

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

**IA(I.B.C)/658(KB)2020**

**IVN.P/8(KB)2021**

**IVN.P/9(KB)2021**

**IA(I.B.C)/1471(KB)2020**

**IA(I.B.C)/1025(KB)2021**

**in**

**C.P. (IB)/676(KB)2019**

**IA(I.B.C)/658(KB)2020**

In the matter of:

Section 19(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016;

AND

In the matter of:

Niraj Kumar Agarwal;

...Resolution Professional/*Applicant*

AND

In the matter of:

Starlite Infracon Private Limited;

...Corporate Debtor

1. Mudit Poddar
2. Manoj Kumar Poddar

...*Respondents*

**IVN.P/8(KB)2020**

Reliance Home Finance Limited, having its registered office at Reliance Centre, 6<sup>th</sup> Floor, North Wing, Off Western Express Highway, Santacruz (East), Mumbai, Maharashtra- 400055

...Financial Creditor

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IA(I.B.C)/658(KB)2020, IVN.P/8(KB)2021  
IA(I.B.C)/1471(KB)2020, IA(I.B.C)/1025(KB)2021.  
IVN.P/9(KB)2021,  
IA (I.B.C)/177(KB)2021 in C.P. (IB)/676(KB)2019IA(I.B.C)

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Versus

Starlite Infracon Private Limited, having its' registered office at Plot No. FB-13, 1598,  
Rajdanga Main Road, Kolkata- 700017, West Bengal.

...Corporate Debtor.

And

In the matter of

Rubina Khatun, Wife of Safiuddin Mondal, resident of Kandarpur, Garia, Police Station:  
Narendrapur, South 24 Paraganas, West Bengal, PIN: 700084

...Applicant / Intervenor

And

In the matter of

Niraj Kumar Agarwal Interim Resolution Professional (IRP), IBBI / IPA-001 / P-00949 /  
2017-2018/ 11569, P-887, Block-A, Ground Floor, Block-A, Laketown, Kolkata-  
700089

**IVN.P/9(KB)2021**

Reliance Home Finance Limited, having its registered office at Reliance Centre, 6<sup>th</sup>  
Floor, North Wingh, Off Western Express Highway, Santacruz (East), Mumbai,  
Maharastra- 400055

...Financial Creditor

Versus

M/s. Starlite Infracon Private Limited, having its' registered office at Plot No. FB-13,  
1598, Rajdanga Main Road, Kolkata- 700017, West Bengal.

...Corporate Debtor.

And

In the matter of

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Safiuddin Mondal, (PAN: BHCPM9357A) son of Farid Ali Mondal, resident of  
Kandarpur, Garia, Police Station: Narendrapur South 24 Parganas, West Bengal, PIN:  
700084

...Applicant / Intervenor

And

In the matter of:

Niraj Kumar Agarwal Interim Resolution Professional (IRP), IBBI / IPA-001 / P-00949 /  
2017-2018/ 11569

P-887, Block-A, Ground Floor, Block-A, Laketown, Kolkata- 700089,  
Email: [nka\\_sa@hotmail.com](mailto:nka_sa@hotmail.com), [cs.sa.associates@gmail.com](mailto:cs.sa.associates@gmail.com) Mobile: 9830016006

***IA (I.B.C.)/ 1471 (KB) 2020***

Reliance Home Finance Limited, having its registered office at Reliance Centre, 6<sup>th</sup>  
Floor, North Wingh, Off Western Express Highway, Santacruz (East), Mumbai,  
Maharashtra- 400055

....Financial Creditor

In the matter of

Starlite Infracon Pvt. Ltd. (In CIRP), having its office at Plot No. FB – 13, 1598,  
Rajdanga Main Road, Kolkata WB 700017

In the matter of

Niraj Kumar Agarwal, Resolution Professional of Starlite Infracon Pvt. Ltd. (In CIRP),  
residing at Swastik Apartment, 332/157, Jessore Road, Flat No. 3H, Kolkata- 700089.

...Applicant

Versus

1. Mudit Poddar, residing at Cl- 241, Sector-II Salt Lake P.S. Bidhangar-East,  
North 24 Parganas, Kolkata 700091.
2. Manoj Kumar, Poddar, residing at Cl-212, Sech Bhawan, Salt Lake P.S.  
Bidhangar-East, North 24 Parganas, Kolkata 700091; Also at 241, Sector-II Salt  
Lake P.S. Bidhangar-East, North 24 Parganas, Kolkata 700091;

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3. Ruchika Poddar Wife of Mudit Poddar, residing at CI-241, Sector-II, Salt Lake P.S. Bidhangar-East, North 24 Parganas, Kolkata 700091;
4. Ruchira Poddar wife of Manoj Kumar Poddar, residing at CI- 212, Sech Bhawan, Salt Lake P.S. Bidhangar-East, North 24 Parganas, Kolkata 700091;
5. Krishiv Poddar (Minor) Son of Mudit Poddar and Ruchika Poddar, having its address at CI-241, Section-II, Salt Lake P.S. Bidhangar-East, North 24 Parganas, Kolkata 700091;
6. MAKP Developers Pvt. Ltd having its office 116/1/1, Mahatama Gandhi Road, Madhav Bhavan, 1<sup>st</sup> Floor, Kolkata- 70007;
7. Starlite Construction Pvt. Ltd. having its registered office at 116/1/1, Mahatama Gandhi Road, Madhav Bhavan, 1<sup>st</sup> Floor, Kolkata – 700007;

...Respondents

***IA(I.B.C.)1025(KB)2021***

Reliance Home Finance Limited, having its registered office at Reliance Centre, 6<sup>th</sup> Floor, North Wingh, Off Western Express Highway, Santacruz (East), Mumbai, Maharashtra- 400055

...Financial Creditor

Versus

Starlite Infracon Private Limited, having its' registered office at Plot No. FB-13, 1598, Rajdanga Main Road, Kolkata- 700017, West Bengal.

...Corporate Debtor.

And

In the matter of

Sanwaj Mondal, son of Farid Ali Mondal, resident of Kandarpapur, Rajpur, Sonarpur, Garia, South 24 Parganas, West Bengal, PIN: 700084

...Applicant/Intervenor

In the matter of:

Niraj Kumar Agarwal Interim Resolution Professional (IRP), IBBI / IPA-001 / P-00949 / 2017-2018/ 11569

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P-887, Block-A, Ground Floor, Block-A, Laketown, Kolkata- 700089,  
Email: [nka\\_sa@hotmail.com](mailto:nka_sa@hotmail.com), [cs.sa.associates@gmail.com](mailto:cs.sa.associates@gmail.com)

***Coram:***

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

***Appearances (via hybrid mode)***

For the Liquidator: Mr. Rahul Auddy, Advocate

Mr. Aditya Guptu, Advocate

For the suspended BoD: Ms. Sushmita Ghosh. Advocate

Order Reserved on :21.04.2022

Pronounced on : 06. 07.2022

**COMMON ORDER**

***Per Rohit Kapoor, member (Judicial)***

1. The Court convened *via* video conference today.

**IA(I.B.C)/658(KB)2020**

2. This is an application filed under section 19(2) of the Insolvency and bankruptcy Code (***'Code'***) by Niraj Kumar Agarwal, (***'IRP'***) against the suspended board of Starlite Infracon Private Limited (***'Corporate Debtor'***), *inter alia*, praying for the following reliefs;

- i. For passing orders under section 19(2) and 19(3) of the Code and to direct the Respondents to provide list of documents to the Applicant as per the Schedule – I of the instant application.
- ii. To direct the respondents to provide the applicant access to the website of the Corporate Debtor.

**Order**

3. However, in the light of the Resolution Plan approved by this Adjudicating

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Authority in **IA(IBC)/177(KB)2021**, this application being  
**IA(I.B.C)/658(KB)2020** stands *infructuous*, as dismissed

**IVN.P/8(KB)2021 and IVN.P/9(KB)2021**

4. The submissions in **IVN.P/8(KB)2021** are tabulated below;

Application's Content	RP Submission
<p><b>INV.P/8/KB/2021 Applicant – Rubina Khatun-</b></p> <p>1. On 03.04.2019 applicant purchased flat from CD and made a payment of Rs. 17,48,600/-</p> <p>2. Flat was cancelled on 31.01.2020 for nonpayment while applicant claim possession of the flat.</p>	<p>1. Applicant choose to move intervening application just to frustrate CIRP process</p> <p>2. Allotment was already cancelled by erstwhile management before commencement of CIRP .</p> <p>3. In the resolution plan under “cancelled home buyers” category 50% of the paid amount is approved as refundable by COC</p> <p>4. The records of the corporate debtor show receipt of Rs. 10,28,600/- only.</p> <p><b>CANCELLATION BY CD:-</b> The record of the corporate debtor shows that with effect from 1st February, 2020, the agreement of sale of flatwas cancelled due to non-payment of the balance amount by the <b>Rubina Khatun</b> against the flat. <b>(Pg No -57 of INV/8 of applicant)</b></p>

5. The submissions in **IVN.P/9(KB)2021** are tabulated below;

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<p><b>INV.P/9/KB/2021 Applicant – Saffiuddin Mondal-</b></p> <ol style="list-style-type: none"><li>1. On 03.04.2019 applicant purchased flat from CD and made payment Rs. 14,50,000/-</li><li>2. Flat was cancelled on 31.01.2020 for nonpayment while applicant claim possession of the flat and want to make balance payment.</li></ol>	<ol style="list-style-type: none"><li>1. Applicant choose to move intervening application just to frustrate CIRP process</li><li>2. Allotment was already cancelled by erstwhile management before commencement of CIRP .</li><li>3. In the resolution plan under “cancelled home buyers” category 50% of the paid amount is approved as refundable by COC</li><li>4. The records of the corporate debtor show receipt of Rs. 7,50,000/- only.</li></ol> <p><b>CANCELLATION BY CD</b></p> <p>The record of the corporate debtor shows that with effect from 1st February, 2020, the agreement of sale of flat was cancelled due to non-payment of the balance amount by <b>Saffiuddin Mondal</b> against the flat.</p> <p><b>(Pg No -48 of INV/8 of applicant)</b></p>
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**ORDER in IVN.P/8(KB)2021 and IVN.P/9(KB)2021**

6. However, in the light of the Resolution Plan approved by this Adjudicating Authority in **IA(IBC)/177(KB)2021**, intervention applications being **IVN.P/8(KB)2021 and IVN.P/9(KB)2021** stands *infructuous*, as dismissed.

**IA(I.B.C)/1025(KB)2021**

7. The submissions in **IA(IBC)/1025(KB)2021** are tabulated below;

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IA (I.B.C)/177(KB)2021 in C.P. (IB)/676(KB)2019IA(I.B.C)

<p><b>IA/1025/KB/2021 Applicant – Sanwaj Mondal</b></p> <ol style="list-style-type: none"><li>1. On 03.04.2019 applicant purchased flat from CD and made payment Rs. 11,09,750/-</li><li>2. Flat was cancelled on 31.01.2020 for non payment while applicant claim possession of the flat and want to make balance payment.</li></ol>	<ol style="list-style-type: none"><li>1. Applicant choose to move IA just to frustrate CIRP process</li><li>2. Allotment was already cancelled by erstwhile management before commencement of CIRP .</li><li>3. In the resolution plan under “cancelled home buyers” category 50% of the paid amount is approved as refundable by COC</li><li>4. The records of the corporate debtor show receipt of Rs. 4,79,750/- only.</li></ol> <p><b>CANCELLATION BY CD</b> The record of the corporate debtor shows that with effect from 31<sup>st</sup> January, 2020, the agreement of sale of flatwas cancelled due to non-payment of the balance amount by by <b>Sanwaj Mondal</b> against the flat. <b>(Pg No – 22 &amp; 46 of INV/8 of applicant)</b></p>
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**Order in IA(I.B.C)/1025(KB)2021**

8. However, in the light of the Resolution Plan approved by this Adjudicating Authority in **IA(IBC)/177(KB)2021**, intervention applications being **IA(I.B.C)/1025(KB)2021** stands dismissed.

**IA(I.B.C)/1471(KB)2020**

9. This I.A. has been filed under section 43 and section 66 of the Code.
10. It is submitted that all the Respondents are related parties of the Corporate Debtor under section 5(24) as depicted in table below:-

	<b><u>Name</u></b>	<b><u>Status / Relationship</u></b>
R1	Mudit Poddar	Part of suspended Board of CD (son of R2 and R4 and husband of R3)

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R2	Manoj Poddar	Part of suspended Board of CD (father of R1 and husband of R4)
R3	Ruchika Poddar	Wife of R1
R4	Ruchira Poddar	Wife of R2
R5	Krishiv Poddar	Minor son of R1 and R3
R6	MAKP Developers Pvt. Ltd.	Related party of CD, where R3 and R4 are the only Directors and also having common office with CD.
R7	Starlite Construction Pvt. Ltd.	Holding company of CD, where R1 and R2 are the Directors

11. Particulars of the transactions impugned, which are hit by sections 43 and/or 66 of IBC are as follows:-

<u>Sl.</u>	<u>Particulars</u>	<u>Allegation</u>	<u>Section applicable</u>	<u>Amount</u>	<u>Page Nos. (IA 1471)</u>
1.	<b>R1</b> – Rs. 15,22,600/- transferred by CD between 5.4.2018 and 13.2.2020 as alleged repayment of unsecured loan.	R1 is Director of the CD <b>amount paid within 2 years of CIRP commencement</b>	Section 43	15,22,600/-	132
2.	<b>R2</b> – Rs. 62,70,576/- transferred by CD between	R2 is Director of the CD amount paid within 2	Section 43	62,70,576/-	133

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	3.4.2018 and 27.2.2020 as alleged repayment of unsecured loan.	years of CIRP commencement			
3.	<b>R3</b> – Rs. 82.75 lacs transferred by CD between 3.5.2018 and 18.2.2010 as alleged repayment of unsecured loan.	R3 wife of R1 <b>amount paid within 2 years of CIRP</b>	Section 43	82,75,000/-	134
4.	<b>R4</b> – Rs. 24,30,000/- transferred by CD between 2.5.2018 and 28.8.2019 as alleged repayment of unsecured loan. Further Rs. 54,804/- given directly to income tax authorities for payment of	R2 wife of R1 <b>amount paid within 2 years of CIRP</b>	Section 43	24,30,000/-	135

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	<p>personal income tax dues of R4. This amounts to fraudulently paying monies not actually due or payable by the CD and is thus, hit by section 66.</p>				
5.	<p><b>R5</b> – Rs. 5.80 lacs transferred by CD between 3.5.2018 and 24.5.2019 as alleged repayment of unsecured loan.</p>	<p>R5 is minor son of R1 <b>amount paid within 2 years of CIRP</b></p>	Section 43	5,80,000/-	136
6.	<p><b>R6</b> – Rs. 28.85 lacs transferred by CD between 26.3.2018 and 30.9.2019 as alleged repayment of unsecured loan.</p>	<p>R6 is company in which R3 &amp; R4 is director <b>Amt paid within 2 years of CIRP</b></p>	Section 43	28,85,000/-	137

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7.	<p><b>R7</b> – Rs.1,22,49,000/- allegedly paid by CD between 22.3.2018 and 13.4.2020 as against “unsecured loan”. Further, since incorporation a total amount of Rs. 2.16 Crore was transferred as evident from bank statement and books of accounts ref <b>page no 104 - 131 &amp; page no 138</b>. This is clearly fraudulent and hit by section 66.</p>	<p>Holding company of CD, where R1 and R2 are the Directors</p> <p><b>Amount Rs. 1.22 Cr paid within 2 years and balance 94 Lakhs before 2 yrs total paid Rs. 2.16 Cr</b></p>	<p>Section 43 and 66</p>	<p>2,16,00,000/-</p>	<p>142</p>
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12. The Bank Statements of the CD showing the aforesaid payments, are at **pages 104-132**. The transactions are also confirmed by R1 himself (see letter dated 9.9.2020 with enclosures at **pages 78-103**). Surprisingly, **there are also alleged loan confirmations dated 1.4.2020 (post commencement of CIRP) by the CD, without the knowledge or consent of RP (pages 88 and 90)**.
13. The aforesaid transactions are hit and/or deemed to be hit by section 43, since they were made within the look-back period of 2 years and amount to transfer of property of the CD for **the benefit of a creditor on account of an antecedent financial debt / liability, and the same has the effect of putting the respondents in a more beneficial position than they would have been in the event of distribution of assets under section 53**. The respondents failed to show that payment were made in ordinary course of business. **Case ref: (2020) 8 SCC 401 [Anuj Jain v. Axis Bank] @ paragraphs 21-23**

**AFFIDAVIT IN REPLY:- Given by R1, R2 & R5**

**No reply received from R3, R4 ,R6 & R7**

14. **Brief Content of Reply:-** Further in Para 4(d) Respondent has mentioned that prescribed period of 75 days expired on 23<sup>rd</sup> November,2020 hence application is time barred. Further it is being claimed that payment is on account of refund of loan given by Respondents. **NO REPLY HAS BEEN FILED BY OTHER RESPONDENTS**
15. Rejoinder of RP:- Application made is well within time line provided under Regulation 35A of 2016 regulation as per detail given below:-

Sl No	Particulars	Timeline	Date of Compliance
1	Date of Commencement of CIRP	16/03/2020	

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2	<b>Exclusion due to lockdown</b> as per Regulation 40C approved by Hon'ble NCLT, Kolkata vide order IA(IB) No. 661/KB/2020 dtd 14.09.2020 & IA/1422(KB)2020 dtd 07.01.2021 <b>(Reference ANNEXURE-A pg no 13 -16 of Rejoinder)</b>	25/03/2020 to 30/09/2020 Total 191 days	
3.	<b>75 Days excluding period of Exclusion as referred in Sr.No 2 above</b>	<b>04/12/2020</b>	<b>15/08/2020</b>
4.	115 days excluding period of Exclusion as referred in Sr.No 2 above	13/01/2021	15/10/2020
5	<b>135 days</b> excluding period of Exclusion as referred in Sr.No 2	<b>02/02/2021</b>	<b>23/12/2020</b>

16. Report in terms of Regulation 35A time line was submitted to IBBI on 23.10.2021 by email. Copy of the report enclosed with rejoinder as **ANNEXURE-B (Page No- 17-19 of Rejoinder)**. Application made on 23.12.2021 copy of acknowledgement enclosed with rejoinder as **ANNEXURE-C (Page No- 20 of Rejoinder)**.
17. **Application to adjudicating authority made within 115 days hence determination and application timelines are also adhered by the applicant.**
18. The transfers are not in the ordinary course of business of the CD or the respondents and were not in good faith. CD has been under financial stress and

there is no reason for CD to transfer such huge amounts to the respondents towards purported repayments of loans. The stands taken are clearly afterthought, contradictory and the transactions are designed to defraud the general body of creditors. In their reply also respondent failed to show that these transactions were in ordinary course of business.

**ORDER**

19. It may be noted that the transactions in question have taken place within the look back period of two years preceding the date of commencement of CIRP i.e. 16.03.2020. The transactions relate to 2018, 2019 and 2020.
20. On perusal of the record, it is apparent that the Corporate Debtor had entered into transactions with the Respondents that are preferential in nature. The Resolution Professional has formed an opinion and has taken steps to recover the loans given to the Respondent Nos. 1 and 2.
21. The Resolution Professional made a determination as to the nature of transactions. The Respondents have contended that the amount was returned to the Respondents for the loan availed by the Corporate Debtor at 15% per annum in the ordinary course of business.
22. What baffles us is that at a time, when the Corporate Debtor is undergoing a financial crunch, no prudent person or Board of Management would repay the loan amount to itself and its related party unless the Board of Management were of suspicion that the Corporate Debtor would dissolve or wind up soon and the related parties of the Corporate Debtor would not receive their fair share.
23. This is a case of preferential transactions which were entered by the Corporate Debtor and the related parties. The Respondents are directed to return the amounts as mentioned in the table in paragraph 11 to the Resolution Professional within two weeks from the date of this order.
24. In view of the above directions, **IA(I.B.C)/1471(KB)2020 is disposed of.**
25. The Registry is directed to send e-mail copies of the order forthwith to all the

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parties and their Counsel for information and for taking necessary steps.

26. 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 6<sup>th</sup> day of July, 2022.

Safura [LRA]/GGRB[LRA]