi Agarwal consequent to approval of resolution plan in case of corporate debtor, and they were substituted as applicant herein to prosecute this application.

5. In the 2nd COC meeting, the appointment of M/s Arsan & Co. for conducting transaction audit for the period 02.01.2023 to 02.01.2025 under Section 43,45,50 & 66 of the IBC, 2016 was approved by the COC members, however, consequent to their resignation from the assignment, the RP appointed M/s ADV & Associates as Transaction Auditor for conducting transaction audit under Section 43,45,50 & 66 for similar scope of work on 16th June, 2025 in terms of approval granted by CoC on 2nd July, 2025.

6. It is stated by the applicant that he coordinated with the Transaction Auditor to ensure proper review and verification of the relevant documents and processes, and the draft Transaction Audit report,

received by the Applicant from the Auditor, was shared by the Applicant with the suspended directors via email dated 20 June 2025 and reminder email on 23 June 2025, 25 June 2025, 26 June 2025, 27 June 2025, 10 July 2025, requesting them to provide their reply for which Respondents have given their reply to the transactions on 11 July 2025, basis which the Transaction Audit report was finalized and the same was received from the Auditor on 21 July 2025.

7. The Applicant has impugned the following transactions :

U/s 43 of IBC :

a. an amount of Rs. 25,78,778/- (Rs. 10,00,000/- on 15.03.2024 & Rs. 15,78,778/- on 20.03.2024) paid by the Corporate Debtor in two tranches to Partani Appliances Ltd. against unsecured loan of Rs. 2.25 Crores received from them;

U/s 66 of IBC :

b. a payment of Rs. 1,21,000/- on 28.07.2016 in favour of the Eseva Collection Account, allegedly towards Stamp Duty and Registration Charges, classified as Sundry Debtor instead of an expense under the head of stamp duty or registration charges in the books of accounts, and subsequently written off in books of accounts on 31.3.2023;

c. cash amounting to Rs. 1,10,000/- was seized by the Enforcement Directorate (ED) from the residential premises on 15.05.2023, during a search operation, in the absence of any acknowledgment or seizure memo issued by the ED confirming the ownership or source of the seized cash;

d. Purchase of 50,000 shares of Sethia Infrastructure Pvt. Ltd. from Zarmin Tradelinks Pvt. Ltd. at a price of Rs. 29/- per share (as against book value of Rs. 22.18/- as on 31.3.2022), amounting to Rs. 14,50,000/-, and sale of 17,000 shares of Raghini Infrastructure Pvt. Ltd. at a price of Rs. 85.30/- per share (as against book value of Rs. 66.40/- as on 31.3.2022), amounting to Rs. 14,50,100/- to Zarmin Tradelinks Pvt. Ltd., effectively making it a settlement transaction (both taking place on 18.1.2023) resulting into a net loss of Rs. 19,700/- to the corporate debtor;

e. Recording of a Long-Term Capital Loss of Rs. 1,06,73,382/-, incurred on the sale of 34,671 shares of Rander Corporation Ltd., under the head of "Other Expenses" in the books of account on 11.12.2024, thus allegedly to be adversely impacting the profit/loss statement of the Corporate Debtor for FY 2024-25.

8. It is stated by the applicant in relation to transaction impugned u/s 43 of IBC that, the absence of substantiating documents and considering the fact that these payments were made to a specific creditor in preference over others, the Transaction Auditor has classified the transaction as a preferential transaction under Section 43 of the Insolvency and Bankruptcy Code, 2016, and this classification is based on the principle that such payments disturb the pari passu treatment of creditors and confer undue preference on a related or favoured party, especially when made within the look-back period prescribed under the Code.

9. It is stated by the applicant in relation to transaction impugned u/s 66 of IBC that, the impugned transactions were done with an intent to defraud the creditors of the Company or for any other fraudulent purpose, and the aforesaid transactions are deeply prejudicial to the interest of the Corporate Debtor and the creditors of the Company and thus indeed already caused severe harm and injury to the creditors at large, thus, the aforesaid transactions are highly suspicious and fall squarely within the ambit of 66 of the Code based on the limited records made available to the Auditor, and it appears that these fraudulent transactions have been carried out with the intent to defraud the creditors of the Corporate Debtor.

10. Respondent No. 1 & 2 filed common reply stating that (i) all financial decisions and transactions of the Corporate Debtor were undertaken in good faith, in the ordinary course of business, based on commercial requirements, historical practices, and information available at the relevant point of time; and (ii) vide email dated 11 July 2025, the Respondents furnished a complete and final point-wise reply to all queries raised by the Resolution Professional, 212 supported by the documents then available, constituting replies to all communications from the applicant in relation to impugned transaction. The Respondents have also given reply to specific transactions.

11. Heard the Counsel and perused the material on record.

12. It is admitted fact that an amount of Rs. 25,78,778/- (Rs. 10,00,000/- on 15.03.2024 & Rs. 15,78,778/- on 20.03.2024) paid by the Corporate Debtor in two tranches to Partani Appliances Ltd. against unsecured loan of Rs. 2.25 Crores received from them in September, 2013, and the said party is not a related party of

corporate debtor u/s 5(24) of IBC. It is stated by the Respondents that the loan was repayable on demand and the said payment were made in the ordinary course of business. It is noted from the ledger account of Partani Appliances Limited appearing in books of corporate debtor that the corporate debtor have been making yearly repayments to such party, and the balance as on 31.3.2022 was Rs. 25,78,778/-, and no interest was provided on outstanding balances from FY 2016-17. The payments were made in March 2024 within 12 months of CIRP commencement date. It is further noted that the company petition 612 of 2024 was filed on 25.04.2024.

12.1. Section 43 of IBC is a deeming fiction carved out to protect the corpus of funds available to the creditors in case of admission of corporate debtor in CIRP by providing for reversal of transactions taken place within the period specified in section 43(4) of IBC. Section 43(2) of IBC provides that "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.

12.2. Indubitably, there is an antecedent debt payable to payee, and there is an payment towards such antecedent debt, however, the pleadings of the applicant does not demonstrate if the

unsecured financial creditors had not received any money in the CIRP in the resolution process. On perusal of order dated 19.11.2025 passed by this Tribunal approving the resolution plan of corporate debtor, that the resolution plan had proposed a payment of Rs. 7,56,00,000/- to the financial and operational creditors of the corporate debtor and its liquidation value was determined as Rs. 7,48,36,043/- and the total admitted claims of financial creditors amounted to Rs. 3,02,77,973/- (secured financial creditors) and Rs. 4,65,01,990/- (Unsecured financial creditors) of corporate debtor, thus, even in case of distribution u/s 53 of IBC, an amount of Rs. 4,45,58,070/- was available for the satisfaction of claims of the unsecured financial creditors of corporate debtor, thereby satisfying their claims to the extent of approx.. 96%.

12.3. The applicant has ignored these vital facts while stating in the application that the timing of the payments, shortly before the initiation of the insolvency proceedings, raises a red flag with respect to the intent and beneficiary of the transaction. In view of these facts, we are of considered view, the applicant has failed to make out a case if the impugned payment had 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, and if it had, to what extent, while the facts as enumerated above clearly demonstrate that, even if a preference can be said to have occurred, it could be said only to the extent of approx. 4% of total amounts paid to the payee. Nonetheless, it is noted that the payee i.e Partani Appliances Ltd. is a not a party respondent in this application,

and in the absence of same, such payee can not be directed to make payment of an amount of preference to the extent of 4%.

12.4. As the applicant has failed to meet the necessary ingredients in the application, we are of considered view that no order can be passed impugning the aforesaid transaction as preferential.

13. The applicant has also impugned a payment of Rs. 1,21,000/- made on 28.07.2016 to M/s Eseva Collection Account, allegedly towards Stamp Duty and Registration Charges, in terms of section 66 of IBC. The narration in the bank statement of corporate debtor in relation to this payment records "*BRN-NEFT-AXISF16211085210-ESEVACOLLECTIO*". The applicant has impugned this transaction on the ground that such payment was grouped as Sundry Debtor in the books of corporate debtor instead of booking it as an expense under the head of stamp duty or registration charges in the books of accounts. Admittedly, this amount was subsequently written off in books of accounts on 31.3.2023. It seems that the applicant has failed to appreciate that the payments towards purchase of stamp papers is made through e-seva portal.

13.1. It was explained by the Respondents to the applicant that the stamp duty was initially paid for a proposed transaction which was later dropped, and since a refund could not be obtained from the department, the amount was written off. However, the applicant has impugned this transaction as fraudulent stating that no documentary proof or evidence has been submitted by the Respondents substantiating, the original purpose for which stamp duty was paid, the reasons for non-

completion of the transaction, any correspondence or effort made to recover the amount from the concerned department, reasons for incorrect classification as Sundry Debtors instead of a direct expense.

13.2. In case, the applicant suspected about the real beneficiary of this payment, he could have independently verified the real beneficiary of this payment from the banker. It is further noted that the transaction auditor, in its report, has observed the business of the corporate debtor consisting of "the company holds and trades real estate assets as part of its business operations" also. The explanation of the Respondents that the stamp papers were purchased for a property transaction which didn't materialized is in consonance with the said business activity. The applicant, instead of impugning the transaction here, could have taken necessary steps to seek refund from the state treasury. It could not be understood in what manner this transaction of payment to state treasury can be said to be entered with an intent to defraud the creditors of the corporate debtor or fraudulent purpose.

13.3. Considering the facts of the case and explanation offered by the respondents, we do not find that the impugned transaction entails any element of fraud, and meets the necessary ingredients of section 66 of IBC, as the intent to defraud creditors is completely missing except a bald assertion to that effect.

14. The applicant has also impugned an amount of Rs. 1,10,000/-, being cash belonging to the corporate debtor stated to be seized by the Enforcement Directorate (ED) from the residential

premises on 15.05.2023, during a search operation, in the absence of any acknowledgment or seizure memo issued by the ED confirming the ownership or source of the seized cash in terms of section 66 of IBC.

14.1. The Respondents vide email dated 10th July replied to the applicant that "*Search was conducted on 15.05.2023 by Investigating Officer, Enforcement Directorate and cash was seized by department in course of search action. Out of total cash seized by ED portion of Rs 1,10,000/- belong to Laxmiramuna Investments Pvt Ltd. (Cash balance as at 15.05.2023 was Rs. 115658/- as per books of accounts)*". Further, in the letter dated 22.05.2023 addressed to Investigation Officer, Enforcement Directorate, Mumbai, the Respondent no. 1 had explained the source of cash seized from his residence, and the said letter clearly mentions that out of seized amount, an amount of Rs. 1,15,658/- belonged to the corporate debtor. The said letter is acknowledged by the Enforcement Directorate on 22.5.2023.

14.2. The aforesaid communication from the Respondent No. 1 to the Enforcement Directorate binds the Respondent No.1, from whom the cash was seized. It is normal practice to keep cash balance with the directors of the company, and the cash in hand claimed is also not alleged to be abnormally high. In our considered view, the applicant could have filed a claim before Enforcement Directorate for release of aforesaid cash amount, as belonging to the corporate debtor. Even if such amount is still lying with Enforcement Directorate, the claim on basis of Respondent No. 1's statement can be preferred before them in

view of section 32A of IBC, and Respondent no. 1 is obligated to co-operate in this relation.

14.3. Accordingly, it could not be understood in what manner this transaction involving seizure of company's cash from the residence of director can be said to be entered with an intent to defraud the creditors of the corporate debtor or fraudulent purpose. Considering the facts of the case and explanation offered by the respondents, we do not find that the impugned transaction entails any element of fraud, and meets the necessary ingredients of section 66 of IBC, as the intent to defraud creditors is completely missing except a bald assertion to that effect.

15. The applicant has also impugned transaction of sale and purchase of shares taken place with Zarmin Tradelinks Pvt. Ltd. on 18.03.2023, whereby 50,000 shares of Sethia Infrastructure Pvt. Ltd. were purchased from Zarmin Tradelinks Pvt. Ltd. at a price of Rs. 29/- per share as against book value of Rs. 22.18/- as on 31.3.2022, and 17,000 shares of Raghini Infrastructure Pvt. Ltd. were sold to them at a price of Rs. 85.30/- per share as against book value of Rs. 66.40/- as on 31.3.2022, , amounting to Rs. 14,50,100/- to Zarmin Tradelinks Pvt. Ltd., effectively settling the consideration in kind in this manner. It is alleged that this transaction has resulted into a net loss of Rs. 19,700/- to the corporate debtor based on the book value of shares of these companies as on 31.3.2022 as determined from the audited financial statements thereof. This transaction is impugned on the grounds of purchase of overvalued shares despite available financials indicating a significantly lower book value; Lack of justification or valuation report supporting the pricing differential; no independent rationale or board resolution explaining the

necessity of the transaction; and the absence of supporting commercial logic or documentation to justify the pricing differential.

15.1. It is stated by the Respondents that the Corporate Debtor has, since inception, been engaged in investment and securities trading activity. The transactions dated 18 January 2023, involving the purchase of shares of Sethia Infrastructure Pvt. Ltd. and the sale of shares of Raghini Infrastructure Pvt. Ltd. to Zarmin Tradelinks Pvt. Ltd., were undertaken strictly in the ordinary course of business. It is further stated that losses of such insignificant quantum cannot, by any stretch of legal interpretation, satisfy the statutory threshold of fraudulent intent required under Section 66 of the Code.

15.2. Indubitably, the corporate debtor is engaged in business of securities sale/purchase, and the transaction auditor has also observed in its report about the business of corporate debtor comprising of '*investment and trading of stocks, bonds, and other financial instruments*'. It is also noted that the said transaction took place on 18.1.2023 and the book value for determination of impugned loss is calculated basis 31.3.2022 financial statements. In view of trading and investment of stocks, being one of primary business of the corporate debtor and nominal loss determined on basis of 10 months old financial statements, we are of considered view this transactions can not be classified as fraudulent transactions falling under section 66 of the IBC. Accordingly, the impugned transaction lacks necessary element of fraud, and fails to meet the necessary ingredients of section 66 of IBC, as the intent to defraud creditors is completely missing except a bald assertion to that effect.

16. The Applicant has also impugned recording of a Long-Term Capital Loss of Rs. 1,06,73,382/-, incurred on the sale of 34,671 shares of Rander Corporation Ltd., under the head of "Other Expenses" in the books of account on 11.12.2024 in terms of section 66 of IBC alleging that it adversely impacts the profit/loss statement of the Corporate Debtor for FY 2024-25. It is case of the applicant that no contract notes, sale transaction documents, DMAT statements, valuation reports, 6305 or other evidence were furnished by the Respondents to substantiate the alleged sale of the said shares; the only entry traced in the books was a journal entry directly debiting the shares of Rander Corporation Ltd. and reflecting a loss of Rs. 1,06,73,382/-, without any backup documentation; this fabricated loss entry appears to have been made with the sole intent to distort the financial position of the Corporate Debtor and wrongfully reduce taxable or distributable profits, potentially to the detriment of the creditors; and such conduct amounts to financial misrepresentation, concealment, and possible misappropriation of assets.

16.1. The Respondents have stated that The classification of the said loss under 'Other Expenses' was a technical accounting error arising from the mistaken understanding that negative entries could not be reflected under the 'Capital Gains' head in the income tax return, and this error was a presentational one and does not affect the genuineness of the underlying transaction. It is further stated by the respondents that the allegation that the said loss was fabricated is incorrect and contrary to the share transfer documentation, contract notes, demat statements, and income tax filings. Each of these contemporaneous documents establishes the bona fide nature of the transaction.

16.2. It is noted that no such documents have been placed on record by the respondents and the applicant as well as transaction auditor have alleged that there are no document / evidence proof apart from above explanation was being given to reflect the actual transaction behind this Journal entry. It is further noted from the public domain that the shares of Rander Corporation Limited are listed on BSE and were traded @ Rs. 10.86 per share on 10.12.2024 on the exchange platform. Since, these shares are listed, these shares must be in de-materialised form and its sale price could have been ascertained from the ledger accounts of the corporate debtor. However, the applicant has not stated the sale consideration stated to be received on sale of such shares resulting into loss impugned in the application. In the absence of these information, the correctness of the sale consideration recorded in the books and resultant loss therefrom could not be verified. Nonetheless, since the shares, in question, are listed, the applicant could have verified the relevant trade from BSE on the stated date in terms of powers vested in him under Regulation 4 of CIRP Regulations. In the absence of such verification, merely recording of such loss under an incorrect head, can not lead to a probable conclusion that the transaction in question was undertaken for fraudulent purpose to keep away the shares held by the corporate debtor beyond creditors at lesser value than prevailing in the market.

16.3. Accordingly, the impugned transaction lacks necessary element of fraud, and fails to meet the necessary ingredients of section 66 of IBC, as the intent to defraud creditors is completely missing except a bald assertion to that effect.

17. In view of aforesaid discussion, we are of considered view that the present application is based on surmises and conjectures, this fails to meet the necessary ingredients of section 43 and 66 of IBC, hence, IA 4240 of 2025 is dismissed and disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)