NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 201
I.A. 2841/2023
IN C.P.(IB)-27(MB)/2019

CORAM:
SH. HARIHARAN NEELAKANTA IYER
Member (Technical)

MS. LAKSHMI GURUNG
Member (Judicial)

ORDER SHEET OF THE HEARING ON **04.11.2026**
(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: Bank of India
Vs
Housing Development & Infrastructure Ltd.

Appearance

For Applicant : Adv. Mufaddal Paperwala (VC).

SECTION 7 OF THE IBC, 2016

ORDER

This application is listed for pronouncement of order. The same is pronounced in open court, vide a separate order.

Sd/-
HARIHARAN NEELAKANTA IYER
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

---Azad---

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A. 2841 of 2023

In

CP (IB) No. 27/MB/2019

Under Section 45 of the Insolvency and Bankruptcy Code, 2016

Abhay Narayan Manudhane

Resolution Professional of Housing Development and Infrastructure Limited

9-01, HDIL Towers, Anant Kanekar Marg, Bandra East, Mumbai – 400054

... Applicant

Vs.

1. **Ms. Sehaj Kochhar**

   4004 – D. B. Woods, Goregaon (East), Mumbai – 400063

2. **Rakesh Kumar Wadhawan**

   Wadhawan House, Plot No. 32/A, Union Park, Road No. 5, Opp. J.B. Petit School, Bandra (West), Mumbai – 400050

3. **Sarang Rakesh Wadhawan**

   Wadhawan House, Plot No. 32/A, Union Park, Road No. 5, Opp. J.B. Petit School, Bandra (West), Mumbai – 400050

... Respondents

In the matter of

Bank of India

... Financial Creditor

Vs

Housing Development and Infrastructure Limited

... Corporate Debtor

Order Pronounced on: 04.11.2026

CORAM:

Sh. Hariharan Neelakanta Iyer
Member *(Technical)*

Ms. Lakshmi Gurung
Member *(Judicial)*

APPEARANCES:

For the Applicant	:	Adv. Shadab Jan a/w Adv. Prerana Wagh Adv. Mufaddal Paperwala i/b M/s Crawford Bayley & Co.
For the Respondent 1	:	Adv. Ryan Dsouza (VC) a/w Adv. Ritesh Hegde
For the Respondent 2	:	Adv. Sagar Shetty a/w Adv. Aayesha Thakkar
For the Respondent 3	:	Adv. Disha Shah a/w Adv. Zalak Mody i/b A&P Partners

Per: **Lakshmi Gurung, Member *(Judicial)***

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1. The present Interlocutory Application has been filed by the Resolution Professional of M/s Housing Development and Infrastructure Limited (**HDIL/Corporate Debtor**) seeking following prayers:

   a) *Declare that the transaction under Sale Deed dated 04.07.2019 entered between the Corporate Debtor and Respondent No. I is an undervalued transaction as under Section 45(2) of the Insolvency & Bankruptcy Code, 2019;*

   b) *Declare that the transaction under Sale Deed dated 04.07.2019 entered between the Corporate Debtor and Respondent No. 1 is a fraudulent transaction as under Section 66(1) of the Insolvency & Bankruptcy Code, 2016;*

   c) *Direct the Respondents to jointly and/or severally, to make payment of a sum of Rs. 2,38,18,000/- (Rupees two crore thirty eight lakh eighteen thousand only) to the Corporate Debtor towards arrears of Sale Consideration for Commercial Office Premises, 1st Floor, Dheeraj Pali Arcade Building, New Adarsh Nagar CHS, Pali Road, Bandra (West), Mumbai- 400050, in accordance with the market price;*

d) *In the alternative to clauses (b) & (c), appoint an independent expert in terms of Section 46(d) of the Insolvency & Bankruptcy Code, 2016 for determination of Sale Consideration for the premises at Commercial Office Premise, 1st Floor, Dheeraj Pali Arcade Building, New Adarsh Nagar CHS, Pali Road, Bandra (West), Mumbai- 400050 and direct Respondent No.1 to make payment of the sale consideration as determined;*

e) *Grant any other relief, issues any appropriate directions or any such other orders, as may be deemed by this Tribunal as just, proper and necessary in the interest of justice*

2. **Brief facts**:

2.1 The Corporate Debtor had constructed a composite building (residential and commercial) named, "Dheeraj Pali Arcade" comprising of two wings of five floors ("**said building**") at Pali Road, Bandra, Mumbai, together with structures standing thereon, admeasuring about 831.94 sq. mt. ("**Said Property**") in accordance with the Scheme sanctioned by the Slum Rehabilitation Authority (**SRA**). Accordingly, the Corporate Debtor acquired the right to sell the Free Sale Component on ownership basis and allot flat/shops/offices/parking spaces in the said Building.

2.2 The Corporate Debtor was admitted to Corporate Insolvency Resolution Process (**CIRP**) vide this Tribunal's Order dated 20.08.2019 and the Applicant was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional (**RP**) by the CoC at the 1st CoC Meeting held on 08.01.2020.

2.3 Upon taking charge, the RP learnt that a premise situated at Commercial Office Premises, 1st Floor, Dheeraj Pali Arcade Building, New Adarsh Nagar CHS, Pali Road, Bandra (West), Mumbai – 400050 ("**Bandra Premises**") was registered in favour of Ms. Sehaj Kochhar (**Respondent No. 1/ R-1**) by virtue of a registered Sale Agreement dated 04.07.2019 and R-1 is currently in possession of the said Bandra premises.

2.4 The RP had earlier filed IA No. 1244 of 2022 under section 45 of the Code against one Mr. Sunny Mohan Dhuriya and also the Respondents

herein. The reliefs sought in IA No. 1244/2022 were akin to the reliefs sought in the present IA. It is submitted that the said IA had clubbed two PUFE transactions, one against Mr. Sunny Mohan Dhuriya and the other was against R-1. The said IA was withdrawn since the dispute with Mr. Sunny Mohan Dhuriya was amicably resolved. But the cause of action against the Respondent No. 2 and 3 continued. Due to oversight and in-advertence, the Applicant failed to inform the bench that he shall continue to pursue the reliefs against the Respondents herein.

2.5 The present IA was filed on 30.06.2023 seeking directions with respect to the transaction entered between the Corporate Debtor and R-1 under the Sale Agreement dated 04.07.2019 for allegedly being hit by sections 45, 49 and 66 of the Code.

Submissions of the Applicant/RP

3. The submissions of the RP are encapsulated below:

3.1 On perusal of the Books of Accounts of the Corporate Debtor, it was observed that the Bandra Premises was mentioned as "work in progress", however, upon visit of the said premises, it was learnt that the Bandra premises has been transferred to R-1 under a registered Sale Agreement dated 04.07.2019 for a consideration of Rs. 49,94,500/- whereas the market price of the said premises according to the Department of Registration and Stamps attached to the Sale Agreement is Rs. 2,38,18,000/-. The Stamp Duty and Registration charges amounting to Rs. 14,60,000/- have been paid in accordance with the said market price.

3.2 Though the Receipt of Rs. 49,94,500/- is annexed to the Sale Agreement, the RP is unable to trace the same in the books of accounts of the Corporate Debtor. There is neither any RTGS entry nor any details of cheque or other mode of payment recorded. The RP addressed a Letter dated 27.07.2021 to R-1 seeking details of the consideration paid to the Corporate Debtor in lieu of the property and also requested to provide all the annexures to the Sale Agreement. However, no reply has been received.

3.3 On the date when the sale agreement was executed i.e. 04.07.2019, the captioned CP/27/2019 was heard and reserved for orders. Mr. Rakesh Kumar Wadhawan (**Respondent No. 2/R-2**) and Mr. Sarang Rakesh Wadhwan (**Respondent No. 3/R-3**) being the directors-promoters of the Corporate Debtor are fully aware of the developments concerning the CP/27/2019, yet R-3 is a signatory to the Sale Agreement.

3.4 Given the peculiar timing and circumstances surrounding the Sale Agreement, the said transaction, although a real estate transaction, does not form part of the undistinguished common flow of business of the Corporate Debtor in ordinary course of business.

3.5 The Respondents No. 2 & 3 have not acted in good faith as the transaction under challenge has caused wrongful loss to the Corporate Debtor. Rather this transaction is carried out by the Respondents with fraudulent purpose and with an intent to defraud the creditors. Hence, the transaction under the Sale Agreement is also hit by Section 66(1) & 66(2) of the Code, and thus Respondent No. 2 & 3 (being the director-promoter of the Corporate Debtor as well as a party involved in the said transaction) are liable to contribute to the assets of the Corporate Debtor.

3.6 Since the transaction under the Sale Agreement is undervalued transaction as under Section 45(2) of the Code and deliberately entered between the parties for keeping assets of the Corporate Debtor beyond the reach of the creditors and claimants of the Corporate Debtor to adversely affect the interest of creditors and claimants of the Corporate Debtor, the said transaction would suffer under Section 49 of the Code.

4. Reply of the Respondents

The RP has impleaded Ms. Sehaj Kochhar, the purchaser of the Bandra Premises, as Respondent No. 1. The erstwhile directors of the Corporate Debtor i.e. Mr. Rakesh Wadhawan and Mr. Sarang Wadhawan, are impleaded as Respondents no. 2 and 3. Replies have been filed by Respondents No. 1 and 3.

4.1 **Reply of R-1:**

a) It is submitted that the applicant has failed to establish that the consideration value of the challenged transaction is undervalued. The applicant has merely considered the Ready Reckoner Value of the Bandra premises which is taken for the purpose of stamp duty calculation at the time of registration of the Sale Agreement.

b) It is submitted that the transaction dates back to the year 2004, when Mr. Neeraj Kochhar, father of R-1 (legal guardian) had purchased the said Bandra Premises for consideration of Rs. 49,94,500/- on behalf of R-1. The consideration was paid in the year 2004-2005 and allotment letter was issued by the Corporate Debtor on 05.04.2004.

c) When R-1 later followed up with the Corporate Debtor, it was discovered that the Bandra premises was in possession of the Punjab and Maharashtra Co-operative Bank Limited (**PMC Bank**). It was only after the PMC Bank vacated the said Premises that the sale agreement was finally registered on 04.07.2019. Due to the delay in the registration, the higher stamp duty was paid on the market value as per the then prevailing Ready Reckoner rates, however, the sale consideration was paid in the year 2004-2005 itself.

4.2 **Reply of R-3:**

a) Respondent -3 has not denied the factum of execution of sale agreement dated 04.07.2019 with respect to the Bandra premises in "Dheeraj Pali Arcade" Building as part of free component sale. It is submitted that the Corporate Debtor was engaged in the business of real estate and has developed the project as per the sanction received from Slum Rehabilitation Authority and the Corporate Debtor was entitled to sell the sale components in the aforesaid building. Thus, the sale agreement dated 04.07.2019 for sale of the Bandra premises in the said building is part of the Corporate Debtor's ordinary course of business. Reliance is placed on ***Anuj Jain IRP for Jaypee Infratech Limited vs. Axis Bank Ltd. (Civil Appeal No. 8512-8527 of 2019)***

and ***Pallavi Joshi Bakhru vs Universal Buildwell Private Limited*** (CA No. 891/2019 and CA No. 253/2019 in Company Petition No. (IB) - 456 (ND)/2018.

b) Without prejudice, it is submitted that the present IA is filed under section 45 of the Code, however, the Applicant has also sought reliefs under section 66 of the Code. Further, the present application is also barred by limitation under Regulation 35A of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 (**CIRP Regulations**).

Analysis & Findings

5. Heard the Ld. counsel for the parties and perused the record.

6. The CP bearing No. 27 of 2019 was filed under section 7 of the Code on 10.01.2019 and after hearing the parties, the matter was reserved for orders on 04.07.2019 and Corporate Debtor (CD) was admitted into CIRP on 20.08.2019. On the same day when the matter was reserved for orders, Mr. Sarang Rakesh Wadhawan (Respondent No. 3), being the erstwhile director of the Corporate Debtor, had executed a sale deed dated 04.07.2019 for sale of commercial office at 1st Floor, Dheeraj Pali Arcade Building, New Adarsh Nagar CHS, Pali Road, Bandra (West) (the '**Bandra Premises**')

7. Ld. Counsel appearing for the RP submits that the suspended directors of the Corporate Debtor knew that admission of the Corporate Debtor into CIRP was inevitable, however, despite the same, they have executed the said sale deed dated 04.07.2019 for a significantly lower consideration at a time when the Corporate Debtor was on its verge of insolvency.

8. Ld. Counsel for the RP contends that the ready reckoner value of the Bandra Premises is Rs. 2,38,18,000 whereas the consideration paid for the said property is only Rs. 49,94,500 which is much below the real value and therefore, this transaction of sale should be declared to be as undervalued transaction under section 45(2) of the IBC and subsequently, orders be passed including appointment of an independent

expert to ascertain the real fair market value of the said property as on 04.07.2019.

9. He further submitted that the said transaction is also covered under fraudulent transaction as there is no details of receipt of Rs. 49,94,500 in the books of accounts of the corporate debtor, nor details of any cheques or RTGS payments are provided. Therefore, it is the case of the RP that the Bandra premises has been fraudulently transferred to R-1 to defraud the creditors of the corporate debtor without receipt of real value of the said property.

10. On the other hand, R-1 has referred to the provisions of Section 45 and contended that the term 'ordinary course of business' as defined under section 43(2) of the Code and interpreted in the case of ***Anuj Jain IRP for Jaypee Infratech Limited vs. Axis Bank Ltd. (Civil Appeal No. 8512-8527 of 2019)*** relied upon by the RP, will not be applicable for any transaction alleged to be under section 45 of the Code. It is submitted that section 45 of the Code only mentions 'ordinary course of business of the Corporate Debtor' and not 'ordinary course of business of Corporate Debtor and transferee'. In other words, even if Corporate Debtor executed a transaction which was in its ordinary course of business and not of the transferee i.e. R-1, then such transaction cannot be covered under section 45 of the Code.

11. Ld. Counsel for R-1 referred to the allotment letter dated 05.04.2004 and contended that the Corporate Debtor had allotted the said property long back in the year 2004 and therefore, the alleged transaction is beyond the look back period and cannot be covered undervalued transaction under section 45 of the Code.

12. It is submitted by R-1 that the question as to whether a transaction is covered under section 45 must be examined with reference to the consideration agreed between the parties and the value of the property at the time the commercial bargain was entered into. A subsequent appreciation in the market value of the premises or the Ready Reckoner value prevailing at the time of registration cannot, according to R-1,

render a *bona fide* transaction as undervalued.

13. It was further submitted on behalf of R-1 that as a *bona fide* purchaser, it was sufficient to note that Corporate Debtor had developed the Dheeraj Pali Arcade Building under scheme of slum rehabilitation and the said flat was part of free sale component, the details of which are given in the registered sale deed dated 04.07.2019.

14. It is also submitted that though the allotment was made on 05.04.2004 and the entire sale consideration was paid in cash, however, R-1 had to suffer for 15 years to get the registered sale deed in her favour and the possession of the said property as the said property was under charge of and subject to issue of NOC by PMC Bank. Thereafter, R1 is in possession since 2019.

15. R-1 has further contended that the RP has not considered the fact that the transaction was actually undertaken in the year 2004 and has not annexed any valuation report to show that the transaction is undervalued as on 2004.

16. Ld. Counsel for R2 & R3 merely emphasized on the fact that the sale transaction was in the 'ordinarily course of business' and that the RP has not been able to establish that the ingredients of section 45 or section 66 are fulfilled. Therefore, the transaction cannot be declared as undervalued and/or fraudulent transaction.

17. In response to the submissions of the Respondents, Ld. Counsel for the RP submitted that R-1 has only produced the allotment letter allegedly issued by the Corporate Debtor on 05.04.2004 in favour of Mr. Neerad Kochhar (father and legal guardian of R-1). The said letter bears the signature of Mr. Sarang Wadhawan as director of the Corporate Debtor, however, R-3 was appointed as director only on 04.03.2005 i.e. nearly a year after the date of the alleged allotment letter.

18. It is further submitted that the letterhead of the allotment letter records the registered address of the Corporate Debtor as *"9-01, Dheeraj Arma,*

Anant Kanekar Marg, Bandra (East), Mumbai – 400051" ('**Bandra Address**'). However, the Bandra Address became the registered office of the Corporate Debtor only with effect from 27.03.2006. Prior thereto, the registered address of Corporate Debtor was *"Ground Floor, Dheeraj Apartments, Natwar Nagar Road No. 1, Jogeshwari (East), Mumbai – 400060".* Therefore, on the date of the alleged Allotment Letter, no registered office of the Corporate Debtor existed at the Bandra Address which raises doubts on the authenticity and genuineness of the allotment letter.

19. We have considered the submissions of the parties and have carefully examined the material on record.

Whether the transaction is undervalued under section 45 of IBC

20. R-1 has vehemently argued that the genesis of the transaction commenced on 05.04.2004 when the corporate debtor issued allotment letter to R-1 upon receipt of entire sale consideration of Rs. 49,94,500. Thus, the transaction is much beyond the look back period and therefore section 45 is not attracted.

21. It is submitted on behalf of R-1 that due to charge created in the Bandra Premises by PMC Bank, R-1 was deprived of the possession of the Bandra premises until 2019. Thus, it is admitted position that even after issue of allotment letter, the Bandra premises was not handed over to R-1.

22. It is submitted by R-1 that the consideration was paid in the year 2004-2005. But nowhere the details of payment are provided. So, during the course of hearing this Tribunal raised a query from R-1 about the mode of payment of consideration to which R-1 submitted that entire amount was paid by her father in cash and she did not pay any consideration.

23. The allotment letter dated 05.04.2004 states that R-1 is allotted the Bandra premises for a consideration of Rs. 49,94,500. It is merely a promise to sell a particular property at particular price. If the version of the R-1 is to be believed that sale agreement dated 04.07.2019 was a culmination of allotment letter of 2004, then there would have been some

reference to the allotment letter of 05.04.2004 in the Sale Agreement dated 04.07.2019. However, the Sale Agreement does not bear the testimony of this fact. There is neither any mention about the allotment letter dated 05.04.2004 nor about the details of consideration such as mode of payment whether paid in cash or by cheque and specific dates when paid. Merely a receipt of Rs. 49,94,500, duly signed by Mr. Sarang Wadhawan is annexed to the Sale Agreement which does not even bear any date and specific details of the payments. Further, allotment letter is not an executed contract and does not create or confer, in favour of R-1, any right, title or interest over the Bandra Premises. R-1 derives its rights from the impugned the registered sale agreement executed on 04.07.2019 which is under challenge in the present application. Therefore, the submission of the R-1 that the alleged transaction emanates from allotment letter of the year 2004 is untenable and is rejected.

24. For better appreciation of the controversy, we now refer to Sections 45 and 46 of the Code that deals with respect to avoidance of undervalued transactions as quoted below:

Section 45: Avoidance of undervalued transactions.

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor—

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,

and such transaction has not taken place in the ordinary course of business of the corporate debtor.

Section 46: Relevant period for avoidable transactions.

(1) In an application for avoiding a transaction at undervalue, the liquidator or the resolution professional, as the case may be, shall demonstrate that—

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date.

(2) The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

25. As per section 46 of the Code, the relevant period in case of an undervalued transaction with any person who is not a related party is one year preceding the insolvency commencement date and for related parties, the relevant period is two years preceding the insolvency commencement date. In the present case, the insolvency commencement date is 20.08.2019. Therefore, the relevant period runs from 20.08.2017 to 19.08.2019 in case of related parties and from 20.08.2018 to 19.08.2019 in any other case. The impugned sale transaction in favour of R-1 was executed by way of sale agreement dated 04.07.2019 which is very much within the look back period. Further, the petition was heard and reserved for order on 04.07.2019, and on the very same date the sale agreement was executed and registered.

26. Mr. Sarang Wadhawan/Respondent No. 3 has sought to contend that the transaction was in the ordinary course of business of the Corporate Debtor and is therefore, not covered under section 45 of the Code. However, he has remained completely silent about the allotment letter and the date when the sale consideration was received. On one side, during the oral arguments, R-1 has submitted that the entire sale consideration was paid in cash in 2003-04 by R-1's father and on the other side, the RP has asserted that the sale consideration of Rs. 49,94,500 is nowhere found in the books of account of the corporate debtor. Despite such glaring facts, the Respondents No. 2 & 3 have

maintained deafening silence about receipt of the sale consideration. The receipt of Rs. 49,94,500 was signed by R-3 who has not even bothered to furnish details of such payments. Obviously adverse inference has to be drawn that though R-3 has issued receipt for payment of Rs. 49,94,500 which according to R-1 was paid by her father in 2003-04 but is not reflecting in the books of account of the CD, that such amount was not deposited in the account of the CD and CD is deprived of its valuable asset.

27. While this Tribunal is conscious that the Corporate Debtor is involved in the business of real estate, however, that fact cannot *ipso facto* be a ground to conclude that any transaction of immovable property has to be in the ordinarily course of business of the corporate debtor. The circumstances under which the Sale Agreement dated 04.07.2019 is executed can by no means be deemed to be in the ordinary course of business.

28. The following circumstances support the conclusion that the sale had not taken place in the ordinary course of business:

i. By Respondent's own admission, the allotment letter was issued on 05.04.2004. This allotment letter bears the signature of Mr. Sarang Wadhawan. The RP has pointed out that Mr. Sarang Wadhawan was appointed as director of the Corporate Debtor only on 04.03.2005. Further, the letterhead of the allotment letter reflects the Bandra address which became the registered address of the Corporate Debtor only with effect from 27.03.2006. These facts are not controverted by the Respondents. Thus, the allotment letter is clearly an ante dated document.

ii. The sale agreement dated 04.07.2019 and the receipt for Rs. 49.94 lakhs issued by the Corporate Debtor has some glaring features with respect to the consideration. In the recitals, Rs. 49,94,500 is stated as the full consideration whereas in the payment receipt issued by the Corporate Debtor, it is stated that Rs. 49,94,500/- is paid as token or part consideration. Further, in the allotment letter dated

05.04.2004, the Corporate Debtor has confirmed receipt of only Rs. 9,90,000.

iii. Neither the allotment letter nor the sale agreement mentions about the mode of payment. Upon query regarding the payment mode, R-1 submits that the entire sale consideration was paid by her father (since deceased) to the Corporate Debtor in cash. The receipt of Rs. 49,94,500 is also not recorded in the books of account of the Corporate Debtor.

iv. Though R-1 submitted that the said Bandra premises was under possession of PMC and as NOC was not granted hence sale was not earlier executed. However, no specific details are provided by any of the Respondents as to when the possession of the Bandra premises was handed back to CD and when NOC was granted.

v. The captioned petition no. 27/2019 was filed by Bank of India on 10.01.2019. The said petition was reserved for orders i.e. 04.07.2019 and on this very same date, the sale of Bandra premises was executed.

vi. No cause or reason provided by the Respondents on which basis they found it now viable to sell the Bandra premises in the year 2019 at such a rate lower than the existing market value especially at the time when it was imminent that the Corporate Debtor was going to be admitted to insolvency.

29. In the aforementioned glaring and unusual facts, it cannot be held that the sale transaction in the year 2019 based on the allotment letter 2004 was in the ordinary course of business where a property having ready reckoner value of Rs. 2.25 crores got transferred for consideration of Rs. 49.9 lakhs without entering in the books of account of the corporate debtor.

30. The Hon'ble Supreme Court in **Anuj Jain Vs. Axis Bank Limited & Ors. [Civil Appeal Nos.8512 – 8527, 6777 – 6797 of 2019 and Civil Appeal**

Nos.9357 – 77 of 2019] observed:

"28.6.1 … It remains trite that an activity could be regarded as 'business' if there is a course of dealings, which are either actually continued or contemplated to be continued with a profit motive. As regards the meaning and essence of the expression 'ordinary course of business', reference made by the appellants to the decision of the High Court of Australia in Downs Distributing Co., could be usefully recounted as under: -

> *"… The provision does not require that the transaction shall be in the course of any particular trade, vocation or business. It speaks of the course of business in general. But it does suppose that according to the ordinary and common flow of transactions in affairs of business there is a course, an ordinary course. It means that the transaction must fall into place as part of the undistinguished common flow of business done, that it should form part of the ordinary course of business as carried on, calling for no remark and arising out of no special or particular situation."*

28.6.2. Taking up the transactions in question, we are clearly of the view that even when furnishing a security may be one of normal business practices, ***it would become a part of "ordinary course of business" of a particular corporate entity only if it falls in place as part of "the undistinguished common flow of business done"; and is not arising out of "any special or particular situation"****, as rightly expressed in Downs Distributing Co."*

(emphasis supplied)

31. In the present facts and circumstances, we are of the earnest view that the impugned sale transaction dated 04.07.2019 is not in the general flow of business of the Corporate Debtor and therefore, cannot be treated as ordinarily course of business.

32. Thus, we hold that the sale of the Bandra Premises to R-1 by way of execution of sale agreement dated 04.07.2019 is hit by section 45 of the Code for being undervalued.

Whether the transaction is also covered under section 66 of IBC

33. The RP has also made averments that the sale of the Bandra premises is

a fraudulent transaction and has sought directions under section 66 of the Code.

34. The Respondents have contended that the RP has sought to treat the same set of facts and pleadings for both 'undervalued transaction' and 'fraudulent or wrongful trading' without establishing the distinct statutory ingredients necessary for attracting each of the said provisions, and therefore, the present IA is in contravention to the observations made by Hon'ble Supreme Court in ***Piramal Capital and Housing Finance Limited vs. 63 Moons Technologies Limited [2025 SCC OnLine SC 690].***

35. On perusal of the application, it is seen that the RP has made pleadings invoking section 66 of the Code and also sought prayer in that regard. Further, during the course of arguments, Ld. Counsel for the RP has made submissions at length with respect to the applicability of section 66 of the Code in the present case.

36. In the case of ***Piramal Capital and Housing Finance Limited vs. 63 Moons Technologies Limited*** *(supra),* the Hon'ble Supreme Court while discussing on the demarcation of the powers of this Tribunal to pass orders in avoidance applications, has observed:

> *"61. ...If the resolution professional has filed common applications under sections 43, 45, 50 and also under section 66, the Adjudicating Authority shall have to distinguish the same and decide as to which provision would be attracted to which of the applications, and then shall exercise the powers and pass orders in terms of the provisions of the IBC."*

37. We have already analysed the impugned transaction in terms of section 45 of the Code and accordingly, we proceed to distinctively examine the applicability of section 66 of the Code.

38. Section 66 of the Code is reproduced below for ease of reference:

> *"**Section 66: Fraudulent trading or wrongful trading.***
>
> *(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate*

debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if—

(a) before the insolvency commencement date, such director or partner knew or ought to have known that the there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and
(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub- section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.]

Explanation – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor."

39. We see that sub-section (1) of section 66 categorizes a transaction to be 'fraudulent or wrongful' if any business of the corporate debtor has been carried on with intent to defraud its creditors or for any fraudulent purpose. Similarly, a transaction is covered under section 66(2) of the Code if, before the insolvency commencement date, a director knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP in respect of the corporate debtor and if such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

40. We have already noted in the preceding paragraphs about the unusual facts surrounding the purported allotment letter and the execution of the

sale agreement dated 04.07.2019. It is to be further noted that it is only R-1 who has been emphasising about the allotment letter dated 05.04.2004 and payment being made in the year 2004 itself, whereas R-3 has merely stated that the sale was in the ordinary course of its business and has made no submission endorsing the issuance of any such allotment letter dated 05.04.2004. This indicates that R-3 has admitted that the transaction occurred in the year 2019 and not 2004. We thus find that there are contradictions in the versions presented by R-1 and R-3 to justify the impugned transaction.

41. Further, R-3 has failed to ascertain that sale consideration received from R-1, was credited to the account of corporate debtor. No justification whatsoever is provided by the erstwhile directors (R-2 & R-3) for selling the Bandra premises when the Corporate Debtor was on the verge of insolvency. Thus, it is clear that the impugned transaction was made with an intent to defraud the creditors and is therefore also covered under section 66(1) of the Code.

42. We further note that on the same date when the captioned petition no. 27/2019 was reserved for orders i.e. 04.07.2019, the suspended directors decided to sell the Bandra Premises having a Ready Reckoner value of Rs. 2.25 crores merely for Rs. 49.9 lakhs. Further, based on the submissions of R-1, it seems that no consideration was paid during the execution of the sale agreement dated 04.07.2019. There is no proof of payment of Rs. 49.9 lakhs nor the receipt of Rs. 49.9 lakhs is recorded in the books of the Corporate Debtor. Thus, clearly the directors of the Corporate Debtor have disposed of the assets of the Corporate Debtor at a significantly lower rate or no payment at all despite being aware about the possibility of initiation of insolvency process against the Corporate Debtor and have failed to exercise due diligence to minimize the potential loss to the creditors. The impugned transaction also falls under the ambit of section 66(2) of the Code.

43. Ld. Counsel for R-1 contended that no valuation report has been annexed to the application by the RP, however, we note that the registered sale

deed itself captures the ready reckoner value as on the date of sale deed.

44. R-1 submitted that even if section 66 is to be considered, the same has to be confined to persons who were responsible for carrying on the business of the Corporate Debtor with fraudulent intent and the transaction cannot be held to be void and no direction can be issued against the third party with whom the Corporate Debtor had carried out the transaction. Reliance is placed on and ***Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors. [Misc. Application No. 1302 of 2023 in SLP (Crl.) Diary No. 6732 of 2023]***.

45. In this regard, we refer to ***Royal India Corporation Limited vs. Mr. Nandkishor Vishnupant Deshpande & Ors. [Company Appeal (AT) (Ins) No. 137/2021***, decided on 06.05.2024, wherein the Hon'ble NCLAT has held:

> *"as per provisions of sub-section (1), the Adjudicating Authority can pass an order directing* ***"any person",*** *who was party to carrying on the business of Corporate Debtor in such manner as to defraud creditors of the Corporate Debtor, or for any fraudulent purpose, to make him liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. A plain reading clearly shows that action can be taken against 'any person' for recovery of amount involved in the fraudulent transaction."*
>
> (emphasis supplied)

46. Thus, we hold that Respondent 1, being the beneficiary of the impugned transaction is equally liable to make contribution to the assets of the Corporate Debtor together with Respondents 2 & 3.

Conclusion

47. The findings recorded above are summarized as follows:

a) The impugned transaction entered into between the Respondent 1 and Respondents 2 & 3, is held to be an 'undervalued transaction' covered under section 45 of the Code. Prayer 'a' is **allowed**.

b) The impugned transaction entered into between the Respondent 1 and Respondents 2 & 3, is also covered as 'fraudulent and wrongful

transaction' covered under section 66 of the I&B Code. Prayer 'b' is **allowed**.

c) We note that the RP in prayer 'c' has sought contribution of Rs. 2,38,18,000/- from the Respondents towards the arrears of Sale consideration and alternatively, in prayer 'd', has prayed for appointment of independent expert under Section 46(d) of the Code for determination of Sale Consideration. Since we have drawn an adverse inference regarding the payment of Rs. 49,94,500 which is also not reflecting in the books of account of the Corporate Debtor, we **allow** prayer 'c' in terms of following direction:

> Respondent 1, being the beneficiary of the said transaction and Respondents 2 & 3, being the suspended directors of the Corporate Debtor, are directed to make contribution of Rs. 2,38,18,000/-, towards the sale consideration based on the Ready Reckoner value of the premises estimated as on 04.07.2019 when the sale agreement was executed. The payment shall be made within a period of 60 days, failing which the sale shall become void and the possession of the Bandra Premises be handed over to the RP.

d) Since we have allowed prayer 'c', prayer 'd' which is an alternate prayer has become superfluous.

e) IA is **allowed and disposed of** in above terms.

Sd/-	Sd/-
Hariharan Neelakanta Iyer	**Lakshmi Gurung**
Member (Technical)	**Member (Judicial)**

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