

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

I.A. (IB) No. 314/KB/2021

in

C.P. (IB) No. 676/KB/2019

In the matter of:

Under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Reliance Home Finance Limited

... Financial Creditor

Versus

Starlite Infracon Private Limited

... Corporate Debtor

I.A. (IB) No. 314/KB/2021

**An application under section 43, section 45, section 49 and section 66 of
the Insolvency and Bankruptcy Code, 2016 read with Insolvency and
Bankruptcy Board of India (Insolvency Resolution Process of Corporate
Persons) Regulations, 2016**

In the matter of:

Niraj Kumar Agarwal,

Resolution Professional of Starlite Infracon Private Limited

... Applicant

Versus

- 1. Mudit Poddar**
- 2. Manoj Kumar Poddar**
- 3. Md. Sadique Islam**

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4. Rafiza Nusrat
5. Sahajaham Molla
6. Puja Roy
7. Md Sarique Islam
8. Zakir Hussain Khan Saheb
9. Vikram Singh
10. Neelam Singh
11. Binod Chakraborty
12. Sk. Jahangir Ali
13. Avecon Infrastructure Pvt. Ltd.
14. Sk. Jahangir Ali, Sole Proprietor of Creative Construction & Company
15. Dipanjan Mukherjee
16. Anuradha Shaw
17. Vijay Kumar Shaw
18. Sanjib Chowdhury
19. Debolina Biswas
20. Koushik Bandopadhyay
21. Mainak Bandopadhyay
22. Sumita Banerjee
23. Dilu Mondal
24. Bina Mondal
25. Biswajit Ghosh Roy
26. Sanwaj Mondal
27. Safiuddin Mondal
28. Rubina Khatoon
29. Rahul Bhandari
30. VAB Commercial Private Limited
31. Arpita Mukherjee
32. Sharmila Sengupta
33. Shampa Dutta

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34. Anil Kumar Sharma

35. Monika Sharma

... Respondents

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via hybrid mode):

For the Resolution Professional : Mr. Saurav Jain, Advocate

For Respondent No. 9, 10, 23, 24, 32, 33 : Mr. Shwetaank Nigam, Advocate

Date of Hearing: 21.03.2022

Date of pronouncing the order: 06.07.2022

ORDER

Per : Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This I.A. has been filed under section 43, section 45, section 49 and section 66 of the Insolvency and Bankruptcy Code, 2016 was filed on 10.02.2021 seeking reliefs against the suspended Board of Directors and parties to whom flats have been sold.
3. There are as many as 35 Respondents and notice was issued by this Adjudicating Authority on 07.04.2021. The Respondents Nos. 9, 10, 23, 24, 32 and 33 have filed their reply whereas the right of the Respondents who did not file their reply was closed.
4. Coming to the contentions of the Resolution Professional and appearing Respondents, it is relevant to point out that the Company Petition (IB) No. 676/KB/2019 under section 7 before this Adjudicating Authority.
5. This Adjudicating Authority admitted the section 7 petition on 16 March 2020 and Mr. Niraj Kumar Agarwal was appointed as the Interim

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Resolution Professional (“IRP”). The Applicant was then appointed as the Resolution Professional on 08.10.2020.

6. The IRP published Form A for inviting claims on 20.03.2020 in two leading newspapers and issued invitation for Expression of Interest (“EoI”) in Form G on 08.10.2020, by making advertisement in two newspapers viz. Business Standard and Aajkal and designated website of IBBI.
7. In this publication, Starlite Infracon Private Limited is shown to be the Corporate Debtor along with other details in Form G issued by the Resolution Professional.
8. The Resolution Plan was filed before this Adjudicating Authority on 10.02.2021. Coming to the contents of I.A. (IB) No. 314/KB/2021 filed by the Resolution Professional on 10.02.2021. The factual position as pleaded by the Applicant is summarised herein below:

Sl No.	Respondent	Contention	Date	Transactions
1.	Respondent Nos. 3 & 4 ¹	Sale of Flat No. 1B, Block A of DNP Heights for Rs.25,67,000/-	Agreement of Sale: 09.04.2019 Transfer of title of property:26.09.2019	Undervalued and fraudulent
2.	Respondent No. 5	Sale of Flat No. 1B, Block A of DNP Heights for Rs.22,50,000/-	Agreement of Sale: 03.04.2019 Transfer of title of property:26.09.2019	Undervalued and fraudulent
3.	Respondent No. 6	Sale of Flat No. 1G, Block A of DNP Heights for Rs.16,58,000/-	Agreement of Sale: 04.02.2020	Undervalued and fraudulent
4.	Respondent No. 7	Sale of Flat No. 3G(1), Block A of DNP Heights	Agreement of Sale: 04.04.2019 Transfer of title of property:13.03.2020	Undervalued and fraudulent

¹ Written as Respondent Nos. 9 and 10 in paragraph 12 which does not correspond with the causetitle.

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		for Rs.13,85,000/-		
5.	Respondent No. 8	Sale of Flat No. 5G(2), Block A of DNP Heights for Rs.8,32,000/-	Agreement of Sale: 04.04.2019	Undervalued and fraudulent
6.	Respondent Nos. 9 & 10	Sale of Flat No. 4B, Block B of DNP Heights for Rs.21,00,000/-	Agreement of Sale: 23.06.2017 Transfer of title of property:19.03.2019	Undervalued, fraudulent, and preferential
7.	Respondent No. 11	Sale of Flat No.4G, Block A of DNP Heights for Rs. 23,66,000/-	Agreement of Sale: 25.03.2019 (unregistered)	Undervalued and preferential
8.	Respondent Nos. 12, 13 and 15	Sale of flats	Agreement of Sale: 10.01.2017 (unregistered)	Undervalued, fraudulent and preferential
9.	Respondent Nos. 13, 14, 16 & 17	Sale of Flat No. 2B, Block A of DNP Heights for Rs. 20,00,000/-	Agreement of Sale: 10.01.2017 (unregistered) Deed of Conveyance 07.02.2018	Undervalued, fraudulent and preferential
10.	Respondent Nos. 13, 14, 16 & 17	Sale of Flat No.2C, Block A of DNP Heights for Rs. 19,28,000/-	Agreement of Sale: 10.01.2017 (unregistered) Deed of Conveyance 17.02.2018	Undervalued, fraudulent and preferential
11.	Respondent Nos. 13, 14, 18 & 19	Sale of Flat No. 2D, Block A of DNP Heights for Rs. 20,08,000/-	Agreement of Sale: 10.01.2017 (unregistered)	Undervalued, fraudulent and preferential

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12.	Respondent Nos. 13, 14, 20, 21 & 22	Sale of Flat No. 5C, Block B of DNP Heights for Rs. 25,92,000/-	Agreement of Sale: 10.01.2017 (unregistered)	Undervalued, fraudulent and preferential
13.	Respondent No. 23 & 24	Sale of Flat No.1F, Block B of DNP Heights for Rs. 30,94,000/-	Agreement of Sale: 11.03.2016 (unregistered)	Undervalued and fraudulent
14.	Respondent No. 25	Sale of Flat No. 4A, Block A of DNP Heights for Rs. 35,25,250/- and garage for Rs.2,00,000/-	Agreement of Sale: 09.03.2016 Transfer of title of property: 17.02.2020	Undervalued and fraudulent
15.	Respondent No. 26	Sale of Flat No.3G1, Block A of DNP Heights for Rs.13,54,000/-	Agreement of Sale: 03.04.2019 (cancelled)	Undervalued and fraudulent
16.	Respondent No. 27	Sale of Flat No. 4B, Block A of DNP Heights for Rs. 16,70,000/-	Agreement of Sale: 03.04.2019 (cancelled on 01.02.2020)	Undervalued and fraudulent
17.	Respondent No. 28	Sale of Flat No. 3D, Block A of DNP Heights for Rs.16,70,000/-	Agreement of Sale: 03.04.2019 (cancelled on 01.02.2020)	Undervalued and fraudulent
18.	Respondent Nos. 29, 30	Sale of Flat No. 5A, Block A of DNP Heights for Rs. 35,25,250/-	Agreement of Sale: 12.03.2015	Undervalued and fraudulent

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19.	Respondent No. 31	Sale of Flat No. 5(G1), Block A of DNP Heights for Rs. 16,57,000/-	Agreement of Sale: 18.11.2016	Undervalued and fraudulent
20.	Respondent Nos. 33 & 34	Sale of Flat No. 2F, Block B of DNP Heights for Rs. 15,58,000/-	Deed of Conveyance: 23.03.2018	Undervalued and fraudulent
21.	Respondent Nos. 34 & 35	Sale of Flat No. 5A, Block B of DNP Heights for Rs. 31,00,000/-	Agreement of Sale: 29.12.2017	Undervalued and fraudulent

9. It is further revealed from this Application that the Committee of Creditors (“CoC”) proposed the appointment of forensic auditor M/S Bhandari and Co. to conduct the forensic audit of the Corporate Debtor.
10. The forensic auditor submitted its report dated 15.12.2020, a copy of the report has been annexed with the I.A. and marked with the Letter “C”.
11. The Applicant has further stated that he has gone through the said report and the records made available to the Applicant by the Corporate Debtor as also the documents which were available in the public domain and the Applicant is of the opinion that the transactions fall under preferential, undervalued and fraudulent transactions with an intent to defraud the creditors of the Corporate Debtor.

Reply of the Respondent Nos. 9 and 10

12. The Respondent Nos. 9 and 10 disputed and denied the contents of the application filed by the Resolution Professional
13. They stated that have purchased a flat measuring 1425 sq. ft. and covered garage at a consideration of Rs.21,00,000/- and the said flat was sold during the ordinary course of business.

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14. The Flat was not handed over to the answering Respondents within time. The absence of Board Resolution is an internal document and hence the answering Respondents are not concerned.

15. The Deed of Conveyance was entered into on 23.06.2017, which is almost three years prior to the date of initiation of CIRP.

Reply of the Respondent Nos. 23 and 24

16. It is submitted that the Respondent Nos. 23 and 24 had purchased a flat measuring 1190 sq. ft. and covered garage at a consideration of Rs.30,94,000/- and the said flat was sold during the ordinary course of business.

17. The Flat was not handed over to the answering Respondents within time. The absence of Board Resolution is an internal document and hence the answering Respondents are not concerned.

18. The Agreement for Sale was entered into on 11.03.2016, which is almost four years prior to the date of initiation of CIRP.

Reply of the Respondent Nos. 32 and 33

19. The Respondent Nos. 32 and 33 submitted that the Respondent Nos. 32 and 33 had purchased a flat measuring 1190 sq. ft. and covered garage at a consideration of Rs.15,58,000/- and the said flat was sold during the ordinary course of business.

20. The Flat was not handed over to the answering Respondents within time. The absence of Board Resolution is an internal document and hence the answering Respondents are not concerned.

21. The Deed of Conveyance was entered into on 23.03.2018, which is almost two years prior to the date of initiation of CIRP.

Analysis and Findings

22. The Resolution Professional has contended that the transactions are undervalued, preferential and fraudulent in nature. For convenience, the undervalued amount for each of the transactions as stated by the Resolution Professional, has been tabulated hereunder:

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Sl No.	Respondent	Agreement Price (Rs.)	Circle Value (Rs.)	Undervalue (Rs.)
1.	Respondent Nos. 3 & 4 ²	Rs. 25,67,000/- @ Rs 1814/sq ft	Rs. 39,62,000/- @Rs. 2800/ sq ft	Rs.13,95,000/-
2.	Respondent No. 5	Rs. 22,50,000/- @ Rs 2000/sq ft	Rs. 31,50,000/- @ Rs. 2800/ sq ft	Rs.9,00,000/-
3.	Respondent No. 6	Rs. 16,58,000/- @ Rs 1800/sq ft	Rs.25,48,000/- @Rs. 2800/ sq ft	Rs.8,90,000/-
4.	Respondent No. 7	Rs.13,85,000/- @ Rs 1500/sq ft	Rs.26,39,000/- @Rs. 2800/ sq ft	Rs.12,54,000/-
5.	Respondent No. 8	Rs.8,32,000/- @ Rs 1500/sq ft	Rs.14,56,000/- @Rs. 2800/ sq ft	Rs.6,24,000/-
6.	Respondent Nos. 9 & 10	Rs.21,00,000/- @ Rs 1400/sq ft+ Car Park	Rs.42,70,800/- @Rs. 2800/ sq ft	Rs.22,75,000/-
7.	Respondent No. 11	Rs.23,66,000/- 910 sq ft @ Rs 2600/sq ft	Rs.25,48,000/- @Rs. 2800/ sq ft	
8.	Respondent Nos. 12, 13, 14 and 15	Rs.21,04,000/- @ Rs 1600/sq ft+ Car Park	Rs.36,12,000/- @Rs. 2800/ sq ft	Rs.13,95,000/-
9.	Respondent Nos. 13, 14, 16 & 17	Rs.20,00,000/- @ Rs. 1600/-sq ft+ car park	Rs.35,11,250/- @ 2800/ sq ft + car park	Rs.15,11,250/-
10.	Respondent Nos. 13, 14, 16 & 17	Rs.19,28,000/- @ 1600 /sq ft	Rs.34,12,800/- @2800/sq ft + car park	Rs.14,84,800/-
11.	Respondent Nos. 13, 14, 18 & 19	Rs.20,08,000/- @1600/sq ft+ Car park	Rs.34,44,000/- @2800/sq ft +Car park	Rs.14,26,000/-
12.	Respondent Nos. 13, 14, 20, 21 & 22	Rs.25,92,000/- @1600+ car park	Rs.44,60,000/-	Rs.18,68,000/-

² Written as Respondent Nos. 9 and 10 in paragraph 12 which does not correspond with the causetitle.

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13.	Respondent No. 23 & 24	Rs.30,94,000/- @ Rs 2600/sq ft	Rs.33,32,000/- @Rs. 2800/ sq ft	Rs.2,38,000/-
14.	Respondent No. 25	Rs.35,25,250/- @ Rs 2350/sq ft+ Car Park	Rs.43,84,300/- @Rs. 2900/ sq ft	Rs.8,59,050/-
15.	Respondent No. 26	Allotment of flats were cancelled before commencement of CIRP. Prayer is not pressed against these respondents.		
16.	Respondent No. 27			
17.	Respondent No. 28			
18.	Respondent Nos. 29, 30	Rs.35,25,250/- @ Rs 2350/sq ft+ Car Park	Rs.42,42,000/- @Rs. 2800/ sq ft	Rs.7,16,750/-
19.	Respondent No. 31	Rs.26,57,000/- @ Rs 2700/sq ft+ Car Park	Rs.2748000/- @Rs. 2800/ sq ft	
20.	Respondent Nos. 33 & 34	Rs.15,58,000/- @ Rs 1309/sq ft	Rs.33,43,900/- @Rs. 2810/ sq ft	Rs.17,85,900/-
21.	Respondent Nos. 34 & 35	Rs. 31,00,000/- @ Rs 2000/sq ft+ Car Park	Rs.43,26,000/- @Rs. 2800/ sq ft	Rs.12,26,000/-

23. The above transactions have been determined to be under valued by the Resolution Professional. The above chart also shows the amount of under valued amount of each of such transactions. We have gone through the application filed by the Resolution Professional and the averments contained therein.

24. It is relevant to note here the Resolution Professional while forming his opinion has referred to a forensic auditor report dated 15th of December, 2020. Copy of which has been annexed as Annexure- C along with documents mentioned therein. The details of each transaction have been incorporated in the averments in this application. The Resolution Professional has also referred to the transactions as fraudulent in relation to a suspended board of management.

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25. From the contents of the application and the averments contained therein, it is clear that there has been a determination regarding these transactions being undervalued, fraudulent and preferential and the Resolution Professional has dealt with each of these transactions separately.

26. Now seen in the context of law laid down by the Hon'ble Supreme Court in **Anuj Jain vs. Axis Bank Limited and Ors.**, MANU/SC/0228/2020, observed in paragraph 29.1 as follows:

“29.1. However, we are impelled to make one comment as regards the application made by IRP. It is noticed that in the present case, the IRP moved one composite application purportedly Under Sections 43, 45 and 66 of the Code while alleging that the transactions in question were preferential as also undervalued and fraudulent. In our view, in the scheme of the Code, the parameters and the requisite enquiries as also the consequences in relation to these aspects are different and such difference is explicit in the related provisions. As noticed, the question of intent is not involved in Section 43 and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time. However, whether a transaction is undervalued requires a different enquiry as per Sections 45 and 46 of the Code and significantly, such application can also be made by the creditor Under Section 47 of the Code. The consequences of undervaluation are contained in Sections 48 and 49. Per Section 49, if the undervalued transaction is referable to Sub-section (2) of Section 45, the Adjudicating Authority may look at the intent to examine if such undervaluation was to defraud the creditors. On the other hand, the provisions of Section 66 related to fraudulent trading and wrongful trading entail the liabilities on the persons responsible therefor. We are not elaborating on all these aspects for being not necessary as the transactions in question are already held preferential and hence, the order for their avoidance is required to be approved; but it appears expedient to observe that the arena and scope of the requisite enquiries, to find if the transaction is undervalued or is intended to defraud the creditors or had been of wrongful/fraudulent trading are entirely different. Specific material facts are required to be pleaded if a transaction is sought to be brought under

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the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority.”:

We are of the view, the Resolution Professional has considered the above aspects laid down in the above referred judgment while determining these transactions under Section 43, 45 and 66 of the Code while determining these transaction and forming his opinion.

27. Let us now consider whether these transactions have taken place within the look back period with respect to undervalued and preferential transactions i.e. one year preceding the insolvency commencement date. From the table given in paragraph 8 above, it is pertinent to note that only the transactions that have been entered into with Respondent Nos. 3, 4, 5, 6, 7, 8, 11 fall within the look back period.

28. The Resolution Professional has clearly determined the undervalued transactions as well as preferential and fraudulent transactions. There transactions entered into with Respondent Nos. 3, 4, 5, 6, 7, 8, 11 by the Respondent Nos. 1 and 2 were clearly done with the intention to defraud the other creditors, hence, the Respondent Nos. 1 and 2 have entered into fraudulent transactions.

29. In view of the position as mentioned above, we hereby allow this application and grant the relief as directed hereunder:

The Respondent Nos. 1, 2, 3 and 4 are directed to jointly deposit a sum of Rs.13,95,000/-, Respondent Nos. 1, 2 and 5 are directed to jointly deposit a sum of Rs. 9,00,000/-, Respondent Nos. 1, 2 and 6 are directed to jointly deposit a sum of Rs. 8,90,000/-, Respondent Nos. 1, 2 and 7 are directed to jointly deposit a sum of Rs.12,54,000/-, Respondent Nos. 1, 2 and 8 are directed to jointly deposit a sum of Rs.6,24,000/-, Respondent Nos. 1, 2 and 11 are directed to jointly deposit a sum of Rs.28,28,000/- to the Resolution Professional/Monitoring Agency, within two months from the date of this order.

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30. I.A. (IB) No. 314/KB/2021 is, therefore, disposed of with the above directions.
31. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Counsel for information and for taking necessary steps.
32. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 6th day of July, 2022.

GGRB_LRA/Safura_LRA