

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**IA(I.B.C)/640(KB)2022**

**In**

**C.P. (IB)/80(KB)2021**

*An application under Sections 45 and 66 of the Insolvency and  
Bankruptcy Code, 2016*

And

In the matter of:

Mallick Projects Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at Shrutineer Apartment, 1<sup>st</sup> Floor, 23/2/1/1, Bhagaban Chatterjee Lane, Howrah-711101, e-mail: info.mprojects@gmail.com;

And

In the matter of:

Neeraj Kejriwal, Resolution Professional of M/s. Mallick Projects Private Limited, having its office at P-40, C.I.T. Scheme-VI (M), Phoolbagan, Riddhi Siddhi Apartment, 1<sup>st</sup> Floor, Kolkata- 700054, Ph. No. 6291470523, e-mail: mallick.cirp@gmail.com;

... .. Applicant

Versus

1. Ayan Mallick, Suspended Board of Director of Mallick Projects Private Limited, residing at 6/9, Nabin Banerjee Lane, Shibpur Sadar, Howrah- 711104, West Bengal;
2. Archana Mallick, Suspended Board of Director of Mallick Projects Private Limited, residing at 6/9, Nabin Banerjee Lane, Shibpur Sadar, Howrah- 711104, West Bengal;
3. Amit Kumar Bose, Suspended Board of Director of Mallick Projects Private Limited, residing at 6/9, Nabin Banerjee Lane, Shibpur Sadar, Howrah- 711104, West Bengal;

... .. Respondents

**Date of pronouncement: 1<sup>st</sup> July, 2024**

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**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/physically)**

Mr. Sanwal Tibrewal, Adv. ] For the Suspended Board  
Ms. Swastika Roy, Adv. ]

Mr. Ratul Das, Adv. ] For the Resolution Professional  
Ms. Sutapa Mitra, Adv. ]  
Mr. Niraj Kejriwal, RP-in-Person ]

**O R D E R**

**Per: D. Arvind, Member (Technical)**

1. The Court Convened in a hybrid mode.
2. Heard both the learned Counsel for the parties.
3. This is an application preferred by Mr. Neeraj Kejriwal, Resolution Professional of M/s. Mallick Projects Private Limited (Resolution Professional/Applicant) against one Mr. Ayan Mallick, Ms. Archana Mallick and Mr. Amit Kumar Bose, Suspended Directors of Mallick Projects Private Limited seeking the following reliefs:
  - (a) *The respondents be directed to jointly and/or severally refund a sum of Rs.1592.00 lacs to the CD with respect and undervalued transactions mentioned in paragraph 10 of the instant application;*
  - (b) *The respondents be directed to jointly and/or severally refund a sum of Rs.2992.96 lacs to the CD with respect fraudulent transactions mentioned in paragraph 11 of the instant application;*
  - (c) *Such further or other order or orders be passed and/or directions are given as this Hon'ble Tribunal may deem fit and proper;*

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**4. Factual matrix:**

- 4.1. Mallick Projects Private Limited (Corporate Debtor) was put into Corporate Insolvency Resolution Process under Section 10 of the Code on 25<sup>th</sup> November, 2021, by virtue of an order passed by this Tribunal.
- 4.2. The Applicant was appointed an Interim Resolution Professional and, thereafter, as Resolution Professional.
- 4.3. After going through the records of the Corporate Debtor which were in public domain and the Applicant formed an opinion that certain transactions in the Corporate Debtor whereof are preferential, undervalued and fraudulent made with an intent to defraud the creditors of the Company.
- 4.4. Accordingly, the transaction Auditor was appointed to file his report on 11<sup>th</sup> May, 2022 based on which the alleged undervalued transaction under Section 45 has been filed. The books of the Corporate Debtor shows an inventory of investment valued at Rs.15.92 crores in the year ended 2021 and 2022. However, no share certificates were made available in spite of repeated follow-ups with the Respondents. In the absence of the whereabouts of the share certificates and no records available, the management must have sold the stock without routing the sale proceeds to the Corporate Debtor by avoiding disclosing the details of alleged sale.

**5. Fraudulent transaction:**

- 5.1. The Corporate Debtor has transferred an aggregate of Rs.2900.89 lakhs to A.K. Power Industries Private Limited. No agreement or any board resolution approving such transfer has been forthcoming from the suspended management as per the Applicant. Therefore, the entire transfer of Rs.2900.89 lakhs to group company is an act of syphoning off funds from Corporate

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Debtor to defraud the stakeholder of the Corporate Debtor, claims the Applicant and hence, this application has been filed.

**6. Learned Counsel for the Applicant:**

- 6.1.** Learned Counsel for the Applicant relies on the Transaction Auditor's Report and submits that no stock register containing details like name of the company, quantity of share purchased, date of purchase, rate of purchase etc. were maintained in the audited financials and books of accounts.
- 6.2.** Learned Counsel for the Applicant further submits that the investment file is also missing and in any case, the said shares are unsaleable and unrecoverable.
- 6.3.** Learned Counsel for the Applicant further submits that same should be treated as undervalued transaction falling under Section 45 of the Code. Total value of the undervalued transaction has been assessed at Rs.15.92 crores.
- 6.4.** With regard to the fraudulent transaction, the amount transferred to A.K. Power Industries Private Limited which is an associate Company without any justification or board resolution and, hence, appears to be not a genuine transaction. The suspended management has written off this amount in view of the fact that the said group company, A.K. Power Industries Private Limited has been admitted to liquidation and there is no scope for recovery. Therefore, the entire money transferred to A.K. Power Industries Private Limited without any agreement/justification should be recovered from the Respondents in terms of Section 66 of the Code.

**7. Learned Counsel for the Respondent:**

- 7.1.** Learned Counsel for the Respondent submits that the Corporate Debtor, A.K. Power Industries Private Limited is a group Company

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and owned and controlled by the Respondents. The Corporate Debtor invested in equity of the said A.K. Power Industries Private Limited purchasing 2,45,00,000 shares then valued at Rs.15.92 crores and investment was made in the year 2010. Copies of the share certificates have been attached, in reply to the application.

**7.2.** Learned Counsel for the Respondent submits that no allegation of fraud with reference to this investment. The allegation is only with reference to under valuation which is well beyond lookback period. In the given case, since investments were made in the year 2014 it is well beyond the lookback period and hence, no recovery can be made.

**7.3.** In any event, A.K. Power Industries Private Limited has gone into liquidation and therefore, the investment currently has no value.

**7.4.** With reference to the transfer of Rs.2900.89 lakhs, it was transferred to the associate company in the usual course of business and the money was to be returned with 9 per cent interest. However, the Company A.K. Power Industries Private Limited went into liquidation and consequently, the money could not be recovered. Therefore, they should not be treated as a fraudulent transfer and no recovery be ordered.

**8. Analysis and findings:**

**8.1.** We find based on the copy of share certificates attached to the reply that investments in A.K. Power Industries Private Limited have been made by Mallick Projects Private Limited in 2014.

**8.2.** The allegation in relation to this investment is under valuation. Avoidance and undervalued transactions are covered under Section 46 of IBC and the relevant lookback period for the avoidable transaction with reference to undervaluation is two years if such transaction was made with the related party

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preceding the insolvency commencement date as per Section 46 of the Code.

- 8.3.** In the given case, insolvency commenced on 26<sup>th</sup> November, 2021 and the lookback period is upto 24<sup>th</sup> November, 2019 whereas the alleged undervalued transaction has been made in the year 2014. Thus, allegation made by the Resolution Professional is well beyond lookback period provided in Section 46 of the Code and, hence, not sustainable and consequently we hold that this prayer for recovery of Rs.15.92 lakhs cannot be granted.
- 8.4.** With reference to the transfer made to the group company for a sum of Rs.2900.89 lakhs we see that both the companies are managed by the same person.
- 8.5.** Respondent has claimed that transfer was made in the usual course of business as intercorporate loan. To invoke Section 66 of the Code, it has to be proved that business of the Corporate Debtor has been carried on with intent to defraud the Creditors of the Corporate Debtor or for any fraudulent purpose.
- 8.6.** In the given case, we find that Corporate Debtor has advanced loan to the group company and the group company has gone into liquidation and therefore, amount advanced to the group company has been written off.
- 8.7.** It is not the case of the Applicant that post transfer of funds to group Company, A.K. Power Industries Private Limited, funds have been syphoned off from that company. Even if, it has been syphoned off from that company, it would be the Liquidator of A.K. Power Industries Private Limited, who can file avoidance application. Non-compliance of relevant provisions under the Companies, 2013, with regard to intercorporate loan, will have its own consequence under the Companies Act, but that will not have

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any bearing in this case relating to an avoidance application under IBC.

- 8.8.** There is nothing placed on record about the alleged fraudulent transfer of funds in the form of statutory Auditor's Report or how the write off, of loan has been treated in the Income Tax Assessment- for the relevant financial year or of any other documents to evidence fraud.
- 8.9.** We find that avoidance application has been filed without proper supportings or any evidences but merely based on the report of the Forensic Auditor.
- 8.10.** Avoidance application filed merely based on report of the Forensic Auditor is liable to be dismissed as held by our co-ordinate bench in **IA 618 of 2019 (NCLT, Ahmedabad Bench) - Vijay P Lulla RP for Technovaa Plastic Industries Pvt. Ltd. Vs. Technovaa Plastic Industries Pvt. Ltd. & Ors.**
- 9.** In view of the above discussions and findings, we find no merit in this application.
- 10.** Accordingly, IA(I.B.C)/640(KB)2022 is disposed of.
- 11.** Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order signed on this, the 1<sup>st</sup> day of July, 2024.**

Sayon (Steno)