

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 953 OF 2022

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Anchor Leasing Private Limited

...Applicant

V/s

Jayesh Natwarlal Sanghrajka and Ors.

...Respondent

In the matter of

C.P.(IB) No. 4464/MB/2019

Gajendra Investment Limited

Financial Creditor

Vs.

Satra Property Developers Private Limited

Corporate Debtor

Order delivered on: 29.02 .2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Appearances

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

For the Applicant : Mr. Viraj Parikh, Advocate
For the RP : Mr. Pulkit Sharma a/w Mr. Chintan
Gandhi a/w, Advocate
For the Respondent 2 & 3 : Mr. Rohan Agarwal, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Interlocutory Application no. 953/2022 is filed by M/s Anchor Leasing Private Limited under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Properties (India) Limited (“Corporate Debtor”), to seek following reliefs
 - a. That this Tribunal be pleased to declare the sale of Shares by the Corporate Debtor and/or its nominees in favour of Respondent No. 2 and/or its nominees vide the Transaction Documents (Exhibits E and F) as undervalued and fraudulent under the IBC;
 - b. that this Tribunal be pleased to declare the Transaction Documents and the 2018 MoU (Exhibits E, F and G) and the sale of the Shares by the Corporate Debtor in favour of Respondent No. 2 as void ab initio, bad in law, illegal, unenforceable and not binding;
 - c. that in the alternative to prayer (b) above, this Tribunal be pleased to direct Respondent No. 2 to pay the Corporate Debtor the entire consideration at the fair market value of the Shares (less Rs. 5,00,000/- already paid by Respondent No. 2), as determined under the valuation certificate dated January 24, 2022 (at Exhibit I) along with interest at the rate of 18% per annum from the date

of the Transaction Documents (Exhibits E and F) until realisation of the amount so directed to be paid;

- d. that pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the Respondent No. 2 and Respondent No. 3 to disclose on affidavit within such time as this Hon'ble Tribunal may deem fit and proper, the particulars of all inventories/flats including those mentioned in the Transaction Documents and agreements executed/registered, allotment letters issued, amounts received and receivable in respect of such inventories/flats;
- e. that pending the hearing and final disposal of this Application, Respondent No. 2, Respondent No. 3, their partners, servants,...- agents, representatives and/or any person deriving any right, tide or interest through or under them be restrained by an order of this Hon'ble Tribunal from in any manner whatsoever, either directly or indirectly, dealing with, alienating, encumbering and/or disposing of and/or inducting any third party or creating any third party right, title and interest in respect of the inventories, assets, properties (immovable, movable, tangible and/or intangible) of Respondent No. 3 whether disclosed or not;
- f. that pending the hearing and disposal of this Application, Respondent No. 2 their partners, servants, agents, representatives and/or any person deriving any right, title or interest through or under them be restrained by an order of this Hon'ble Tribunal from in any manner whatsoever, either directly or indirectly, dealing with, alienating, encumbering and/or disposing of or creating any third party right, title and interest in respect of the and/or the Shares;
- g. that pending the hearing and disposal of this Application, Respondent No. 2, its partners, servants, agents, representatives and/or any person deriving any right, title or interest through or under them be restrained by an order of this Hon'ble Tribunal

from in any manner whatsoever, either directly or indirectly, dealing with, alienating, transferring possession of the Shares;

2. By an Order dated August 10, 2020 passed by this Tribunal in the captioned Petition, corporate insolvency resolution process in respect of the Corporate Debtor has commenced. Pursuant to the 15th meeting of the Committee of Creditors (“CoC”) of the Corporate Debtor held on August 7, 2021, the CoC has on August 12, 2021 approved the Resolution Plan in respect of the Corporate Debtor. Interlocutory Application No. 2193 of 2021 in the abovementioned Petition is pending before this Hon’ble Tribunal for approval of the Resolution Plan.

2.1 Pursuant to Share Purchase Agreements dated March 20, 2017 and February 23, 2018, the Corporate Debtor sold in aggregate 50,000 fully paid up equity shares (“Shares”), representing 100% paid-up share capital of its wholly owned subsidiary Respondent No. 3, in favour of Respondent No. 2 and its nominees (the “Transaction”) at an aggregate ‘negotiated’ consideration of merely Rs. 5,00,000/- (Rupees Five Lakhs Only). Thereafter, vide Memorandum of Understanding dated March 23, 2018 (“2018 MoU”), Respondent No. 2 inter alia agreed to relinquish its rights after completion of construction upto 22nd floor in Respondent No. 3’s real estate project at Govandi in favour of Mr. Praful Satra (erstwhile promoter) or his nominees.

2.2 According to the share valuation certificate dated January 24, 2022 issued by a practicing-chartered accountant, the fair market value of the Shares as on March 31, 2018 is Rs. 305,21,64,000/- (Rupees Three Hundred and Five Crores Twenty Lakhs Sixty-Four Thousand Only). The Applicant, therefore, submits that Transaction is inter alia (i) an undervalued and fraudulent transaction undertaken with an intent to defraud the creditors; and (ii) entered into by the Corporate Debtor not in its ordinary

course of business and good faith, as a result of which, liable to be impugned under IBC.

3. Heard learned Counsel and perused the materials available on record.
 - 3.1. The Applicant/Financial Creditor has locus to file an application in terms of section 47 of the Code in case of undervalued transactions and in case where such transaction has not been reported by the Resolution Professional (“RP”). Section 47 of the Code further requires the adjudicating authority to be satisfied that after having sufficient information or opportunity to avail information of such transactions, the RP did not report the same to it.
 - 3.2. It is the case of the of Respondent No.2 that fairvalue of the share of the company i.e. Centrio Lifespaces Limited (“Centrio”) was determined to be Rs. (-) 11,008.30/- by Jignesh Goradia & Associates, Chartered Accountant on 27.01.2018. We note that share purchase agreement between Corporate Debtor, Centrio Lifespaces Limited and Respondent No.2 M.J Shah Realty was entered on 20.03.2017, initially for purchase of 24,500 equity shares and thereafter on 23.03.2018 for purchase of remaining 25,500 equity shares of Centrio Lifespaces Limited. The Applicant has placed on record a valuation report from M/s Pakshal Shah and Associates Chartered Accountant determining the value of shares to be Rs.61,043/- per share as on 31.03.2018 on the asset-based approach assuming the business be continued as on-going concern basis.
 - 3.3. It is undisputed fact that the valuation of the Company may be different for different perspective. However, it is also undisputed that Respondent No.2 i.e. MJ Shah Realtors LLP had acquired the shares of Centrio Lifespaces Limited to keep it as a going concern. Accordingly, the value determined by Jignesh Goradia on net asset value method without determining the fair value of land rights which was available to the Centrio Lifespaces Limited is not correct

approach. On the other hand, the valuation determined by the Applicant deriving the value of land rights on the basis of value of flats without discounting the same for appropriately for contingency involved in final execution of construction project is also not correct. Nonetheless, we find that there is wide variation between the value arrived at by M/s Pakshal Shah & Associates Chartered Accountant and Mr. Jignesh Garodia and Associates. M/s Pakshal Shah & Associates Chartered Accountant was determined the value of 100% shares of Centrio Rs.305.2164 Crores while Mr. Jignesh Goradia has determined a negative figure as the value of the shares.

3.4. We further find from MOU dated 23.05.2018 entered between the Corporate Debtor and Respondent No.2 i.e. MJ Shah Realtors LLP that the purchaser (Respondent No.2) shall after completion of construction upto 22nd floor shall relinquish its rights and obligation for its construction and sale under this Project to the seller (Corporate Debtor) or its nominees as per the provisions of 1st Supplemental to Joint Development Agreement signed with the Developer. Developer shall co-operate and shall make all the provisions for getting part OC upto 22nd floor. We do not find any consideration of this clause in the valuation report of M/s Pakshal Shah. Further, we could not get any definite response as to whether these valuable rights beyond 22nd Floors are part and parcel of the Corporate Debtor's assets which have been considered for resolution. Neither the RP nor Respondent No.2 made any submission in relation to this fact.

3.5. In view of above facts, we are of prima facie view that the transaction of sale of shares of Centrio by the Corporate Debtor to Respondent No.2 is substantially undervalued and this aspect needs to be further examined by the RP to arrive at correct finding in the matter. It is undisputed fact that Corporate Debtor was admitted into CIRP on 10.08.2020 in a Company Petition filed in 2019 and this transaction of sale of shares was entered on 20.03.2017 and

23.03.2018, which is more than two years preceding the insolvency commencement date in this case. Accordingly, this transaction does not fall within the scope of section 45 of the Code.

3.6. As regards, applicability of section 49 of the Code is concerned, we find that said section is not applicable to acquisition of any interest in property from a person other than the corporate debtor which is in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest. In the present case, it has been pleaded that MJ Shah Group proposed acquisition of 100% shareholding of Centrio and offered to continue construction of the GOvandi project. It was agreed between the parties that MJ Shah Group, through its entities, will acquire 100% shareholding of Centrio at price of Rs.10/- per share in view of the fact that MJ Shah Group had already infused a large sum of money by way of loan. Therefore, the MJ Shah Group was an unsecured creditor of Ultra Lifespace Private Limited (ULPL). Further, ULPL had large outstanding dues to secured creditors. In view of the same the MJ Shah Group agreed to take over Centrio and repay its dues.

3.7. The Applicant has not placed any material except the valuation report to prove that this Transaction was entered into deliberately by both the parties for keeping the assets of the Corporate Debtor beyond the reach of any person who is entitled to make any claim against the Corporate Debtor. It is noteworthy that buyer Respondent No.2 was itself a creditor of the Corporate Debtor. Accordingly, we are of the considered view that it cannot be said that the said transaction was a conscious act on the part of either of the parties. Accordingly, section 49 is also not applicable to the present case.

3.8. As we have already held in preceding paras that the transaction was not a conscious act was part of either of the parties to defraud the

creditors, we do not find the said transaction had fallen u/s 66 of the Code also.

4. In view of above findings, I.A. 953/2022 is dismissed. However, we direct the RP to look into the rights available to corporate debtor in terms of clause 2 of the MOU dated 23.03.2018 placed at para 545 of the Application.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)