

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

I.A. 917 OF 2022

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

Anchor Leasing Private Limited

...Applicant

V/s

Mr. Devarajan Raman & Others

...Respondent

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

Financial Creditor

Vs.

M/s Satra Properties India Limited

Corporate Debtor

Order delivered on: 04.03.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances

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, 4 : Mr. Rohan Agarwal, Advocate
& 8

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Interlocutory Application no. 917/2022 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 Mr. Mayank Jaswant Lal Shah i.e. Respondent No. 4 and/or its nominees vide the 2019 SPA as preferential and fraudulent under IBC.
 - b. That this Tribunal be pleased to declare the 2019 SPA and the sale of Shares by the Corporate Debtor and/or its nominees in favour of Respondent No. 4 as void ab initio, bad in law, illegal, unenforceable and not binding;
 - c. That this Tribunal be pleased to declare that the sale of Shares by the Respondent No. 4 in favour of Sh. Jignesh Pravinchandra Shah i.e. Respondent No. 8 is void ab initio, bad in law, illegal, unenforceable and not binding;

- d. That this Tribunal be pleased to declare that the issue of Fresh Shares by the Respondent No. 2 in favour of Respondent Nos. 5 to 7 (as mentioned in Exhibit F) is void ab initio, bad in law, illegal, unenforceable and not binding;
- e. That pending the hearing and disposal of this Application, this Hon'ble Tribunal be pleased to direct the Respondent Nos. 2 to 8 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 2019 SPA (Pages 411 to 444) and title of Respondent No. 2, agreements executed/registered, allotment letters issued, amounts received and receivable in respect of such inventories/ flats;
- f. That pending the hearing and disposal of this Application, Respondent Nos. 3 to 8, 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 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. 2 whether disclosed or not;
- g. That pending the hearing and disposal of this Application, Respondent Nos. 3 to 8, 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, parting with the possession of, and/or 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 and the Fresh Shares;

2. The Applicant is a Financial Creditor presently controlling a voting share of 0.91% in the Committee of Creditors ("CoC") of the Corporate Debtor, on the basis of the Interest list of creditors filed by the Respondent No. 1 with this Tribunal, as on November 30, 2021.
 - 2.1. The Applicant has a claim of Rs. 121,50,41,839/- (Rupees One Hundred Twenty One Crores Fifty Lakhs Forty One Thousand Eight Hundred Thirty Nine Only) against Satra Properties (India) Limited (the "Corporate Debtor") as on August 3, 2020 (i.e. the insolvency commencement date), which has been wrongly rejected by the Resolution Professional (Respondent No. 1) to the extent of Rs.120,18,40,090/- (Rupees One Hundred Twenty Crores Eighteen Lakhs Forty Thousand Ninety Only) without any intimation whatsoever. This decision of the Resolution Professional has been challenged by the Applicant vide Interlocutory Application No. 946 of 2021 filed before this Tribunal, which is presently pending.
 - 2.2. The captioned Petition was filed by the Petitioner against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Petition was admitted by this Tribunal vide Order dated August 3, 2020 ("Admission Order") and accordingly the corporate insolvency resolution process ("CIRP") in respect of the Corporate Debtor commenced. Pursuant to the Admission Order, the Respondent No. 1 was appointed as the Interim Resolution Professional for the Corporate Debtor and was subsequently confirmed as the Resolution Professional by the then members of the CoC pursuant to the 1st CoC meeting held on October 3, 2020.
 - 2.3. Respondent No. 2, is a company incorporated under the provisions of Companies Act, 1956 and was part of Satra Group of Companies ("Satra Group") comprising of various entities managed and controlled, whether directly or indirectly by Mr. Praful Satra. Respondent No. 2 was a wholly owned subsidiary of the Corporate Debtor until the Corporate Debtor transferred its 100% fully paid-

up equity share capital of Respondent No. 2 to Respondent Nos. 3 and 4 in 2013 and 2019 respectively. Respondent No. 4 and his brother Mr. Shreyans Jashwantlal Shah ("SJS") controls and manages various entities which inter alia includes Respondent No. 3, amongst others, directly or indirectly, through or under their other family members and affiliates, (collectively "MJS Group"). Respondent No. 3, a partnership firm is a part of the MJS Group and Respondent No. 4 and SJS are the partners of Respondent No. 3.

2.4. The Respondent Nos. 5 to 8 are relatives and affiliates of Respondent No. 4 and SJS. Respondent Nos. 3 and 5 to 8 are the present shareholders of Respondent No. 2.

2.5. On January 3, 2019, Respondent No. 4 transferred Rs. 5,00,00,000/- (Rupees Five Crores Only) to the Corporate Debtor. This Rs. 5,00,00,000/- (Rupees Five Crores Only) was immediately on the same day ie. January 3, 2019, paid to Pratiti Trading Private Limited ("PTPL") (an MJS Group entity) against the outstanding loan of the Corporate Debtor. Against payment of Rs.5,00,00,000/- (Rupees Five Crores Only) to the Corporate Debtor, the Corporate Debtor preferentially transferred on August 8, 2019 [within one (1) year look back period], 10,000 fully paid up equity shares ("Shares"), representing 51% of the total paid-up share capital of Respondent No. 2 i.e. Ultra Lifespaces Private Limited (earlier known as Satra Buildcon Private Limited), in favour of Respondent No. 4 ("Transaction"). This entire transaction was orchestrated vide Commercial Suit No. 859 of 2019 under which without advancing any arguments whatsoever, the Corporate Debtor and Respondent No. 4 filed consent terms dated August 8, 2019 ("Consent Terms") and further executed share purchase agreement on August 8, 2019 ("2019 SPA"), without making payment of applicable stamp duty.

2.6. The Applicant submits that the Transaction is inter alia (i) a preferential 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 the IBC.

2.7. Respondent No. 1, despite having knowledge of the Transaction, failed to take steps for setting aside the same under the provisions of IBC. The Applicant is aggrieved by the Transaction and the inaction of Respondent No. 1 and is accordingly, constrained to approach this Hon'ble Tribunal by way of the present Application.

2.8. On January 3, 2019, Respondent No. 4 transferred Rs. 5,00,00,000/- (Rupees Five Crores Only) to the Corporate Debtor. This Rs. 5,00,00,000/- (Rupees Five Crores Only) was immediately on the same day ie. January 3, 2019, paid to Pratiti Trading Private Limited ("PTPL") (an MJS Group entity) against the outstanding loan of the Corporate Debtor. Against payment of Rs.5,00,00,000/- (Rupees Five Crores Only) to the Corporate Debtor, the Corporate Debtor preferentially transferred on August 8, 2019 [within one (1) year look back period], 10,000 fully paid up equity shares ("Shares"), representing 51% of the total paid-up share capital of Respondent No. 2, in favour of Respondent No. 4 ("Transaction"). This entire transaction was orchestrated vide Commercial Suit No. 859 of 2019 under which without advancing any arguments whatsoever, the Corporate Debtor and Respondent No. 4 filed consent terms dated August 8, 2019 ("Consent Terms") and further executed share purchase agreement on August 8, 2019 ("2019 SPA"), without making payment of applicable stamp duty.

2.9. The Applicant submits that the Transaction is inter alia (i) a preferential 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 the IBC. Respondent No. 1, despite having knowledge of the Transaction, failed to take steps for setting aside the same under the provisions of IBC. The Applicant

is aggrieved by the Transaction and the inaction of Respondent No. 1 and is accordingly, constrained to approach this Hon'ble Tribunal by way of the present Application.

2.10. On or about August 26, 2013, Respondent No. 3 acquired from the Corporate Debtor and its nominees, 9670 fully paid up equity shares of Rs. 10/- each, representing 49% of the total paid up equity share capital of Respondent No. 2, for an aggregate consideration of Rs. 96,070/- (Rupees Ninety Six Thousand Seventy Only). Pursuant to the Joint Development Agreement dated December 27, 2013 duly registered with the office of Sub Registrar of Assurances at Bandra under serial no. BDR-17-8010-2013 read with Supplemental Joint Development Agreement dated April 27, 2014 duly registered with the office of Sub Registrar of Assurances at Bandra under serial no. BDR-17-3426-2014 (collectively "JDA") with M/s Pyramid Developers, Respondent No. 2 was developing the sale building known as LE-88 (now known as 81 AUREATE) of a slum rehabilitation project situated at Mahim Bandra Reclamation, Bandra (West), Mumbai 400050 ("Bandra Project").

2.11. As per the list of creditors of the Corporate Debtor as on November 30, 2021, filed by the Respondent No. 1 with this Tribunal under Regulation 13 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") the Corporate Debtor owes the following nominees of MJS Group ("MJS Group CoC Members") at least Rs. 1,15,56,96,762/- (Rupees One Hundred and Fifteen Crores Fifty Six Lakhs Ninety Six Thousand Seven Hundred and Sixty two Only) ("MJS Group Loan") in the following manner:

Sr. No.	MJS Group Entity/Nominee	Claim admitted (Rs.)
1.	Vistra ITCL (India) Limited	79,87,08,505
2.	Pratiti Trading Private Limited	10,53,44,381
3.	Gajendra Investment Limited	25,16,43,876
TOTAL		1,15,56,96,762

2.12. MJS Group and Satra Group have clandestinely entered into the Transaction with an intent inter alia to repay the MJS Group Loan to the exclusion of other creditors of Respondent No. 2 and the Corporate Debtor. It is pertinent to note that Rs. 5,00,00,000/- (Rupees Five Crores Only) received by the Corporate Debtor from Respondent No. 4 on January 3, 2019 were immediately paid to PTPL against its outstanding loan in the following manner:

1.	MJS	2,00,000/-	→	SPIL	2,00,000/-	→	PTPL
2.	MJS	98,00,000/-	→	SPIL	98,00,000/-	→	PTPL
3.	MJS	1,00,00,000/-	→	SPIL	1,00,00,000/-	→	PTPL
4.	MJS	1,00,00,000/-	→	SPIL	1,00,00,000/-	→	PTPL
5.	MJS	1,00,00,000/-	→	SPIL	1,00,00,000/-	→	PTPL
6.	MJS	1,00,00,000/-	→	SPIL	1,00,00,000/-	→	PTPL
TOTAL		5,00,00,000/-			5,00,00,000/-		

2.13. In or about March 2019, Respondent No. 4 instituted a Commercial Suit No. 859 of 2019 and Notice of Motion No. 1492 of 2019 therein (collectively "Suit") inter alia against the Corporate Debtor and its nominees for transfer of Shares in favour of Respondent No. 4

before the Hon'ble Bombay High Court. Without advancing any arguments whatsoever in the Suit, the Corporate Debtor and Respondent No. 4 filed Consent Terms.

- 2.14. No prior written consent from two-third allottees and/or the Maharashtra Real Estate Regulatory Authority under the provisions of Real Estate (Regulation and Development) Act, 2016 was obtained before transferring the Bandra Project to Respondent No. 4 via the 2019 SPA. No stamp duty has been paid by either the Corporate Debtor or MJS on the 2019 SPA.
- 2.15. The Respondent No. 2 was the wholly owned subsidiary of the Corporate Debtor. After the Transaction, Respondent No. 3 and/or its nominees and Respondent No. 4 became 100% shareholder of Respondent No. 2 and consequently entitled to the benefits accruing from the Bandra Project. The Applicant craves leave to refer to and rely upon the documents in this regard, as and when produced. The consideration of Rs. 5,00,00,000/- (Rupees Five Crores Only) towards the Shares was a farce. By the time the Transaction was effected, the Bandra Project was already completed and the application for obtaining the occupation certificate was pending. The Applicant submits that the Transaction entered into by the Corporate Debtor is a colourable device to transfer benefits accruing from the Bandra Project in favour of Respondent No. 4 under the guise of transfer of Shares. The Applicant submits that the Transaction was entered into by the Corporate Debtor and Respondent No. 4 with a view to keep the assets of the Corporate Debtor, beyond the reach of the other creditors of the Corporate Debtor.
- 2.16. The Shares were not acquired by Respondent No. 4 in good faith. The had filed Company Petition (IB) No. 1496 of 2017 against the Corporate Debtor under section 7 of IBC. The Corporate Debtor and MJS Group were aware that there is a likelihood of initiation of CIRP against the Corporate Debtor. The Corporate Debtor,

therefore, transferred its valuable asset in favour of Respondent No. 4 and re-routed the alleged consideration paid by Respondent No. 4 to PTPL, making the Transaction a preferential and fraudulent transaction. Applicant OF

2.17. Moreover, in or about October 2019, apprehending that the Transaction may be avoided under the provisions of IBC and with a view to retain control of the Respondent No. 2 (i) Respondent No. 4 transferred the Shares to his nephew i.c. Respondent No. 8; and (ii) Respondent No. 4 and SJS caused Respondent No. 2 to increase the authorised share capital of Respondent No. 2 from Rs. 2,00,000 (Rupees Two Lakhs Only) to Rs. 1,02,00,000/- (Rupees One Crore Two Lakhs Only) and issue 4,80,000 fresh equity shares of Rs. 10/- each ("Fresh Shares") on preferential basis in favour of his relatives and affiliates i.e. Respondent Nos. 5 to 7 at face value, thereby increasing the issued and paid up equity share capital of Respondent No. 2 from Rs. 1,96,070/- comprising of 19,607 fully paid up equity shares of Rs. 10/- each to Rs. 49,96,070/- comprising of 4,99,607 fully paid up equity shares of Rs. 10/- each. The sale of Shares by Respondent No. 4 in favour of Respondent No. 8 and issue of Fresh Shares in favour of Respondent Nos. 5 to 7 is collectively referred to as the "MJS Group Transfer". Resolution Professional is duty bound to determine preferential, undervan fraudulent and extortionate transactions entered into by the Corporate Debtor under IBC ("Avoidance Transactions") and file an application before this Hon'ble Tribunal for avoidance thereof ("Avoidance Application") within the timelines mentioned in the CIRP Regulations.

2.18. During the CIRP of the Corporate Debtor, Respondent No. 1 shared with the CoC of the Corporate Debtor, a draft avoidance report ("Draft Avoidance Report") from the forensic auditor, BDO India LLP ("Auditor") identifying 14 (fourteen) potential avoidance transactions under sections 43 to 50 and 66 of the IBC amounting

to Rs.546.77 Crores including the Transaction. Copy of the Draft Avoidance Report shared by the Respondent No. 1 vide email dated July 9, 2021 is annexed hereto and marked as Exhibit 'G'.

2.19. During various CoC meetings and vide several emails exchanged between the Applicant/another CoC member and Respondent No. 1 between July 2021 and September 2021, Respondent No. 1 was called upon to file the Avoidance Application with this Hon'ble Tribunal within the timelines prescribed under the CIRP Regulations. However, Respondent No. 1 failed and neglected to file the Avoidance Application on the pretext of (i) non-cooperation from the ex- directors of the Corporate Debtor, (ii) non-availability of funds to pay the Auditor's fees; (iii) the timelines mentioned in the CIRP Regulations not being mandatory; and (iv) non-mandatory of filing an Avoidance Application before the resolution plan is considered. The Applicant's request to Respondent No. 1 for inter alia providing inspection of the originals of all documents relied upon by the applicable parties in connection with the Avoidance transactions mentioned in the Draft Avoidance Report was denied by Respondent No. and by MJS Group CoC Members during the 13th CoC Meeting held on September 15, 2021, despite all other present CoC members voting in favour of the Applicant's request for inspection.

2.20. Aggrieved by the non-filing of the Avoidance Application by Respondent No. 1 in accordance with the CIRP Regulations, on or about September 27, 2021, the Applicant has filed Interlocutory Application No. 2183 of 2021 before this Hon'ble Tribunal inter alia for issuance of direction to Respondent No. 1 to file the Avoidance Application, which is presently pending. The Applicant craves leave to refer to and rely upon the papers and proceedings of Interlocutory Application No. 2183 of 2021, as and when produced.

2.21. During the pendency of the aforesaid Interlocutory Application No. 2183 of 2021, by an email dated December 8, 2021 (i.e. after 493

days from the insolvency commencement date and after more than 60 days of approval of the Resolution Plan for the Corporate Debtor by the CoC), Respondent No. 1 shared with the CoC, an Executive Summary by the Auditor ("Avoidance Transactions Summary") modifying the Draft Avoidance Report and identifying 13 (thirteen) potential Avoidance Transactions amounting to Rs.523.44 Crores. The Transaction which was identified as a potential preferential transaction under Section 43 of IBC in the Draft Avoidance Report was removed from the Avoidance Transactions Respondent No. 1 refused the Applicant's request to Summary. Moreover share with the CoC, B of the final report submitted by the Auditor on November 15, 2021.

- 2.22. Upon receipt of the Draft Avoidance Report and Avoidance Transactions Summary, it was the duty and responsibility of the Respondent No. 1 to inquire and investigate into the transactions and file appropriate Avoidance Application as required under the IBC. The Respondent No. 1 has failed to perform his statutory duty towards the Corporate Debtor and its creditors, despite various emails by the Applicant requesting the Respondent No. 1 to determine and file Avoidance Application. The Respondent No. 1 has been appointed at the recommendation of MJS Group. Applicant apprehends and has a reason to believe that the Respondent No. 1 is acting biased and not in the best interest of the Corporate Debtor and its creditors at the behest of MJS Group.
- 2.23. As set out hereinabove, the non-filing of Avoidance Application is likely to potentially benefit Respondent No. 4 and/or his nominees and the inaction on the part of Respondent No. 1 to take steps towards filing Avoidance Application appears to be with a view to cause undue benefit to Respondent No. 4 and/or his nominees at the cost and peril of the interest of the Corporate Debtor and its creditors and other stakeholders involved.

- 2.24. An avoidance application under IBC is meant to give benefit to the creditors of the Corporate Debtor. The benefit is not meant for the Corporate Debtor once it is taken over by the new management, after the approval of the Resolution farms Therefore, considering that an application under Section 30 of IBC being Interim Application No. 2273 of 2021 in the abovementioned Petition is pending before this Hon'ble Tribunal for approval of the Resolution Plan, it is necessary that the present Application is heard and decided at the earliest.
- 2.25. It is submitted that the Respondent No. 1 is in possession of adequate information and documents to determine the Transaction and consequently the MJS Group Transfer as an Avoidance Transaction. The Transaction was implemented on August 8, 2019 and the MJS Group Transfer was executed in or about October 2019, which falls within the look back period under section 45 of the IBC.
- 2.26. It is submitted that if the Transaction and the MJS Group Transfer are avoided the value of Corporate Debtor shall increase multi-fold and benefit all the creditors of the Corporate Debtor. However, if the Transaction and the MJS Group Transfer are not avoided then the same shall cause undue benefit to MJS Group including Respondent Nos. 2 and 3 and 5 to 8 at the cost and peril of the interest of the creditors of the Corporate Debtor.
3. The Respondent No.1 i.e. the Resolution Professional filed affidavit in reply dated September 2022 stating that Forensic Audit was initiated and it was delayed due to the pandemic, non-cooperation by the Suspended Directors of the Corporate Debtor ('CD'), non-availability of records sought by the forensic Auditor and delayed payment of fees to the forensic Auditor by the CoC. The application for avoidance transaction was filed on 19.02.2022 (u/s 43-IA 589 of 2022). 22.02.2022 (u/s 45-1A

754/2022) and 23.02.2022 (u/s 66-1A 496/2022) and it is yet to be heard and decided by the Tribunal.

3.1. It is further submitted that the transfer of the share of SBPL has been made to Mr. Mayank J Shah. Mr. Mayank Shah had given an amount of Rs. 5.00 Crs. on 03.01.2019 with a view to acquire the balance 51% shares of SBPL. It is pertinent to point out that on 26.08.2013 Mr. Mayank Shah had acquired 49% shares of SBPL. However, there were some issues between the parties and the matter was finally settled by a consent terms filed in the Hon'ble Bombay High Court on 08.08.2019. It may be appreciated that the shareholders of the CD vide a resolution dated 23.01.2018 had given approval for the sale of shares of SBPL to the CD. Further, the sale agreement dated 08.08.2019 clearly records that the sale has taken place on 03.01.2019 thereby establishing that the transaction is prior to the look back period envisaged in section 43 of IBC. This transaction does not meet the first condition of section 43 since on the date of the transaction, even though it is beyond the look back period, the CD did not owe any money to Mr. Mayank Shah and as such he was not creditor. The lookback period need not be beyond one year as Mr. Mayank Shah is not a related party to the CD. Further, it is pertinent to point out that the application of the Corporate Insolvency Resolution Process of Satra Properties (India) Limited was lodged on 24.04.2019 and the date of transaction is 03.01.2019 which is beyond the look back period as stipulated in u/s 43 of the Code.

3.2. Further, it is noticed from the books of accounts that there was an outstanding payable of Rs.9,51,94,980/- to M/s Pratiti Trading and the amount of Rs. 5.00 Crore was paid to it against said liability. However, no reply has been received either from Mr. Praful Satra or from Mayank Shah Group in this regard.

4. The Respondent No.2 has stated that the Corporate Debtor intimated to BSE on 04.01.2019 about the sale of 51% shareholding in Ultra Lifespaces Private Limited (“ULPL”) and an also unequivocally stated that ULPL has ceased to be subsidiary of the Corporate Debtor. The said letter also states that an agreement for sale has been entered into on 03.01.2019 which clearly indicates the intention of the property to transfer the property and its shares in January 2019 itself. Further, the prices of the share was determined on the basis of valuation of report conducted by Mr. Jignesh Goradia.

5. Heard learned counsel and perused the materials available on record.

5.1. We note that this Application has been filed by one of the Creditor of the Corporate Debtor seeking declaration from this Tribunal that the transaction of sale of shares of the SBPL held by the Corporate Debtor is preferential and fraudulent under IBC. The Respondent RP has filed the reply stating that the facts pertaining to the said transaction were available to them and the forensic auditor had analysed, and it could not be concluded that the sale of share in SBPL, which was part of larger scheme of consent terms, is a preferential transaction necessitating filing of application u/s 43 of the Code. Further, these transactions took place beyond the look back period as provided in Section 43(4) of the Code. Accordingly, no application in relation to this transaction was filed and this was done so in concurrence of CoC.

5.2. Section 43 (1) reads as “*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.*”

- 5.3. From the bare perusal of the provisions of the section 43, we note that an application u/s 43 can be filed by the RP/Liquidator and a creditor does not have a locus to file the said application. It is pertinent to note that transfer of shares took place under the overall scheme of settlement under aegis of Hon'ble Bombay High Court. Accordingly, we are of considered view that this settlement was in ordinary course of business of the Corporate Debtor as the settlement between the parties to sort out their disputes in relation to financial matters and thus can be said to be in ordinary course of business of both the parties. Further this transaction is beyond the look back period. Accordingly, no case can be made out in terms of section 43 of the Code.
- 5.4. As regards declaration sought that this transaction is fraudulent transaction, we find that it is not clear whether the applicant intends to invoke the provisions of Section 49 or Section 66 of the Code. The Applicant has not placed copy of any other valuation report or produced any other evidence to determine whether this transaction can be said to undervalued transaction. Accordingly, Section 49 which pertains to undervalued transactions in terms of section 45 cannot also be invoked in this case.
- 5.5. As we have held that this transaction was in ordinary course of business under the settlement of debt with M.J. Shah Group under the aegis of Hon'ble Bombay High Court, we are of considered view that there cannot be a case of defrauding other creditors. It is a normal business scenario to settle the pressing creditor in priority over other creditors. Section 66 of the Code applies where there is a case for carrying of the business with an intent to defraud creditors or for any fraudulent purpose.
- 5.6. In view of the above, we are not persuaded by the contention of the Applicant and decline to declare the sale of shares by the Corporate Debtor and or its nominees in favour of Respondent No.4 as void ab initio. Since, we have declined to interfere with this sale the

- remaining prayers which are consequential to the declaration of such sale to be preferential or fraudulent, do not call for any orders.
6. As we have already disposed of IA 953/2022 and IA 917/2022 is being disposed of by this order, the IA 5401/2023 is rendered infructuous seeking expeditious hearing and disposal thereof.
 7. In view of the above, IA 917/2022 and IA 5401/2023 are dismissed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)